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Federal Register

7–23–02 Tuesday
Vol. 67 No. 141 July 23, 2002
Pages 48015–48352

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–3 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Removing Dancy and Robinson Tangerine Varieties From the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes two varieties of tangerines from the regulated varieties of Florida citrus currently prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule removes Dancy tangerines and Robinson tangerines from the regulated varieties of Florida citrus. This rule also removes a section of the rules and regulations dealing with handling procedures when Dancy and Robinson tangerines are restricted. Production of these varieties has declined and it is expected production will continue to decline. Removing these varieties from the minimum grade and size requirements will have no significant impact on the tangerine market.

DATES: Effective July 24, 2002; comments received by September 23, 2002 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of USDA. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

This rule removes Dancy tangerines and Robinson tangerines from the regulated varieties of Florida citrus fruit currently prescribed under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. Production of these varieties has declined and it is expected that production will continue to decline. Removing these varieties from the minimum grade and size requirements will have no significant impact on the overall quality of tangerines. This action was unanimously recommended by the committee at its meeting on May 22, 2002.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of

paragraph (a), and for export shipments in Table II of paragraph (b). Currently, a minimum grade of U.S. No. 1 as specified in the U.S. Standards for Grades of Florida Tangerines (7 CFR 51.1810 through 51.1837), and a minimum size of 2 6/16 inches diameter are established for both Dancy and Robinson tangerines.

This rule modifies § 905.306 by deleting Dancy tangerines and Robinson tangerines from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). In its deliberations, the committee realized that Dancy tangerines and Robinson tangerines no longer significantly impact the citrus market. During the 2001–02 season, early indications are that total shipments of Dancy tangerines will only be around 13,000 cartons. Florida Department of Agriculture statistics show that in 2000–01, 23,000 cartons were shipped. This is down from 94,000 cartons shipped in the 1997–98 season. During 2001–02, early indications are that only 124,000 cartons of Robinson tangerines will be shipped. Florida Department of Agriculture statistics show that in 2000–01, 165,000 cartons were shipped. This is down from 262,000 cartons in 1997–98. Production of these varieties has declined as newer varieties have been developed and planted. The decline is expected to continue. Currently, shipments of these varieties represent approximately 4 percent of fresh shipments of tangerines. Consequently, the committee believes that the current market share and shipment levels justify removal of minimum grade and size requirements for these varieties.

Section 905.152 sets forth procedures for determining handlers' permitted quantities of Dancy and Robinson tangerine varieties when a portion of the 210 size of these varieties is restricted. Because Dancy and Robinson tangerines will no longer have to meet size requirements, § 905.152 is unnecessary and is being removed with this rule.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 tangerine handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and committee data, the average annual F.O.B. price for fresh early Florida tangerines during the 2000–01 season was around $9.50 per 4/5-bushel carton, and total fresh shipments of early tangerines for the 2000–01 season were 4.5 million cartons.

Approximately 20 percent of all handlers handled 77 percent of Florida tangerine shipments. Using tangerine shipments and the average F.O.B. prices, it can be determined that the majority of Florida tangerine handlers could be considered small businesses under SBA's definition. In addition, the majority of Florida citrus growers may be classified as small entities.

This rule removes Dancy tangerines and Robinson tangerines from the varieties of citrus regulated under the order. These varieties will no longer be required to meet the minimum grade and size requirements. Production of these varieties has declined and it is expected production will continue to decline. Removing these varieties from the minimum grade and size requirements will have no significant impact on the tangerine market.

Section 905.52 of the order, in part, authorizes the committee to recommend minimum grade and size regulations to the USDA. Section 905.306 of the order's rules and regulations specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. This rule modifies § 905.306 of the rules and regulations concerning covered varieties and minimum grade and size requirements, respectively. This rule also removes § 905.152.

This rule relaxes the handling requirements by removing two varieties from the list of varieties regulated. Handlers will be able to market these varieties free from the order's requirements. There will be no additional costs imposed on growers and handlers with this rule.

Early indications are that only a total of 137,000 cartons of these tangerines will be shipped in the 2001–02 season. Florida Department of Agriculture statistics show that in 2000–01, a total of 188,000 cartons of these varieties were shipped. This is down from a total of 356,000 cartons of Dancy and Robinson tangerines shipped in the 1997–98 season. Currently, shipments of these varieties account for approximately 4 percent of the overall 4.5 million cartons of early Florida tangerines shipped during the 2000–01 season. Production of these varieties has declined as newer varieties have been developed and planted. The decline in production of these varieties is expected to continue. Most producers have already discontinued growing these varieties and handlers find it easier to sell the newer varieties that have been developed. This change is expected to benefit both large and small entities equally.

One alternative discussed was to make no change to the order's handling regulations. The committee saw this alternative as being of no benefit to the industry because of the declining production and minimal market share of these varieties. The committee believes these varieties have no significant impact on the tangerine market and agreed that action should be taken to remove these varieties from the handling regulations, so this alternative was rejected.

Another alternative was to also remove the Ambersweet variety of tangerines from the regulations. However, the committee determined that annual shipments of this variety impact the tangerine market and, therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Florida tangerine handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in the committee's deliberations. Like all committee meetings, the May 22, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on the regulatory

and informational impacts of this action on small businesses.

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

This rule invites comments on removal of Dancy tangerines and Robinson tangerines from the rules and regulations concerning covered varieties of Florida citrus. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule relaxes handling requirements for two varieties of tangerines and, therefore, should be in place when the handlers begin shipments of these early tangerine varieties, beginning October 1, 2002. This issue has been widely discussed at various industry and association meetings, and the committee has kept the industry well informed. Interested persons have had time to determine and express their positions. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period is provided in this rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 905.152 [Removed]

2. Section 905.152 is removed.

§ 905.306 [Amended]

3. In § 905.306, Table I and Table II are amended by removing the entries for ''Dancy tangerines'' and ''Robinson tangerines.''

Dated: July 17, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18571 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9009]

RIN 1545–AY66

Taxable Years of Partner and Partnership; Foreign Partners

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations on the taxable year of a partnership with foreign partners and tax-exempt partners. The final regulations provide that in certain circumstances the taxable year of a partnership will be determined without regard to the taxable year of certain foreign partners and certain tax-exempt partners.

DATES: *Effective Date:* These regulations are effective on July 23, 2002.

Applicability Date: For dates of applicability of these regulations, see §§ 1.706–1(b)(5)(iii), (b)(6)(v), and (b)(11)(ii).

FOR FURTHER INFORMATION CONTACT: Dan Carmody, (202) 622–3080 (not a toll-free number). For specific information regarding international issues, contact Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

This document finalizes portions of § 1.706–1(b) of the Income Tax Regulations (26 CFR part 1) relating to the determination of the taxable year of a partnership with tax-exempt partners and foreign partners. This document also withdraws § 1.706–3T (26 CFR part 1).

Background

On May 24, 1988, Treasury and the Internal Revenue Service (IRS) issued temporary regulations (§ 1.706–3T, promulgated as part of TD 8205 (53 FR 19688)) with a contemporaneous notice of proposed rulemaking (LR–53–88 (53 FR 19715)) relating to the determination of the taxable year of a partnership with tax-exempt partners (the 1988 Proposed Regulations). On January 17, 2001, Treasury and the IRS published in the **Federal Register** a notice of proposed rulemaking [REG–104876–00 (66 FR 3920)] to provide guidance relating to the determination of the taxable year of a partnership with foreign partners (the 2001 Proposed Regulations). In that notice of proposed rulemaking, Treasury and the IRS also indicated that the 1988 Proposed Regulations would be finalized. A public hearing was held on June 6, 2001. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

I. In General

Section 706 provides rules relating to the taxable years of a partnership and its partners. Under section 706(a), in computing the taxable income of a partner for a taxable year, the partner must include the partner's share of any income, gain, loss, deduction, or credit of the partnership for the partnership's taxable year that ends within or with the partner's taxable year.

Section 706(b)(1)(B) provides that, unless the partnership establishes a business purpose for a different taxable year, a partnership cannot have a taxable year other than: (i) The majority interest taxable year; (ii) if there is no majority interest taxable year, the taxable year of all the principal partners of the partnership; or (iii) if there is no taxable year described in (i) or (ii), the calendar year unless the Secretary by regulation prescribes another period. Section 1.706–1(b)(2) of the Income Tax Regulations provides that, if neither section 706(b)(1)(B)(i) nor (ii) apply, the partnership's taxable year will be the taxable year that results in the least aggregate deferral of partnership income.

As part of a larger guidance project on accounting periods, the regulations under section 706 were restructured on May 17, 2002 [TD 8996 (67 FR 35009)]. To conform with the restructuring, the regulations finalized by this document will be finalized as amendments to § 1.706–1 even though they were proposed under §§ 1.706–3 and 1.706–4. A small portion of the proposed regulation under § 1.706–3 dealing with the effect of partner elections under

section 444 has been finalized as § 1.706–1(b)(11).

II. Treatment of Tax-Exempt Partners

The 1988 Proposed Regulations provide that, in determining the taxable year (the current year) of a partnership under section 706(b) and the regulations thereunder, a partner that is tax-exempt under section 501(a) is disregarded if such partner was not subject to tax, under chapter 1 of the Internal Revenue Code (Code), on any income attributable to its investment in the partnership during the partnership's taxable year immediately preceding the current year. This Treasury decision finalizes the 1988 Proposed Regulations without substantive change and withdraws the temporary regulations.

III. Treatment of Foreign Partners

A. General Rule

The 2001 Proposed Regulations generally provide that a foreign partner that is not subject to U.S. taxation on a net basis on income earned through the partnership is disregarded for purposes of section 706(b). For these purposes, a foreign partner will be considered subject to U.S. taxation on a net basis only if the partner is allocated gross income of the partnership that is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States (effectively connected income or ECI). In the case of a foreign partner claiming benefits under a U.S. income tax treaty, such partner is disregarded unless it is allocated any gross income that is attributable to a permanent establishment in the United States.

The final regulations follow the same approach as the proposed regulations, but the general rule has been clarified to provide that a foreign partner is disregarded unless such partner is allocated any gross income that is ECI, and the taxation of the income is not otherwise precluded under any U.S. income tax treaty. Gross income for these purposes does not include income that is excluded under another Code provision (e.g., the exclusion from gross income under section 883 for certain transportation income). Further, as the preamble to the proposed regulations [REG–104876–00 (66 FR 3920, 3922)] states, the Commissioner may challenge an arrangement that, while conforming to these rules, is undertaken with a principal purpose of achieving a tax result that is inconsistent with the intent of section 706. § 1.701–2.

A commentator questioned the statutory authority for regulations that disregard the interest in a partnership held by certain foreign partners in determining a partnership's taxable year under section 706(b). Treasury and the IRS believe that they have the authority to adopt these final regulations in order to resolve ambiguity in the statutory provisions in a manner that is consistent with the objectives of section 706(b) to eliminate or reduce the amount of deferral available on income earned through a partnership.

B. Application of the Minority Interest Rule

Treasury and the IRS recognize that requiring a partnership taxable year to be determined without regard to certain foreign partners may present difficulties for minority partners in some cases. For this reason, the proposed regulations include a ''minority interest rule'' which provides that the taxable years of foreign partners are not disregarded for purposes of section 706(b) if no single partner (other than a disregarded foreign partner) holds a 10-percent or greater interest in the capital or profits of the partnership, and if, in the aggregate, the partners that are not disregarded foreign partners do not hold a 20-percent or greater interest in the capital or profits of the partnership.

The 2001 Proposed Regulations provide that, for purposes of determining a partner's ownership in the partnership, the constructive ownership rules of section 318 apply (substituting ''10 percent'' for ''50 percent'' in section 318(a)(2)(C) and (3)(C)) and the attribution rules of section 267(c) also apply to the extent that those rules attribute ownership to persons to whom section 318 does not attribute ownership. These regulations replace this attribution rule with an attribution rule based on the principles of sections 267(b) and 707(b). Attribution under sections 267(b) and 707(b) is more commonly applied in the partnership context than is attribution under section 318, which is generally used to determine constructive ownership of stock.

Commentators expressed concern that the 10- and 20-percent thresholds were too low. They explained that U.S. minority partners would have difficulty reporting partnership income timely under these rules, because a U.S. minority partner typically lacks the practical or legal ability to cause a foreign partnership to close its books and conduct a mid-year accounting. Treasury and the IRS believe that partners can generally negotiate with the partnership to obtain the information needed to comply with their reporting obligations under these regulations. Recognizing, though, that partners in existing partnerships may not be in a position to renegotiate for partnership information, Treasury and the IRS have made these regulations applicable on a mandatory basis only to partnerships formed on or after September 23, 2002. Partnerships formed before September 23, 2002, however, may elect to change their taxable years to conform with these regulations. Such a change will be treated as a change to a required taxable year under § 4 of Rev. Proc. 2002–38 (2002–22 I.R.B. 1), or any successor, and the partnership will then be subject to the requirements of § 1.706–1(b)(6). Moreover, if an existing partnership terminates under the rules of section 708(b)(1)(B), the resulting partnership will be subject to the requirements of these regulations. Treasury and the IRS request comments on additional ways in which the administrative burdens associated with these regulations may be reduced.

The preamble to the 2001 Proposed Regulations requests comments on whether tax-exempt partners should be excluded for purposes of the minority interest rule. As no comments were received, the final regulations consider tax-exempt partners in determining whether the minority interest rule applies.

IV. Effective Date

The regulations under § 1.706–1(b)(5) relating to the taxable year of a partnership with tax-exempt partners apply to taxable years beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

The regulations under § 1.706–1(b)(6) relating to the taxable year of a partnership with foreign partners are applicable for taxable years of partnerships (other than existing partnerships as defined in § 1.706–1(b)(6)(v)) beginning on or after July 23, 2002.

The regulations under § 1.706–1(b)(11) relating to the effect of partner elections under section 444 are applicable for taxable years of partnerships beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

V. Transitional Relief for Existing Partnerships With Foreign Partners

The 2001 Proposed Regulations recognize that a potential hardship exists for partners of an existing partnership that changes its taxable year to comply with § 1.706–1(b)(6). If the

change results in two partnership taxable years ending within a partner's single taxable year, that partner could experience a bunching of more than 12 months of partnership income in a single taxable year. In order to avoid potential hardships, the 2001 Proposed Regulations incorporate the transitional rules of § 1.702–3T to allow the gain recognition to be spread over a four-year period. A partnership that uses this transitional rule is required to take into account all items of income, gain, loss, deduction and credit ratably over the four-year period.

Unlike the 2001 Proposed Regulations, these regulations do not require that existing partnerships change their taxable years to conform to the regulations. Because the regulations do not require existing partnerships to change their taxable years, the need for transitional relief is less imperative. Nevertheless, to encourage existing partnerships to change their taxable years to conform to these regulations, Treasury and the IRS have retained the transitional rule for any partnership that elects to apply the regulations in its first taxable year beginning on or after July 23, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Dan Carmody, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

2. In § 1.706–1, paragraphs (b)(5) and (b)(6) are revised and paragraph (b)(11) is added to read as follows:

§ 1.706–1 Taxable years of partner and partnership.

* * * * *

(b) * * *

(5) *Taxable year of a partnership with tax-exempt partners*—(i) *Certain tax-exempt partners disregarded.* In determining the taxable year (the current year) of a partnership under section 706(b) and the regulations thereunder, a partner that is tax-exempt under section 501(a) shall be disregarded if such partner was not subject to tax, under chapter 1 of the Internal Revenue Code, on any income attributable to its investment in the partnership during the partnership's taxable year immediately preceding the current year. However, if a partner that is tax-exempt under section 501(a) was not a partner during the partnership's immediately preceding taxable year, such partner will be disregarded for the current year if the partnership reasonably believes that the partner will not be subject to tax, under chapter 1 of the Internal Revenue Code, on any income attributable to such partner's investment in the partnership during the current year.

(ii) *Example.* The provisions of paragraph (b)(5)(i) of this section may be illustrated by the following example:

Example. Assume that partnership A has historically used the calendar year as its taxable year. In addition, assume that A is owned by 5 partners, 4 calendar year individuals (each owning 10 percent of A's profits and capital) and a tax-exempt organization (owning 60 percent of A's profits and capital). The tax-exempt organization has never had unrelated business taxable income with respect to A and has historically used a June 30 fiscal year. Finally, assume that A desires to retain the calendar year for its taxable year beginning January 1, 2003. Under these facts and but for the special rule in paragraph (b)(5)(i) of this section, A would be required under section 706(b)(1)(B)(i) to change to a year ending June 30, for its taxable year beginning January 1, 2003. However, under the special rule provided in paragraph (b)(5)(i) of this section the partner that is tax-exempt is disregarded, and A must retain the calendar year, under section 706(b)(1)(B)(i), for its taxable year beginning January 1.

(iii) *Effective date.* The provisions of this paragraph (b)(5) are applicable for taxable years beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

(6) *Certain foreign partners disregarded*—(i) *Interests of disregarded foreign partners not taken into account.* In determining the taxable year (the current taxable year) of a partnership under section 706(b) and the regulations thereunder, any interest held by a disregarded foreign partner is not taken into account. A foreign partner is a disregarded foreign partner unless such partner is allocated any gross income of the partnership that was effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States during the partnership's taxable year immediately preceding the current taxable year (or, if such partner was not a partner during the partnership's immediately preceding taxable year, the partnership reasonably believes that the partner will be allocated any such income during the current taxable year) and taxation of that income is not otherwise precluded under any U.S. income tax treaty.

(ii) *Definition of foreign partner.* For purposes of this paragraph (b)(6), a foreign partner is any partner that is not a U.S. person (as defined in section 7701(a)(30)), except that a partner that is a controlled foreign corporation (as defined in section 957(a)) or a foreign personal holding company (as defined in section 552) shall not be treated as a foreign partner.

(iii) *Minority interest rule.* If each partner that is not a disregarded foreign partner under paragraph (b)(6)(i) of this section (regarded partner) holds less than a 10-percent interest, and the regarded partners, in the aggregate, hold less than a 20-percent interest in the capital or profits of the partnership, then paragraph (b)(6)(i) of this section does not apply. In determining ownership in a partnership for purposes of this paragraph (b)(6)(iii), each regarded partner is treated as owning any interest in the partnership owned by a related partner. For this purpose, partners are treated as related if they are related within the meaning of sections 267(b) or 707(b) (using the language ''10 percent'' instead of ''50 percent'' each place it appears). However, for purposes of determining if partners hold less than a 20-percent interest in the aggregate, the same interests will not be considered as being owned by more than one regarded partner.

(iv) *Example.* The provisions of paragraph (b)(6) of this section may be illustrated by the following example:

Example. Partnership B is owned by two partners, F, a foreign corporation that owns a 95-percent interest in the capital and profits of partnership B, and D, a domestic corporation that owns the remaining 5-percent interest in the capital and profits of partnership B. Partnership B is not engaged in the conduct of a trade or business within the United States, and, accordingly, partnership B does not earn any income that is effectively connected with a U.S. trade or business. F uses a March 31 fiscal year, and causes partnership B to maintain its books and records on a March 31 fiscal year as well. D is a calendar year taxpayer. Under paragraph (b)(6)(i) of this section, F would be disregarded and partnership B's taxable year would be determined by reference to D. However, because D owns less than a 10-percent interest in the capital and profits of partnership B, the minority interest rule of paragraph (b)(6)(iii) of this section applies, and partnership B must adopt the March 31 fiscal year for Federal tax purposes.

(v) *Effective date*—(A) *Generally.* The provisions of this paragraph (b)(6) are applicable for the first taxable year of a partnership other than an existing partnership that begins on or after July 23, 2002. For this purpose, an existing partnership is a partnership that was formed prior to September 23, 2002.

(B) *Voluntary change in taxable year.* An existing partnership may change its taxable year to a year determined in accordance with this section. An existing partnership that makes such a change will cease to be exempted from the requirements of paragraph (b)(6) of this section.

(C) *Subsequent sale or exchange of interests.* If an existing partnership terminates under section 708(b)(1)(B), the resulting partnership is not an existing partnership for purposes of paragraph (b)(6)(v)(A) of this section.

(D) *Transition rule.* If, in the first taxable year beginning on or after July 23, 2002, an existing partnership voluntarily changes its taxable year to a year determined in accordance with this paragraph (b)(6), then the partners of that partnership may apply the provisions of § 1.702–3T to take into account all items of income, gain, loss, deduction, and credit attributable to the partnership year of change ratably over a four-year period.

* * * * *

(11) *Effect of partner elections under section 444—(i) Election taken into account.* For purposes of section 706(b)(1)(B), any section 444 election by a partner in a partnership shall be taken into account in determining the taxable year of the partnership. See § 1.7519–1T(d), *Example (4).*

(ii) *Effective date.* The provisions of this paragraph (b)(11) are applicable for taxable years beginning on or after July 23, 2002. For taxable years beginning before July 23, 2002, see § 1.706–3T as contained in 26 CFR part 1 revised April 1, 2002.

* * * * *

§ 1.706–3T [Removed]

3. Section 1.706–3T is removed.

David A. Mader,

Deputy Commissioner of Internal Revenue.

Approved: July 16, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18455 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9008]

RIN 1545–AY45

Guidance Under Subpart F Relating to Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance under subpart F relating to partnerships. The final regulations are necessary in order to clarify the treatment of a controlled foreign corporation's (CFC) distributive share of partnership income under subpart F. The final regulations will affect United States shareholders of CFCs that have an interest in a partnership.

DATES: *Effective Dates:* July 23, 2002.

Applicability Dates: For dates of applicability, see § 1.702–1(a)(8)(ii), 1.952–1(g)(3), 1.954–1(g)(4), 1.954–2(a)(5)(v), 1.954–3(a)(6)(iii), 1.954–4(b)(2)(iii), 1.956–2(a)(3).

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2000, the IRS and Treasury published in the **Federal Register** (65 FR 56836) proposed amendments to the regulations (REG–112502–00) under section 702 and subpart F of the Internal Revenue Code (Code). Those proposed regulations substantially restated rules in former proposed regulations, REG–104537–97 (63 FR 14613), that were withdrawn in REG–113909–98 (64 FR 37727). Written comments were solicited and a public hearing was scheduled for December 5, 2000. Several comments were received and are discussed below. No public hearing was requested, therefore the hearing was cancelled. After consideration of all the comments, the proposed regulations under section 702 and subpart F are adopted as revised by this Treasury decision.

Summary of Public Comments and Explanation of Revisions

A. § 1.702–1(a)(8)(ii) Characterization and Determination of Subpart F Income

Under the proposed regulations, gross income is characterized at the partnership level. If any part of the partnership's gross income is a type of income that would be subpart F income if received directly by partners that are CFCs, that part of the partnership's gross income must be separately taken into account by each partner under section 702. To the extent that the separately stated income results in subpart F income to the CFC partner, it will be taken into account in determining the CFC's total subpart F income for the taxable year.

The proposed regulations under section 702 clarify that an item must be separately taken into account when, if separately taken into account by any partner, the item would result in an income tax liability for that partner, or any other person, different from that which would result if the partner did not take the item into account separately.

One commentator noted that the proposed regulations are inconsistent with section 702(b), which requires that the character and source of an item of gross income be determined at the partnership level, because the proposed regulations require the determination of subpart F income as if the income had been earned by the CFC. That commentator asserted further that the addition of the phrase ''or for any other person'' in the first sentence of § 1.702–1(a)(8)(ii) goes beyond the regulatory authority provided in section 702(a)(7).

The IRS and Treasury believe there is ample statutory authority for these regulations. The regulations are based upon the authority of subchapter K and subpart F and the policies underlying those provisions. The legislative history of subchapter K provides that, for purposes of interpreting Internal Revenue Code provisions outside of subchapter K, a partnership may be treated as either an entity separate from its partners or an aggregate of its partners, depending on which characterization is more appropriate to carry out the purpose of the particular

Internal Revenue Code or regulation section under consideration. *H.R. Conf. Rep. No. 2543, 83rd Cong. 2d. Sess. 59 (1954).*

To allow a CFC to avoid subpart F treatment for items of income through the simple expedient of receiving them as distributive shares of partnership income, rather than directly, is contrary to the intent of subpart F. Subpart F was intended to limit deferral of U.S. income tax on certain types of income received by CFCs. The IRS and Treasury believe that the approach set out in these regulations (which treats the partnership as an entity for certain purposes and as an aggregate for certain purposes) best achieves the purposes of subpart F and is consistent with the policies underlying subchapter K.

Another commentator stated that the requirement of a separate statement of subpart F income by the partnership would be difficult to administer because a foreign partnership generally is not required to prepare a Schedule K for its foreign partners.

The IRS and Treasury do not believe that applying the rules in the regulations will cause significant problems. Because the rules of subpart F target certain specific types of income (e.g., passive income, certain income earned from transactions with related persons), the IRS and Treasury believe that, in most cases, either the partnership, the CFC partner, or both, will be able to determine without significant difficulty the income earned by the partnership that must be separately stated by the CFC partner.

B. § 1.952–1(g) Treatment of Distributive Share of Partnership Income by a CFC Partner

The proposed regulations clarify that the definition of subpart F income includes a CFC's distributive share of any item of gross income of a partnership to the extent the income would have been subpart F income if received directly by the CFC partner. The proposed regulations apply to all partnership interests owned by CFC partners. In the preamble to the proposed regulations, comments were requested about whether these rules should apply for ownership interests that fall below a minimum threshold. This comment was requested because the IRS and Treasury were considering whether to provide that CFCs with a *de minimis* interest in a partnership should not be subject to the regulations (e.g., by analogy to the 10 percent ownership threshold that is used to determine a U.S. shareholder of a CFC).

One comment was received in response to this request. The commentator suggested that the proposed regulations should apply only to controlling partners, i.e. partners that hold more than a 50 percent interest. The commentator stated further that this result would be consistent with the subpart F ownership rules and would limit the rule to circumstances where the CFC partner could easily obtain the necessary information to determine whether its distributive share was subpart F income.

The commentator's suggestion of limiting the application of these rules to controlled partnerships was not adopted. The IRS and Treasury do not believe that the objective of the regulations (which, as noted above, is to prevent CFCs from avoiding subpart F by receiving items of income as distributive shares of partnership income, rather than directly) can be achieved by limiting the application of these rules only to controlled partnerships. Further, upon additional consideration, the IRS and Treasury believe that requiring all partnership interests held by a CFC to be subject to the rules of these regulations best effectuates the legislative intent of subpart F and generally should not give rise to significant difficulties for the CFC partner.

C. § 1.954–1(g) Test for Activity and Related Persons

Section 1.954–1(g) of the proposed regulations provides that, generally, in determining whether a distributive share of partnership income is subpart F income, whether an entity is a related person and whether an activity takes place in or outside the country under the laws of which the CFC is organized (e.g., for purposes of determining whether the income qualifies for a ''same country'' exception to subpart F), shall be determined with respect to the CFC partner and not the partnership.

One commentator objected to the rules in § 1.954–1(g)(1). This commentator stated that the rule represented a ''reverse'' application of the aggregate theory of partnerships, and was inconsistent with the principles of subchapter K. The IRS and Treasury disagree with this comment. As noted above, subchapter K contemplates applying either an aggregate theory or an entity theory of partnerships, based on the approach that best serves the underlying purposes of the Code or regulations at issue. For purposes of applying the policies of subpart F, which focus in part on whether income is being shifted between a CFC and a related entity in a different country, the IRS and Treasury believe it is appropriate to make the determination of whether an entity is a related person with respect to the CFC, and whether an activity takes place in or outside a CFC's country of incorporation, at the CFC partner level.

The IRS and Treasury also have become aware that some uncertainty exists under the proposed regulations with respect to the application of the related person test to certain purchase and sales transactions occurring between a partnership and its CFC partner. Specifically, where a purchase or sales transaction occurs between the partnership and its CFC partner, including sales or purchases on behalf of the CFC by the partnership, the general rule fails to provide guidance on whether the CFC partner's distributive share of the partnership income is derived from a transaction with a related person. As a result, the final regulations add a new rule for purposes of making that determination. In general, the final regulations provide that where the partnership enters into a purchase or sales transaction with the CFC partner, the transaction will be treated as a purchase or sales transaction with a related person where the CFC purchased the property that it sells to the partnership from a person related to the CFC or sells the property that it purchased from the partnership to such a related person. This rule also applies to purchases or sales by the CFC on behalf of a related person.

For example, if a partnership sells goods to its CFC partner that it bought from a person unrelated to the CFC, and the CFC partner then sells the goods to a person related to the CFC partner, the sale of goods by the partnership to the CFC will be treated as the sale of personal property to a related person for purposes of determining whether the CFC's distributive share of the partnership income relating to the sale of goods by the partnership is foreign base company sales income. An example has been included in the final regulations to illustrate this rule. In addition, the final regulations provide that when the CFC partner manufactures property that it sells to the partnership and the CFC conducts sales or manufacturing activities through a branch, if the CFC's income from the sale of property to the partnership is foreign base company sales income under the branch rule of section 954(d)(2), the partnership's purchase of this property from the CFC will be treated as the purchase of personal property from a related person. The effect of these two rules is to treat the CFC partner's distributive share of the income earned by the partnership as income earned from a related person

transaction if it would have been so treated if the CFC had purchased or sold the property directly, rather than through a partnership.

D. § 1.954–2(a)(5)(ii) Exceptions Applicable to Foreign Personal Holding Company Income

Section 1.954–2(a)(5)(ii) of the proposed regulations provide that only the activities of, and property owned by, the partnership will be taken into account in determining whether the exceptions from foreign personal holding company income contained in section 954(c)(2), (h) and (i) apply.

One commentator argued that applying § 1.954–2(a)(5)(ii) to a CFC with a qualified business unit (QBU) partnership that is seeking to qualify for the active financing exception under section 954(h) produces a result that is inconsistent with the intent of section 954(h). Specifically, section 954(h)(2)(B)(i) provides that a CFC that is engaged in a lending or finance business will be considered an ''eligible controlled foreign corporation'' for purposes of the active financing exception if the CFC derives more than 70 percent of its gross income directly from the active and regular conduct of a lending or finance business from transactions with unrelated customers. In addition, section 954(h)(3)(B) provides that, in the case of a CFC that conducts a lending or finance business (other than a banking or securities business), no income of the CFC (or QBU of the CFC) will qualify for the active financing exception unless more than 30 percent of the CFC's or QBU's gross income is derived directly from the active conduct of a financing business from transactions with unrelated customers in the CFC or QBU's home country. The commentator stated that section 954(h) appears to provide that the 70 percent test must be applied at the CFC level based on the CFC's income (including branches and partnerships) and the 30 percent test must be applied at the partnership or QBU level.

The proposed regulations, however, require that the determination of whether the 70 percent test and the 30 percent test are met is based solely by reference to the activities of the partnership. The commentator concluded that the proposed regulations are inconsistent with the two-part test in section 954(h) and that applying the rule of the proposed regulations potentially could place a CFC that conducts a financial services business through a partnership in a significantly worse situation than a CFC that conducts a similar business through a branch or disregarded entity.

In response to this comment, the IRS and Treasury have included a new rule in the final regulations that applies the ''eligible controlled foreign corporation'' requirement under section 954(h)(2), including the 70 percent test of section 954(h)(2)(B)(i), at the CFC partner level (by including in the gross income of the CFC partner any gross income earned by partnerships or other QBUs of the CFC partner), and applies the qualified banking and financing income test (the 30 percent test) under section 954(h)(3) at the partnership level (by including only the gross income of the partnership). In addition, a new rule has been added under § 1.954–2(a)(5)(ii) to clarify that for purposes of applying the special rule for income derived in the active conduct of an insurance business under section 954(i), the exception will apply only if the CFC partner is a qualifying insurance company, as defined in section 953(e)(3) (determined by examining premiums written by the CFC partner and any partnerships or other QBUs of the CFC partner), and the partnership generates qualified insurance income, as defined in section 954(i)(2) (determined by examining only the income earned by the partnership). Two examples have been included in the final regulations that illustrate the operation of these rules.

Another comment was received suggesting that the proposed regulations inappropriately require the partnership, not the CFC partner, to satisfy the active trade or business tests to qualify for the exceptions to the foreign personal holding company rules. The commentator stated that such a rule allows a purely passive investor in a partnership to qualify for the exceptions, contrary to the purposes of subpart F. The commentator argued that, instead, the regulations should apply the active trade or business tests at the CFC partner level, but should provide a rule that limits the attribution of partnership activities to the CFC partners.

This suggestion was not adopted. In general, the IRS and Treasury believe that the policies underlying subpart F are best served by applying the relevant active trade or business tests at the level of the entity that actually earns the income (i.e., the partnership). As noted above, however, the IRS and Treasury believe that, for purposes of determining whether a CFC qualifies for the active financing exception, applying the 70 percent test of section 954(h)(2) (and determining a CFC's qualification as a qualifying insurance company under section 954(i)(2)) at the CFC partner level is consistent with the statutory language of these provisions and best effectuates the legislative intent behind these provisions.

E. § 1.954–4(b)(2)(iii) Application of the Substantial Assistance Rule

The proposed regulations describe how the substantial assistance rules of § 1.954–4(b)(1)(iv) apply when the CFC partner earns services income through the partnership. When the partnership is performing services for a person unrelated to the CFC partner, but the CFC partner, or a related person, provides substantial assistance to the partnership, the CFC partner and the partnership are regarded as separate entities and the substantial assistance provided to the partnership by the CFC partner, or a related person, cause the CFC partner's distributive share of the services income to be treated as foreign base company services income.

Commentators argued that the proposed regulations should not treat the distributive share of the partnership's income as subpart F income if only the CFC partner provides substantial assistance to the partnership because, in that case, under an aggregate theory the CFC does not receive substantial assistance from a related person. This suggestion has not been adopted because the IRS and Treasury believe that excluding the CFC partner from the substantial assistance rule could potentially allow the CFC partner to circumvent the foreign base company service rules with respect to the services it is performing.

Special Analyses

It has been determined that this final regulation 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) and (d) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jonathan A. Sambur of the Office of the Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury

Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for 26 CFR part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.702–1 is amended as follows:

1. Paragraph (a)(8)(ii) is revised.
2. Paragraph (c)(1)(iii) is amended by removing the word ''and'.
3. Paragraph (c)(1)(iv) is amended by removing the period at the end and adding ''; and'' in its place.
4. Paragraph (c)(1)(v) is added.

The addition and revision read as follows:

§ 1.702–1 Income and credits of partner.

(a) * * *

(8) * * *

(ii) Each partner must also take into account separately the partner's distributive share of any partnership item which, if separately taken into account by any partner, would result in an income tax liability for that partner, or for any other person, different from that which would result if that partner did not take the item into account separately. Thus, if any partner is a controlled foreign corporation, as defined in section 957, items of income that would be gross subpart F income if separately taken into account by the controlled foreign corporation must be separately stated for all partners. Under section 911(a), if any partner is a bona fide resident of a foreign country who may exclude from gross income the part of the partner's distributive share which qualifies as earned income, as defined in section 911(b), the earned income of the partnership for all partners must be separately stated. Similarly, all relevant items of income or deduction of the partnership must be separately stated for all partners in determining the applicability of section 183 (relating to activities not engaged in for profit) and the recomputation of tax thereunder for any partner. This paragraph (a)(8)(ii) applies to taxable years beginning on or after July 23, 2002.

* * * * *

(c) * * *

(1) * * *

(v) In determining whether the de minimis or full inclusion rules of section 954(b)(3) apply.

* * * * *

3. In § 1.952–1, paragraph (g) is added to read as follows:

§ 1.952–1 Subpart F income defined.

* * * * *

(g) *Treatment of distributive share of partnership income*—(1) *In general.* A controlled foreign corporation's distributive share of any item of income of a partnership is income that falls within a category of subpart F income described in section 952(a) to the extent the item of income would have been income in such category if received by the controlled foreign corporation directly. For specific rules regarding the treatment of a distributive share of partnership income under certain provisions of subpart F, see §§ 1.954–1(g), 1.954–2(a)(5), 1.954–3(a)(6), and 1.954–4(b)(2)(iii).

(2) *Example.* The application of this paragraph (g) may be illustrated by the following example:

Example. CFC, a controlled foreign corporation, is an 80-percent partner in PRS, a foreign partnership. PRS earns $100 of interest income that is not export financing interest as defined in section 954(c)(2)(B), or qualified banking or financing income as defined in section 954(h)(3)(A), from a person unrelated to CFC. This interest income would have been foreign personal holding company income to CFC, under section 954(c), if it had received this income directly. Accordingly, CFC's distributive share of this interest income, $80, is foreign personal holding company income.

(3) *Effective date.* This paragraph (g) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

4. In § 1.954–1, paragraph (g) is added to read as follows:

§ 1.954–1 Foreign base company income.

* * * * *

(g) *Distributive share of partnership income*—(1) *Application of related person and country of organization tests.* Unless otherwise provided, to determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been subpart F income if received by it directly, under § 1.952–1(g), if a provision of subpart F requires a determination of whether an entity is a related person, within the meaning of section 954(d)(3), or whether an activity occurred within or outside the country under the laws of which the controlled foreign corporation is created or organized, this determination shall be made by reference to such controlled foreign corporation and not by reference to the partnership.

(2) *Application of related person test for sales and purchase transactions between a partnership and its controlled foreign corporation partner.* For purposes of determining whether a controlled foreign corporation's distributive share of any item of gross income of a partnership is foreign base company sales income under section 954(d)(1) when the item of income is derived from the sale by the partnership of personal property purchased by the partnership from (or sold by the partnership on behalf of) the controlled foreign corporation; or the sale by the partnership of personal property to (or the purchase of personal property by the partnership on behalf of) the controlled foreign corporation (CFC-partnership transaction), the CFC-partnership transaction will be treated as a transaction with an entity that is a related person, within the meaning of section 954(d)(3), under paragraph (g)(1) of this section, if—

(i) The controlled foreign corporation purchased such personal property from (or sold it to the partnership on behalf of), or sells such personal property to (or purchases it from the partnership on behalf of), a related person with respect to the controlled foreign corporation (other than the partnership), within the meaning of section 954(d)(3); or

(ii) The branch rule of section 954(d)(2) applies to treat as foreign base company sales income the income of the controlled foreign corporation from selling to the partnership (or a third party) personal property that the controlled foreign corporation has manufactured, in the case where the partnership purchases personal property from (or sells personal property on behalf of) the controlled foreign corporation.

(3) *Examples.* The application of this paragraph (g) is illustrated by the following examples:

Example 1. CFC, a controlled foreign corporation organized in Country A, is an 80-percent partner in Partnership, a partnership organized in Country A. All of the stock of CFC is owned by USP, a U.S. corporation. Partnership earns commission income from purchasing Product O on behalf of USP, from unrelated manufacturers in Country B, for sale in the United States. To determine whether CFC's distributive share of Partnership's commission income is foreign base company sales income under section 954(d), CFC is treated as if it purchased Product O on behalf of USP. Under section 954(d)(3), USP is a related person with respect to CFC. Thus, with respect to CFC, the sales income is deemed to be derived from the purchase of personal property on

behalf of a related person. Because the property purchased is both manufactured and sold for use outside of Country A, CFC's country of organization, CFC's distributive share of the sales income is foreign base company sales income.

Example 2. (i) CFC1, a controlled foreign corporation organized in Country A, is an 80-percent partner in Partnership, a partnership organized in Country B. CFC2, a controlled foreign corporation organized in Country B, owns the remaining 20 percent interest in Partnership. CFC1 and CFC2 are owned by a common U.S. parent, USP. CFC2 manufactures Product A in Country B. Partnership earns sales income from purchasing Product A from CFC2 and selling it to third parties located in Country B that are not related persons with respect to CFC1 or CFC2. To determine whether CFC1's distributive share of Partnership's sales income is foreign base company sales income under section 954(d), CFC1 is treated as if it purchased Product A from CFC2 and sold it to third parties in Country B. Under section 954(d)(3), CFC2 is a related person with respect to CFC1. Thus, with respect to CFC1, the sales income is deemed to be derived from the purchase of personal property from a related person. Because the property purchased is both manufactured and sold for use outside of Country A, CFC1's country of organization, CFC1's distributive share of the sales income is foreign base company sales income.

(ii) Because Product A is both manufactured and sold for use within CFC2's country of organization, CFC2's distributive share of Partnership's sales income is not foreign base company sales income.

Example 3. CFC, a controlled foreign corporation organized in Country A, is an 80 percent partner in MJK Partnership, a Country B partnership. CFC purchased goods from J Corp, a Country C corporation that is a related person with respect to CFC. CFC sold the goods to MJK Partnership. In turn, MJK Partnership sold the goods to P Corp, a Country D corporation that is unrelated to CFC. P Corp sold the goods to unrelated customers in Country D. The goods were manufactured in Country C by persons unrelated to J Corp . CFC's distributive share of the income of MJK Partnership from the sale of goods to P Corp will be treated as income from the sale of goods purchased from a related person for purposes of section 954(d)(1) because CFC purchased the goods from J Corp, a related person. Because the goods were both manufactured and sold for use outside of Country A, CFC's distributive share of the income attributable to the sale of the goods is foreign base company sales income. Further, CFC's income from the sale of the goods to MJK Partnership will also be foreign base company sales income.

Example 4. The facts are the same as *Example 3,* except that MJK Partnership purchased the goods from P Corp and sold those goods to CFC. CFC sold the goods to J Corp. J Corp sold the goods to unrelated customers in Country C. CFC's distributive share of the income of MJK Partnership from the sale of the goods by the partnership to itself will be treated as income from the sale of goods to a related person, for purposes of section 954(d)(1). Because the goods were both manufactured and sold for use outside of Country A, CFC's distributive share of income attributable to the sale of the goods is foreign base company sales income. Further, CFC's income from the sale of the goods to J Corp is also foreign base company sales income.

(4) *Effective date.* This paragraph (g) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

5. In § 1.954–2, paragraph (a)(5) is added to read as follows:

§ 1.954–2 Foreign personal holding company income.

(a) * * *

(5) *Special rules applicable to distributive share of partnership income*—(i) [Reserved].

(ii) *Certain other exceptions applicable to foreign personal holding company income.* To determine the extent to which a controlled foreign corporation's distributive share of an item of income of a partnership is foreign personal holding company income —

(A) The exceptions contained in section 954(c) that are based on whether the controlled foreign corporation is engaged in the active conduct of a trade or business, including section 954(c)(2) and paragraphs (b)(2) and (6), (e)(1)(ii) and (3)(ii), (iii) and (iv), (f)(1)(ii), (g)(2)(ii), and (h)(3)(ii) of this section, shall apply only if any such exception would have applied to exclude the income from foreign personal holding company income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of, and property owned by, the partnership and not the separate activities or property of the controlled foreign corporation or any other person;

(B) A controlled foreign corporation's distributive share of partnership income will not be excluded from foreign personal holding company income under the exception contained in section 954(h) unless the controlled foreign corporation is an eligible controlled foreign corporation within the meaning of section 954(h)(2) (taking into account the income of the controlled foreign corporation and any partnerships or other qualified business units, within the meaning of section 989(a), of the controlled foreign corporation, including the controlled foreign corporation's distributive share of partnership income) and the partnership, of which the controlled foreign corporation is a partner, generates qualified banking or financing income within the meaning of section 954(h)(3) (taking into account only the income of the partnership);

(C) A controlled foreign corporation's distributive share of partnership income will not be excluded from foreign personal holding company income under the exception contained in section 954(i) unless the controlled foreign corporation partner is a qualifying insurance company, as defined in section 953(e)(3) (determined by examining premiums written by the controlled foreign corporation and any partnerships or other qualified business units, within the meaning of section 989(a), of the CFC partner), and the partnership, of which the controlled foreign corporation is a partner, generates qualified insurance income within the meaning of section 954(i)(2) (taking into account only the income of the partnership).

(iii) *Examples.* The application of paragraph (a)(5)(ii) is demonstrated by the following examples:

Example 1. B Corp, a Country C corporation, is a controlled foreign corporation within the meaning of section 957(a). B Corp is an 80 percent partner of RKS Partnership, a Country D partnership whose principal office is located in Country D. RKS Partnership is a qualified business unit of B Corp, within the meaning of section 989(a). B Corp, including income earned through RKS Partnership, derives more than 70 percent of its gross income directly from the active and regular conduct of a lending or finance business, within the meaning of section 954(h)(4), from transactions in various countries with customers which are not related persons. Thus, B Corp is predominantly engaged in the active conduct of a banking, financing, or similar business within the meaning of section 954(h)(2)(A)(i). B Corp conducts substantial activity with respect to such business within the meaning of section 954(h)(2)(A)(ii). RKS Partnership derives more than 30 percent of its income from the active and regular conduct of a lending or finance business, within the meaning of section 954(h)(4), from transactions with customers which are not related persons and which are located solely within the home country of RKS Partnership, Country D. B Corp's distributive share of RKS Partnership's income from its lending or finance business will satisfy the special rule for income derived in the active conduct of banking, financing, or similar business of section 954(h). B Corp is an eligible controlled foreign corporation within the meaning of section 954(h)(2) and RKS Partnership generates qualified banking or financing income within the meaning of section 954(h)(3). B Corp does not have any foreign personal holding company income with respect to its distributive share of RKS Partnership income attributable to its lending or finance business income earned in Country D.

Example 2. D Corp, a Country F corporation, is a controlled foreign corporation within the meaning of section

957(a). D Corp satisfies the requirements of section 953(e)(3) and is a qualifying insurance company. D Corp is a 40 percent partner of DJ Partnership, a Country G partnership. DJ Partnership is a qualified business unit of D Corp, within the meaning of section 989(a), and is licensed by the applicable insurance regulatory body for Country G to sell insurance to persons other than related persons in its home country within the meaning of section 953(e)(4)(A). DJ Partnership receives income from persons who are not related persons, within the meaning of section 954(d)(3), from investments that satisfy the requirements of section 954(i)(2). D Corp's distributive share of DJ Partnership's income from investments that satisfy the requirements of section 954(i)(2) will not be treated as foreign personal holding company income because D Corp will satisfy the special rule of section 954(i) for income derived in the active conduct of insurance business. DJ Partnership is a qualifying insurance company branch within the meaning of section 953(e)(4) and its income is qualified insurance income within the meaning of section 954(i)(2). D Corp does not have any foreign personal holding company income as a result of its distributive share of DJ Partnership income that is attributable to the partnership's qualifying insurance income.

(iv) [Reserved].

(v) *Effective date.* This paragraph (a)(5) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

6. In § 1.954–3, paragraph (a)(6) is added to read as follows:

§ 1.954–3 Foreign base company sales income.

(a) * * *

(6) *Special rule applicable to distributive share of partnership income*—(i) *In general.* To determine the extent to which a controlled foreign corporation's distributive share of any item of gross income of a partnership would have been foreign base company sales income if received by it directly, under § 1.952–1(g), the property sold will be considered to be manufactured, produced or constructed by the controlled foreign corporation, within the meaning of paragraph (a)(4) of this section, only if the manufacturing exception of paragraph (a)(4) of this section would have applied to exclude the income from foreign base company sales income if the controlled foreign corporation had earned the income directly, determined by taking into account only the activities of, and property owned by, the partnership and not the separate activities or property of the controlled foreign corporation or any other person.

(ii) *Example.* The application of paragraph (a)(6)(i) of this section is illustrated by the following example:

Example. CFC, a controlled foreign corporation organized under the laws of Country A, is an 80 percent partner in Partnership X, a partnership organized under the laws of Country B. Partnership X performs activities in Country B that would constitute the manufacture of Product O, within the meaning of paragraph (a)(4) of this section, if performed directly by CFC. Partnership X, through its sales offices in Country B, then sells Product O to Corp D, a corporation that is a related person with respect to CFC, within the meaning of section 954(d)(3), for use within Country B. CFC's distributive share of Partnership X's sales income is not foreign base company sales income because the manufacturing exception of paragraph (a)(4) of this section would have applied to exclude the income from foreign base company sales income if CFC had earned the income directly.

(iii) *Effective date.* This paragraph (a)(6) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

7. In § 1.954–4, paragraph (b)(2)(iii) is added to read as follows:

§ 1.954–4 Foreign base company services income.

* * * * *

(b) * * *

(2) * * *

(iii) *Special rule applicable to distributive share of partnership income.* A controlled foreign corporation's distributive share of a partnership's services income will be deemed to be derived from services performed for or on behalf of a related person, within the meaning of section 954(e)(1)(A), if the partnership is a related person with respect to the controlled foreign corporation, under section 954(d)(3), and, in connection with the services performed by the partnership, the controlled foreign corporation, or a person that is a related person with respect to the controlled foreign corporation, provided assistance that would have constituted substantial assistance contributing to the performance of such services, under paragraph (b)(2)(ii) of this section, if furnished to the controlled foreign corporation by a related person. This paragraph (b)(2)(iii) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

8. In § 1.956–2, paragraph (a)(3) is added to read as follows:

§ 1.956–2 Definition of United States property.

(a) * * *

(3) *Property owned through partnership.* For purposes of section 956, if a controlled foreign corporation is a partner in a partnership that owns property that would be United States property, within the meaning of paragraph (a)(1) of this section, if owned directly by the controlled foreign corporation, the controlled foreign corporation will be treated as holding an interest in the property equal to its interest in the partnership and such interest will be treated as an interest in United States property. This paragraph (a)(3) applies to taxable years of a controlled foreign corporation beginning on or after July 23, 2002.

* * * * *

David A. Mader,

Deputy Commissioner of Internal Revenue.

Approved: July 16, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–18453 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9007]

RIN 1545–AW87

Compromise of Tax Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the compromise of internal revenue taxes. The regulations adopt the rules of the temporary regulations and reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Taxpayer Bill of Rights II.

EFFECTIVE DATE: These regulations are effective July 18, 2002.

FOR FURTHER INFORMATION CONTACT: Frederick W. Schindler, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7122 of the Internal Revenue Code (Code). The regulations reflect the amendment of section 7122 by section 3462 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685, 764) and by section 503 of the Taxpayer Bill

of Rights II, Public Law 104–168 (110 Stat. 1452, 1461).

As amended by RRA 1998, section 7122 provides that the Secretary will develop guidelines to determine when an offer to compromise is adequate and should be accepted to resolve a dispute. The legislative history accompanying RRA 1998 explains that Congress intended that, in certain circumstances, factors such as equity, hardship, and public policy be taken into account by the IRS in evaluating whether the compromise of individual tax liabilities would promote effective tax administration. H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998). On July 21, 1999, temporary regulations (TD 8829; 64 FR 39020) and a notice of proposed rulemaking (REG–116991–98; 64 FR 39106) reflecting these changes were published in the **Federal Register**. Four written comments on the temporary and proposed regulations were received. A public hearing on the regulations was requested but that request was later withdrawn. No public hearing was scheduled or held. The final regulations adopt the rules of the temporary regulations with minor changes.

Explanation of Provisions

A compromise is an agreement between a taxpayer and the Government that settles a tax liability for payment of less than the total amount determined and assessed. Consistent with its mission of applying the tax laws with integrity and fairness to all, the IRS generally expects that all taxpayers will pay the total amount due, regardless of amount. See Policy Statement P–5–2, Collecting Principles (Approved February 17, 2000), reprinted at IRM 1.2.1.5.2. When attempting to resolve a tax delinquency, the IRS will work with taxpayers to achieve full payment of all tax, penalties, and interest imposed by Congress. Where payment in full cannot immediately be achieved, the IRS may, at its discretion, allow taxpayers to pay over time through installment agreements.

The IRS recognizes that it is both sound business practice and good tax policy to settle some cases for less than the total amount due. Prior to issuance of the temporary regulations, the IRS had a longstanding practice of compromising where there was doubt as to the existence or amount of the tax liability or doubt that the total amount due could be collected. The final regulations continue these traditional grounds for compromise. In addition, to reflect the changes made by RRA 1998, the final regulations allow compromise where there is no doubt as to liability or as to collectibility, but where compromise would promote effective tax administration because either (1) collection of the liability would create economic hardship, or (2) compelling public policy or equity considerations provide a sufficient basis for compromising the liability. Compromise based on these hardship and public policy/equity bases, however, may not be authorized if compromise would undermine compliance with the tax laws.

Effective Tax Administration—Economic Hardship

The final regulations retain the reference in the temporary regulations to the economic hardship standard of § 301.6343–1, which defines economic hardship as the inability to pay reasonable basic living expenses. In determining reasonable basic living expenses, § 301.6343–1 directs the IRS to consider relevant information such as the taxpayer's age, employment status and history, number of dependents, and other ''unique circumstances.'' The final regulations supplement this standard by providing a non-exclusive list of factors which support a finding of economic hardship, and by providing examples to illustrate application of the standard.

The fourth example of economic hardship in the temporary regulations, involving a business taxpayer, has been removed in order to eliminate an inconsistency. The economic hardship standard of § 301.6343–1 specifically applies only to individuals. The fourth example was included in the temporary regulations in the event that a standard for evaluating economic hardship with respect to non-individuals could be developed. After evaluating this issue further, the IRS and Treasury Department have concluded that an economic hardship standard for non-individuals does not necessarily promote effective tax administration. Permitting compromise in non-individual cases where there is no doubt as to collectibility, for instance, would raise the issue of whether the Government should be foregoing the collection of taxes to support a nonviable business.

Although economic hardship therefore is not a basis for compromise for non-individuals under the final regulations, IRS experience has shown that the doubt as to collectibility standard often may permit the resolution of cases involving businesses and other non-individual taxpayers. In addition, even if a business or other non-individual is unable to compromise on liability or collectibility grounds, compelling public policy or equity considerations (discussed below) may provide sufficient grounds to compromise the case.

A commenting party suggested that the economic hardship standard and examples were not inclusive enough, specifically stating that the first two examples of economic hardship in the temporary regulations were drawn too narrowly. The first example illustrating economic hardship described a taxpayer whose assets and income are likely to be exhausted caring for a dependent child. The commenting party believed that the regulations would better promote effective tax administration if the example were expanded to include care of a dependent parent or other family member. The second example described a retired taxpayer whose only income is from a pension and whose only asset is a retirement account. The taxpayer could pay the tax liability in full by liquidating his retirement account, but doing so would leave the taxpayer without adequate means of support. The commenting party suggested that the example should specifically state that the age of the taxpayer should be taken into account. Otherwise, a taxpayer close to retirement age may feel compelled to retire so as to eliminate other sources of income and qualify under this example since retirement funds would then be the only source of income. A second commenting party also suggested that the moral or legal obligation to support others be listed as a factor supporting a finding of economic hardship.

The final regulations adopt these suggestions, in part, by stating that one factor supporting a finding of economic hardship might be that all available funds are used for the care of a dependent. Although the final regulations include examples to illustrate the application of the economic hardship standard, the central inquiry is whether full collection of the liability would render the taxpayer unable to provide for reasonable basic living expenses. Facts such as the number of dependents and the age and health of taxpayers and their dependents are factors which § 301.6343–1 provides should be considered when making that economic hardship determination. Furthermore, the examples in the final regulations are not intended to be exclusive and should not be read to suggest that all of the facts discussed in a given example must be present in a case in order for compromise to be authorized.

Effective Tax Administration—Public Policy and Equity

The temporary regulations provided that the IRS may compromise a liability

to promote effective tax administration even if no other basis for compromise is available. (As discussed above, compromise on the basis of economic hardship is not available to non-individuals under the final regulations.) The temporary regulations provided that the IRS may compromise under the non-hardship effective tax administration standard to promote effective tax administration when, ''[r]egardless of the taxpayer's financial circumstances, exceptional circumstances exist such that collection of the full liability will be detrimental to voluntary compliance by taxpayers.''

The ''detrimental to voluntary compliance'' standard in the temporary regulations was intended to indicate that the IRS may compromise in those rare cases where collection of the full liability would adversely affect the overall tax system. Based on public comments and on IRS experience in implementing the temporary regulations, this standard has been restated in the final regulations to clarify the types of cases that may qualify for compromise on these grounds. Compromise under the non-hardship effective tax administration standard in the final regulations, however, still is expected to be appropriate only in those rare cases where collection would adversely affect the overall tax system.

Under the final regulations, a taxpayer seeking to compromise a liability on this basis must identify compelling public policy or equity considerations providing a sufficient basis for compromising the liability. The circumstances must be such that compromise is justified even though a similarly situated taxpayer may have paid his liability in full. Before accepting an offer based on equity and public policy considerations, the IRS must conclude that collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner.

The clarification to the non-hardship effective tax administration standard in the final regulations recognizes that compromise on these grounds raises the issue of disparate treatment of taxpayers who are able to pay the full amount of their liabilities without economic hardship. Some taxpayers will pay less than the full amount owed, while others must pay in full. (Some taxpayers who pay in full also may be in situations similar to that of the taxpayer requesting compromise.) Accordingly, the final regulations specify that a taxpayer must demonstrate that the circumstances of the taxpayer's liability implicate public policy or equity concerns compelling enough to justify compromise notwithstanding this inherent inequity. As noted earlier, the cases satisfying the equity and public policy standard are expected to be rare. In applying this standard, the IRS will presume that the correct application of the tax laws produces a fair and equitable result, absent exceptional circumstances.

The notice of proposed rulemaking specifically encouraged the public to make comments or provide examples regarding the particular types of cases or situations in which the Secretary's authority to compromise should be used because: (1) Collection of the full amount of tax liability would be detrimental to voluntary compliance (i.e., may be appropriate for compromise under the non-hardship effective tax administration standard) or (2) IRS delay in determining the tax liability has resulted in the accumulation of significant interest and penalties. Parties providing comments regarding delay in interest and penalty cases were asked to consider the possible interplay between cases compromised under this provision and the relief accorded taxpayers under section 6404(e).

Two parties submitted comments in response to this request. Both suggested that the regulations be expanded to authorize compromise in situations where delay in determining the taxpayer's liability caused substantial interest and penalties to accrue. The first suggested that compromise on the basis that collection in full would be detrimental to voluntary compliance was warranted when any undue delay by the IRS resulted in the accumulation of penalties and interest. The commenting party suggested that the regulations include delay by the IRS in determining the taxpayer's liability, issuing a revenue agent's report or notice of deficiency, or litigating the issues as factors and examples supporting compromise on these grounds. The commenting party did not suggest a standard for determining ''undue delay'' and did not discuss whether this kind of expansion of the compromise regulations would undermine the interest abatement provisions of section 6404(e).

The second party to comment on this provision in the regulations suggested compromise should be authorized where a liability results from factors beyond the taxpayer's control and the accumulation of interest and penalties is disproportionately large compared to the initial liability. The specific example suggested by the commenting party was one in which the Tax Matters Partner (TMP) in a partnership subject to the unified audit procedures of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) fraudulently sells shares in a sham business to other partners and those partners incur substantial interest and penalties attributable to partnership items. According to the commenting party, the failure of the IRS to remove a TMP being investigated for fraud relating to the partnership, and to allow the TMP to continue to represent the partnership during the audit, creates ''exceptional circumstances'' warranting compromise with other partners. The commenting party acknowledged that section 6404(e) would not usually authorize the abatement of interest under such circumstances because the interest does not result from an unreasonable error or delay by an IRS official in performing a ministerial or managerial act. The commenting party also acknowledged that it would be unwise to craft a rule that would make the Government an insurer of individual taxpayer liabilities attributable to the misdeeds of a tax shelter promoter. However, the commenting party believed that where the IRS's failure to remove the TMP contributed to the problem, compromise is warranted.

The IRS and Treasury Department do not believe that it would promote effective tax administration to authorize compromise solely on the basis of an asserted delay by the IRS, particularly delay that does not support relief under section 6404(e) with respect to accrued interest, or on the basis that a third party, such as the taxpayer's partner, is claimed to have defrauded or otherwise caused financial harm to the taxpayer. Nevertheless, cases in which a taxpayer believes the liability was caused, in whole or in part, by delay on the part of the IRS or by the actions of third parties may be appropriate for compromise under the public policy and equity standard. Such cases, however, are expected to be rare, as the taxpayer must identify compelling public policy or equity concerns that satisfy the standard set forth above.

The IRS and Treasury Department are mindful that the Congressional Conference Committee, in adding section 7122(c) as part of RRA 1998, anticipated that the IRS may use the authority provided in section 7122(c) to resolve longstanding cases by foregoing penalties and interest resulting from delays in determining a taxpayer's liability. See H. Conf. Rep. 599, 105th Cong., 2d Sess. 289 (1998). The IRS' experience in applying the temporary regulations is that these regulations have given effect to the intent of Congress, as expressed in the

Conference Report, since cases involving substantial interest and penalties often can be compromised under the standards of doubt as to collectibility and economic hardship. Similarly, although a taxpayer is in the best position to anticipate, and protect himself or herself from, the risks of business associations and transactions, the misdeeds of third parties that may have contributed to a tax liability may be taken into account when determining whether to accept a compromise based on doubt as to collectibility or on a finding that collection would cause economic hardship.

Amount of Compromise if Basis for Compromise Exists

The final regulations set forth the permissible bases for compromise, one of which must be established in order to accept an offer to compromise liabilities arising under the internal revenue laws. They do not, however, prescribe the amount which must be offered in order for an offer to be acceptable. The amount to be paid, future compliance, or other conditions precedent to satisfaction of a liability for less than the full amount due are matters left to the discretion of the Secretary. For the sake of clarity, the final regulations now expressly state this principle, which was stated only in the preamble to the temporary regulations.

As required by section 7122(c)(2)(A) and (B), added by RRA 1998, the final regulations provide for the development and publication of national and local living allowances that permit taxpayers entering into offers to compromise to have an adequate means to provide for their basic living expenses. The determination of whether the published standards should be applied in any particular case must be based upon an evaluation of the individual facts and circumstances presented. The Secretary will continue to determine the appropriate means to publish these national and local living allowances.

A commenting party suggested that the national and local living allowance standards be eliminated in favor of a rule requiring all offer specialists to look only to an individual taxpayer's actual facts and circumstances to determine the amount necessary to provide for reasonable basic living expenses. According to the commenting party, IRS employees rarely depart from the national and local standards, which, in practice, serve as a ''cap'' on expenses, rather than as a general guide to be applied based on the specific facts of a case.

Because publication of the national and local standards is required by section 7122(c)(2)(A), the suggestion that the standards be eliminated has not been adopted. In accordance with section 7122(c)(2)(B), the final regulations require that the IRS consider the facts and circumstances of the case when determining basic living expenses. Consistent with this requirement in the statute and regulations, the IRS has issued internal guidance requiring that the particular facts and circumstance of a taxpayer's case be considered whenever the expense standards are applied, and that expense allowances beyond the standards be used whenever use of the standards would result in a taxpayer not having adequate means to provide for basic living expenses.

Other Provisions

Section 7122(c)(3)(A) prohibits the rejection of an offer to compromise by a low income taxpayer based solely on the amount of the offer. The final regulations expand this rule to apply to all taxpayers regardless of income level. The final regulations state that no offer may be rejected based solely on the amount of the offer. Offers will only be rejected when the IRS determines that no basis for compromise under this section is present or that the offer is unacceptable under the Secretary's policies and procedures.

In accordance with section 7122(d)(1), the final regulations provide that all proposed rejections of offers to compromise will receive independent administrative review prior to final rejection. Section 7122(d)(2) requires and the regulations also provide that the taxpayer may appeal any rejection of an offer to compromise to the IRS Office of Appeals. The final regulations provide, however, that when the IRS returns an offer to compromise because the offer was submitted solely to delay collection, or because the taxpayer failed to provide requested information required by the IRS to evaluate or process the offer under IRS procedures, the return of the offer does not constitute a rejection and, thus, is not subject to appeal. In the event that the IRS institutes collection action following the return of an offer to compromise, the taxpayer may have the right to consideration of the whole of his collection case under other provisions of the Code.

Although not required by any provision of the Code, the temporary regulations provided that an offer could not be returned to a taxpayer for failure to submit requested financial information until an independent administrative review of the proposed return was completed. The requirement of an independent administrative review of proposed returns was the source of significant delays and was redundant because an IRS manager must review and approve all returns of offers for failure to submit requested financial information. The final regulations therefore require review only by an IRS manager in these cases.

Pursuant to section 6331(k), the final regulations also provide that the IRS may not levy to collect a liability while an offer to compromise is pending, or for the 30 days following any rejection of an offer to compromise, or during any period that an appeal of any rejection is being considered, when such appeal is instituted within the 30 days following rejection. Levy will not, however, be precluded in any case where collection is in jeopardy or the offer to compromise was submitted solely to delay collection. The regulations also correct for an omission in the temporary regulations by providing that the IRS may not refer a case to the Department of Justice to collect an unpaid tax through a judicial proceeding while an offer to compromise that tax is pending or while a rejection of such an offer is being considered by the IRS Office of Appeals. The IRS may, however, authorize the Department of Justice to file a counterclaim in any refund proceeding commenced by a taxpayer, participate in bankruptcy or insolvency cases commenced by or against the taxpayer, or join a taxpayer in any other proceeding in which liability for the tax at issue may be established or disputed.

The final regulations also implement section 503(a) of the Taxpayer Bill of Rights II by specifying that Chief Counsel review of an accepted offer to compromise is required only for offers in compromise involving $50,000 or more in unpaid liabilities.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the preceding temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frederick W. Schindler of the Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805 * * *

2. Sections 301.7122–0 and 301.7122–1 are added to read as follows:

§ 301.7122–0 Table of contents.

This section lists the major captions that appear in the regulations under § 301.7122–1.

§ 301.7122–1 Compromises.

(a) In general.
(b) Grounds for compromise.
(c) Special rules for the evaluation of offers to compromise.
(d) Procedures for submission and consideration of offers.
(e) Acceptance of an offer to compromise a tax liability.
(f) Rejection of an offer to compromise.
(g) Effect of offer to compromise on collection activity.
(h) Deposits.
(i) Statute of limitations.
(j) Inspection with respect to accepted offers to compromise.
(k) Effective date.

§ 301.7122–1 Compromises.

(a) *In general*—(1) If the Secretary determines that there are grounds for compromise under this section, the Secretary may, at the Secretary's discretion, compromise any civil or criminal liability arising under the internal revenue laws prior to reference of a case involving such a liability to the Department of Justice for prosecution or defense.

(2) An agreement to compromise may relate to a civil or criminal liability for taxes, interest, or penalties. Unless the terms of the offer and acceptance expressly provide otherwise, acceptance of an offer to compromise a civil liability does not remit a criminal liability, nor does acceptance of an offer to compromise a criminal liability remit a civil liability.

(b) *Grounds for compromise*—(1) *Doubt as to liability.* Doubt as to liability exists where there is a genuine dispute as to the existence or amount of the correct tax liability under the law. Doubt as to liability does not exist where the liability has been established by a final court decision or judgment concerning the existence or amount of the liability. See paragraph (f)(4) of this section for special rules applicable to rejection of offers in cases where the Internal Revenue Service (IRS) is unable to locate the taxpayer's return or return information to verify the liability.

(2) *Doubt as to collectibility.* Doubt as to collectibility exists in any case where the taxpayer's assets and income are less than the full amount of the liability.

(3) *Promote effective tax administration.* (i) A compromise may be entered into to promote effective tax administration when the Secretary determines that, although collection in full could be achieved, collection of the full liability would cause the taxpayer economic hardship within the meaning of § 301.6343–1.

(ii) If there are no grounds for compromise under paragraphs (b)(1), (2), or (3)(i) of this section, the IRS may compromise to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for compromising the liability. Compromise will be justified only where, due to exceptional circumstances, collection of the full liability would undermine public confidence that the tax laws are being administered in a fair and equitable manner. A taxpayer proposing compromise under this paragraph (b)(3)(ii) will be expected to demonstrate circumstances that justify compromise even though a similarly situated taxpayer may have paid his liability in full.

(iii) No compromise to promote effective tax administration may be entered into if compromise of the liability would undermine compliance by taxpayers with the tax laws.

(c) *Special rules for evaluating offers to compromise*—(1) *In general.* Once a basis for compromise under paragraph (b) of this section has been identified, the decision to accept or reject an offer to compromise, as well as the terms and conditions agreed to, is left to the discretion of the Secretary. The determination whether to accept or reject an offer to compromise will be based upon consideration of all the facts and circumstances, including whether the circumstances of a particular case warrant acceptance of an amount that might not otherwise be acceptable under the Secretary's policies and procedures.

(2) *Doubt as to collectibility*—(i) *Allowable expenses.* A determination of doubt as to collectibility will include a determination of ability to pay. In determining ability to pay, the Secretary will permit taxpayers to retain sufficient funds to pay basic living expenses. The determination of the amount of such basic living expenses will be founded upon an evaluation of the individual facts and circumstances presented by the taxpayer's case. To guide this determination, guidelines published by the Secretary on national and local living expense standards will be taken into account.

(ii) *Nonliable spouses*—(A) *In general.* Where a taxpayer is offering to compromise a liability for which the taxpayer's spouse has no liability, the assets and income of the nonliable spouse will not be considered in determining the amount of an adequate offer. The assets and income of a nonliable spouse may be considered, however, to the extent property has been transferred by the taxpayer to the nonliable spouse under circumstances that would permit the IRS to effect collection of the taxpayer's liability from such property (e.g., property that was conveyed in fraud of creditors), property has been transferred by the taxpayer to the nonliable spouse for the purpose of removing the property from consideration by the IRS in evaluating the compromise, or as provided in paragraph (c)(2)(ii)(B) of this section. The IRS also may request information regarding the assets and income of the nonliable spouse for the purpose of verifying the amount of and responsibility for expenses claimed by the taxpayer.

(B) *Exception.* Where collection of the taxpayer's liability from the assets and income of the nonliable spouse is permitted by applicable state law (e.g., under state community property laws), the assets and income of the nonliable spouse will be considered in determining the amount of an adequate offer except to the extent that the taxpayer and the nonliable spouse demonstrate that collection of such assets and income would have a material and adverse impact on the standard of living of the taxpayer, the nonliable spouse, and their dependents.

(3) *Compromises to promote effective tax administration*—(i) Factors supporting (but not conclusive of) a determination that collection would cause economic hardship within the meaning of paragraph (b)(3)(i) of this section include, but are not limited to—

(A) Taxpayer is incapable of earning a living because of a long term illness, medical condition, or disability, and it is reasonably foreseeable that taxpayer's financial resources will be exhausted providing for care and support during the course of the condition;

(B) Although taxpayer has certain monthly income, that income is exhausted each month in providing for the care of dependents with no other means of support; and

(C) Although taxpayer has certain assets, the taxpayer is unable to borrow against the equity in those assets and liquidation of those assets to pay outstanding tax liabilities would render the taxpayer unable to meet basic living expenses.

(ii) Factors supporting (but not conclusive of) a determination that compromise would undermine compliance within the meaning of paragraph (b)(3)(iii) of this section include, but are not limited to—

(A) Taxpayer has a history of noncompliance with the filing and payment requirements of the Internal Revenue Code;

(B) Taxpayer has taken deliberate actions to avoid the payment of taxes; and

(C) Taxpayer has encouraged others to refuse to comply with the tax laws.

(iii) The following examples illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the economic hardship provisions of paragraph (b)(3)(i) of this section:

Example 1. The taxpayer has assets sufficient to satisfy the tax liability. The taxpayer provides full time care and assistance to her dependent child, who has a serious long-term illness. It is expected that the taxpayer will need to use the equity in his assets to provide for adequate basic living expenses and medical care for his child. The taxpayer's overall compliance history does not weigh against compromise.

Example 2. The taxpayer is retired and his only income is from a pension. The taxpayer's only asset is a retirement account, and the funds in the account are sufficient to satisfy the liability. Liquidation of the retirement account would leave the taxpayer without an adequate means to provide for basic living expenses. The taxpayer's overall compliance history does not weigh against compromise.

Example 3. The taxpayer is disabled and lives on a fixed income that will not, after allowance of basic living expenses, permit full payment of his liability under an installment agreement. The taxpayer also owns a modest house that has been specially equipped to accommodate his disability. The taxpayer's equity in the house is sufficient to permit payment of the liability he owes. However, because of his disability and limited earning potential, the taxpayer is unable to obtain a mortgage or otherwise borrow against this equity. In addition, because the taxpayer's home has been specially equipped to accommodate his disability, forced sale of the taxpayer's residence would create severe adverse consequences for the taxpayer. The taxpayer's overall compliance history does not weigh against compromise.

(iv) The following examples illustrate the types of cases that may be compromised by the Secretary, at the Secretary's discretion, under the public policy and equity provisions of paragraph (b)(3)(ii) of this section:

Example 1. In October of 1986, the taxpayer developed a serious illness that resulted in almost continuous hospitalizations for a number of years. The taxpayer's medical condition was such that during this period the taxpayer was unable to manage any of his financial affairs. The taxpayer has not filed tax returns since that time. The taxpayer's health has now improved and he has promptly begun to attend to his tax affairs. He discovers that the IRS prepared a substitute for return for the 1986 tax year on the basis of information returns it had received and had assessed a tax deficiency. When the taxpayer discovered the liability, with penalties and interest, the tax bill is more than three times the original tax liability. The taxpayer's overall compliance history does not weigh against compromise.

Example 2. The taxpayer is a salaried sales manager at a department store who has been able to place $2,000 in a tax-deductible IRA account for each of the last two years. The taxpayer learns that he can earn a higher rate of interest on his IRA savings by moving those savings from a money management account to a certificate of deposit at a different financial institution. Prior to transferring his savings, the taxpayer submits an e-mail inquiry to the IRS at its Web Page, requesting information about the steps he must take to preserve the tax benefits he has enjoyed and to avoid penalties. The IRS responds in an answering e-mail that the taxpayer may withdraw his IRA savings from his neighborhood bank, but he must redeposit those savings in a new IRA account within 90 days. The taxpayer withdraws the funds and redeposits them in a new IRA account 63 days later. Upon audit, the taxpayer learns that he has been misinformed about the required rollover period and that he is liable for additional taxes, penalties and additions to tax for not having redeposited the amount within 60 days. Had it not been for the erroneous advice that is reflected in the taxpayer's retained copy of the IRS e-mail response to his inquiry, the taxpayer would have redeposited the amount within the required 60-day period. The taxpayer's overall compliance history does not weigh against compromise.

(d) *Procedures for submission and consideration of offers*—(1) *In general.* An offer to compromise a tax liability pursuant to section 7122 must be submitted according to the procedures, and in the form and manner, prescribed by the Secretary. An offer to compromise a tax liability must be made in writing, must be signed by the taxpayer under penalty of perjury, and must contain all of the information prescribed or requested by the Secretary. However, taxpayers submitting offers to compromise liabilities solely on the basis of doubt as to liability will not be required to provide financial statements.

(2) *When offers become pending and return of offers.* An offer to compromise becomes pending when it is accepted for processing. The IRS may not accept for processing any offer to compromise a liability following reference of a case involving such liability to the Attorney General for prosecution or defense. If an offer accepted for processing does not contain sufficient information to permit the IRS to evaluate whether the offer should be accepted, the IRS will request that the taxpayer provide the needed additional information. If the taxpayer does not submit the additional information that the IRS has requested within a reasonable time period after such a request, the IRS may return the offer to the taxpayer. The IRS may also return an offer to compromise a tax liability if it determines that the offer was submitted solely to delay collection or was otherwise nonprocessable. An offer returned following acceptance for processing is deemed pending only for the period between the date the offer is accepted for processing and the date the IRS returns the offer to the taxpayer. See paragraphs (f)(5)(ii) and (g)(4) of this section for rules regarding the effect of such returns of offers.

(3) *Withdrawal.* An offer to compromise a tax liability may be withdrawn by the taxpayer or the taxpayer's representative at any time prior to the IRS' acceptance of the offer to compromise. An offer will be considered withdrawn upon the IRS' receipt of written notification of the withdrawal of the offer either by personal delivery or certified mail, or upon issuance of a letter by the IRS confirming the taxpayer's intent to withdraw the offer.

(e) *Acceptance of an offer to compromise a tax liability.*—(1) An offer to compromise has not been accepted until the IRS issues a written notification of acceptance to the taxpayer or the taxpayer's representative.

(2) As additional consideration for the acceptance of an offer to compromise, the IRS may request that taxpayer enter into any collateral agreement or post any security which is deemed necessary for the protection of the interests of the United States.

(3) Offers may be accepted when they provide for payment of compromised amounts in one or more equal or unequal installments.

(4) If the final payment on an accepted offer to compromise is contingent upon the immediate and simultaneous release of a tax lien in whole or in part, such payment must be made in accordance with the forms, instructions, or procedures prescribed by the Secretary.

(5) Acceptance of an offer to compromise will conclusively settle the liability of the taxpayer specified in the offer. Compromise with one taxpayer does not extinguish the liability of, nor prevent the IRS from taking action to collect from, any person not named in the offer who is also liable for the tax to which the compromise relates. Neither the taxpayer nor the Government will, following acceptance of an offer to compromise, be permitted to reopen the case except in instances where—

(i) False information or documents are supplied in conjunction with the offer;

(ii) The ability to pay or the assets of the taxpayer are concealed; or

(iii) A mutual mistake of material fact sufficient to cause the offer agreement to be reformed or set aside is discovered.

(6) *Opinion of Chief Counsel.* Except as otherwise provided in this paragraph (e)(6), if an offer to compromise is accepted, there will be placed on file the opinion of the Chief Counsel for the IRS with respect to such compromise, along with the reasons therefor. However, no such opinion will be required with respect to the compromise of any civil case in which the unpaid amount of tax assessed (including any interest, additional amount, addition to the tax, or assessable penalty) is less than $50,000. Also placed on file will be a statement of—

(i) The amount of tax assessed;

(ii) The amount of interest, additional amount, addition to the tax, or assessable penalty, imposed by law on the person against whom the tax is assessed; and

(iii) The amount actually paid in accordance with the terms of the compromise.

(f) *Rejection of an offer to compromise.*—(1) An offer to compromise has not been rejected until the IRS issues a written notice to the taxpayer or his representative, advising of the rejection, the reason(s) for rejection, and the right to an appeal.

(2) The IRS may not notify a taxpayer or taxpayer's representative of the rejection of an offer to compromise until an independent administrative review of the proposed rejection is completed.

(3) No offer to compromise may be rejected solely on the basis of the amount of the offer without evaluating that offer under the provisions of this section and the Secretary's policies and procedures regarding the compromise of cases.

(4) *Offers based upon doubt as to liability.* Offers submitted on the basis of doubt as to liability cannot be rejected solely because the IRS is unable to locate the taxpayer's return or return information for verification of the liability.

(5) *Appeal of rejection of an offer to compromise*—(i) *In general.* The taxpayer may administratively appeal a rejection of an offer to compromise to the IRS Office of Appeals (Appeals) if, within the 30-day period commencing the day after the date on the letter of rejection, the taxpayer requests such an administrative review in the manner provided by the Secretary.

(ii) *Offer to compromise returned following a determination that the offer was nonprocessable, a failure by the taxpayer to provide requested information, or a determination that the offer was submitted for purposes of delay.* Where a determination is made to return offer documents because the offer to compromise was nonprocessable, because the taxpayer failed to provide requested information, or because the IRS determined that the offer to compromise was submitted solely for purposes of delay under paragraph (d)(2) of this section, the return of the offer does not constitute a rejection of the offer for purposes of this provision and does not entitle the taxpayer to appeal the matter to Appeals under the provisions of this paragraph (f)(5). However, if the offer is returned because the taxpayer failed to provide requested financial information, the offer will not be returned until a managerial review of the proposed return is completed.

(g) *Effect of offer to compromise on collection activity*—(1) *In general.* The IRS will not levy against the property or rights to property of a taxpayer who submits an offer to compromise, to collect the liability that is the subject of the offer, during the period the offer is pending, for 30 days immediately following the rejection of the offer, and for any period when a timely filed appeal from the rejection is being considered by Appeals.

(2) *Revised offers submitted following rejection.* If, following the rejection of an offer to compromise, the taxpayer makes a good faith revision of that offer and submits the revised offer within 30 days after the date of rejection, the IRS will not levy to collect from the taxpayer the liability that is the subject of the revised offer to compromise while that revised offer is pending.

(3) *Jeopardy.* The IRS may levy to collect the liability that is the subject of an offer to compromise during the period the IRS is evaluating whether that offer will be accepted if it determines that collection of the liability is in jeopardy.

(4) *Offers to compromise determined by IRS to be nonprocessable or submitted solely for purposes of delay.* If the IRS determines, under paragraph (d)(2) of this section, that a pending offer did not contain sufficient information to permit evaluation of whether the offer should be accepted, that the offer was submitted solely to delay collection, or that the offer was otherwise nonprocessable, then the IRS may levy to collect the liability that is the subject of that offer at any time after it returns the offer to the taxpayer.

(5) *Offsets under section 6402.* Notwithstanding the evaluation and processing of an offer to compromise, the IRS may, in accordance with section 6402, credit any overpayments made by the taxpayer against a liability that is the subject of an offer to compromise and may offset such overpayments against other liabilities owed by the taxpayer to the extent authorized by section 6402.

(6) *Proceedings in court.* Except as otherwise provided in this paragraph (g)(6), the IRS will not refer a case to the Department of Justice for the commencement of a proceeding in court, against a person named in a pending offer to compromise, if levy to collect the liability is prohibited by paragraph (g)(1) of this section. Without regard to whether a person is named in a pending offer to compromise, however, the IRS may authorize the Department of Justice to file a counterclaim or third-party complaint in a refund action or to join that person in any other proceeding in which liability for the tax that is the subject of the pending offer to compromise may be established or disputed, including a suit against the United States under 28 U.S.C. 2410. In addition, the United States may file a claim in any bankruptcy proceeding or insolvency action brought by or against such person.

(h) *Deposits.* Sums submitted with an offer to compromise a liability or during the pendency of an offer to compromise are considered deposits and will not be applied to the liability until the offer is accepted unless the taxpayer provides written authorization for application of the payments. If an offer to compromise is withdrawn, is determined to be nonprocessable, or is submitted solely for purposes of delay and returned to

the taxpayer, any amount tendered with the offer, including all installments paid on the offer, will be refunded without interest. If an offer is rejected, any amount tendered with the offer, including all installments paid on the offer, will be refunded, without interest, after the conclusion of any review sought by the taxpayer with Appeals. Refund will not be required if the taxpayer has agreed in writing that amounts tendered pursuant to the offer may be applied to the liability for which the offer was submitted.

(i) *Statute of limitations*—(1) *Suspension of the statute of limitations on collection.* The statute of limitations on collection will be suspended while levy is prohibited under paragraph (g)(1) of this section.

(2) *Extension of the statute of limitations on assessment.* For any offer to compromise, the IRS may require, where appropriate, the extension of the statute of limitations on assessment. However, in any case where waiver of the running of the statutory period of limitations on assessment is sought, the taxpayer must be notified of the right to refuse to extend the period of limitations or to limit the extension to particular issues or particular periods of time.

(j) *Inspection with respect to accepted offers to compromise.* For provisions relating to the inspection of returns and accepted offers to compromise, see section 6103(k)(1).

(k) *Effective date.* This section applies to offers to compromise pending on or submitted on or after July 18, 2002.

§§ 301.7122–0T and 301.7122–1T [Removed]

3. Sections 301.7122–0T and 301.7122–1T, are removed.

Approved: July 15, 2002.

Charles O. Rossotti,

Commissioner of Internal Revenue.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 02–18454 Filed 7–18–02; 12:32 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–7249–5]

Notice of Halting the Sanctions Clocks for the Commonwealth of Virginia's Failure To Submit Required State Implementation Plan for the NO_X SIP Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination regarding state implementation plan; notice of halting the sanctions clocks.

SUMMARY: The EPA is announcing that the State Implementation Plan (SIP) revision in response to the Nitrogen Oxides (NO_X) SIP Call submitted by the Commonwealth of Virginia (Virginia) is complete, thereby halting the sanctions clocks. Under the Clean Air Act (CAA) and EPA's NO_X SIP Call regulations, Virginia was required to submit SIP measures providing for NO_X emissions reductions, by October 30, 2000. On December 26, 2000, EPA made a finding that Virginia had failed to submit a SIP in response to the NO_X SIP Call, thus starting the 18-month and 24-month clocks, respectively, for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP). On June 30, 2002, Virginia submitted, as a SIP revision, its NO_X Budget Trading Program, in response to the NO_X SIP Call. On July 16, 2002, EPA found Virginia's SIP submission to be complete. The approval of the Virginia SIP revision in response to the NO_X SIP Call will be addressed in a separate rulemaking action.

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION: On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' otherwise known as the ''NO_X SIP Call.'' On March 2, 2000 (65 FR 11222), the NO_X SIP Call rule was modified establishing emissions budgets for NO_X that each of the identified States must meet through enforceable SIP measures. Various industries and States challenged the final NO_X SIP Call rule by filing petitions for review in the U.S. Court of Appeals for the District of Columbia (D.C. Circuit). State Petitioners challenging the NO_X SIP Call filed a motion requesting the Court to stay the submission schedule until April 27, 2000. In response, in May 1999, the DC Circuit issued a stay of the SIP submission deadline pending further order of the Court. *Michigan* v. *EPA,* No. 98–1497 (D.C. Cir., May 25, 1999) (order granting stay in part). On March 3, 2000, the Court of Appeals issued an opinion, largely upholding the NO_X SIP Call regulations. On April 11, 2000, EPA filed a motion with the Court to lift the stay of the SIP submission date. The EPA requested that the Court lift the stay as of April 27, 2000. On June 22, 2000, the Court ordered that EPA allow the States 128 days from the June 22, 2000 date of the order to submit their SIPs. Therefore, SIPs were due October 30, 2000.

On December 26, 2000 (65 FR 81366), EPA issued findings of failure to officially submit complete submissions to their SIPs, including adopted rules, in response to the SIP Call. The States that received these findings are Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, Ohio, and the District of Columbia. These findings started an 18-month sanctions clock; if the State failed to make the required submittal which EPA determined to be complete within that period, the emissions offset sanction would apply in accordance with 40 CFR 51.121(n) and 52.31. If the State still had not made a complete submittal which EPA determined to be complete within six months after the sanction is imposed, limitations on the approval of Federal highway funds would apply in accordance with 40 CFR 51.212(a) and 52.31. Conversely, when EPA finds that the State has made a complete SIP submittal under the SIP Call, then the 18-month clock, or additional 6-month clock, stops and the sanctions would be lifted. In addition, CAA section 110(c) provides that EPA can promulgate a FIP immediately after making the findings, as late as two years after making the findings, or any time in between. On July 16, 2002, EPA determined that the Virginia SIP submission is complete; therefore, the sanctions clocks will not take effect.

Administrative Requirements

A. Notice and Comment Under the Administrative Procedure Act

This document is final agency action but is not subject to notice-and-comment requirements of the Administrative Procedures Act (APA), 5 U.S.C. 553(b). The EPA invokes,

consistent with past practice (for example, 61 FR 36294), the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). The EPA believes that because of the limited time provided to make findings of failure to submit and findings of incompleteness regarding SIP submissions or elements of SIP submission requirements, Congress did not intend such findings to be subject to notice-and-comment rulemaking. Notice and comment are unnecessary because no significant EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs or elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. See 58 FR 51270, 51272 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

B. Executive Order 12866 (Regulatory Planning and Review)

This action is exempt from OMB review under Executive Order 12866.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described under (A) above, it is not subject to the RFA.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's document contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or tribal governments or the private sector. The various CAA provisions discussed in this document require the States to submit SIPs. This document merely provides a finding that the States have not met those requirements. This document does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the APA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the effective date of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office. This rule is not a ''major rule'' as defined by APA section 804(2), as amended. The EPA is issuing this action as a rulemaking. There is a question as to whether this action is a rule of ''particular applicability'' under [[Page 81369]] section 804(3)(A) of the APA as amended by SBREFA, and thus exempt from the congressional submission requirements, because this rule applies only to named States. In this case, EPA has decided to err on the side of submitting this rule to Congress, but will continue to consider this issue of the scope of the exemption for rules of ''particular applicability.''

F. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of July 23, 2002.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 16, 2002.

Abraham Ferdas,

Acting Regional Administrator, Region III.

[FR Doc. 02–18581 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–047–7173a; A–1–FRL–7243–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; VOC RACT Order and Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish requirements for sources of volatile organic compounds (VOC). The intended effect of this action is to approve a VOC regulation for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area and to approve a VOC order for Anheuser-Busch into the New Hampshire SIP. EPA is taking this action in accordance with the Clean Air Act.

DATES: This direct final rule will be effective September 23, 2002, unless EPA receives relevant adverse comments by August 22, 2002. If EPA receives relevant adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room M–1500, 401 M Street, (Mail Code 6102), S.W., Washington, D.C.; and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What Action Is EPA Taking?
What Are the Relevant Clean Air Act Requirements?
What Are the Items New Hampshire Submitted?
Why Is EPA Approving New Hampshire's Submittals?
What Is the Process for EPA to Approve These SIP Revisions?

What Action Is EPA Taking?

EPA is approving New Hampshire's VOC reasonably available control technology (RACT) order for Anheuser-Busch. EPA is also approving New Hampshire's Env-A 1204.27 VOC RACT rule for the New Hampshire portion of the Boston-Worcester-Lawrence (Eastern Massachusetts) serious ozone nonattainment area.

What Are the Relevant Clean Air Act Requirements?

Sections 182(b)(2) and 184(b) of the Clean Air Act (CAA) contain the requirements relevant to today's action. 42 U.S.C. 7511a(b)(2) and 7511c. Section 182(b)(2) requires states to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing Control Techniques Guideline (CTG)—i.e., a CTG issued prior to the enactment of the 1990 amendments to the CAA; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources.

Pursuant to the CAA Amendments of 1990, portions of New Hampshire were classified as marginal and serious nonattainment areas for ozone. See 56 FR 56694 (November 6, 1991). These serious areas were, thus, subject to the section 182(b)(2) RACT requirement.

In addition, New Hampshire is located in the Northeast Ozone Transport Region (OTR). The entire state is, therefore, subject to section 184(b) of the CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAA Amendments of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Today's action specifically deals with the CAA requirement in sections 182(b)(2)(C) and 184(b)(2) to implement RACT at all major VOC sources not already subject to a CTG.

What Are the Items New Hampshire Submitted?

New Hampshire submitted a RACT regulation for major VOC sources, a letter regarding New Filcas of America, and an order for Anheuser-Busch.

New Hampshire's VOC RACT regulation, Env-A 1204.27, ''Applicability Criteria and Compliance Options for Miscellaneous and Multicategory Stationary VOC Sources,'' requires RACT for non-CTG sources that emit 50 tons of VOC or more per year. Env-A 1204.27(d) establishes five options for measuring and enforcing RACT. Options 1 through 4 identify specific levels of emissions or emissions reductions that constitute RACT. Control option 5 describes a process by which RACT can be defined, but does not specifically define RACT as required by the CAA. EPA cannot approve this portion of the rule as meeting sections 182(b)(2) and 184(b)(2) until New Hampshire defines, and EPA approves, RACT for all of those sources which comply with the regulation through control option 5. Therefore, EPA previously granted a limited approval of Env-A 1204.27. See 63 FR 11600 (March 10, 1998). EPA's rulemaking noted that to receive full approval, New Hampshire needed to define RACT for the following sources: Harvard Industries, New Filcas of America, Sturm Ruger, and Anheuser-Busch.

New Hampshire's letter regarding New Filcas of America states that the company's Nashua facility has been shut down since January of 1998 and the company has moved its operations to North Carolina. The letter also states that an inspection by the New Hampshire Department of Environmental Services (DES) staff was conducted on August 30, 2001 to verify that the facility has been shut down. Therefore, DES does not need to establish VOC RACT for this facility.

The order issued to Anheuser-Busch requires the implementation of various process loss reduction activities including the development of information management systems, enhanced training for equipment operators, and integration of state-of-the-art packaging equipment improvements to reduce malt beverage production emissions.

As noted above, New Hampshire has adequately addressed Anheuser-Busch and New Filcas of America. Thus, DES has addressed RACT for all of the applicable sources in the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area. The state has not yet, however, submitted VOC RACT determinations for Harvard Industries and Sturm Ruger. New Hampshire will need to address these facilities in order for Env-A 1204.27 to be fully approvable statewide.

Why Is EPA Approving New Hampshire's Submittals?

EPA has evaluated the Anheuser-Busch order and has found that it is generally consistent with EPA guidance. EPA agrees with DES's assessment that add-on pollution controls are not economically reasonable to control the ethanol emissions from the beer production and bottling processes at the Anheuser-Busch facility. Therefore, DES's order requires Anheuser-Busch to use enumerated state-of-the-art packaging equipment, or replacement equipment that improves on the performance of the existing equipment, which will minimize product losses and VOC emissions. Therefore, EPA is approving this order as RACT. EPA has also evaluated New Hampshire's Env-A 1204.27 and has found that this regulation is generally consistent with EPA guidance, with the exception of the control option 5 issue discussed above. Since New Hampshire has, however, adequately addressed all of the non-CTG major VOC sources in the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area to which this option applies, EPA is approving Env-A

1204.27 as meeting the CAA requirements for this area.

The specific requirements of the Anheuser-Busch order and New Hampshire's Env-A 1204.27 regulation and EPA's evaluation of these requirements are detailed in a memorandum dated May 20, 2002, entitled ''Technical Support Document—New Hampshire—VOC RACT Order and Regulation'' (TSD). Copies of the TSD are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

What Is the Process for EPA To Approve These SIP Revisions?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should EPA receive relevant adverse comments. This action will be effective September 23, 2002 without further notice unless the EPA receives relevant adverse comments by August 22, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. EPA will then address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If EPA receives no such comments, the public is advised that this rule will be effective on September 23, 2002 and EPA will take no further action on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Final Action

EPA is approving New Hampshire's VOC RACT order for Anheuser-Busch. EPA is also approving New Hampshire's Env-A 1204.27 VOC RACT rule for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 21, 2002.

Ira Leighton,

Acting Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(68) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on June 28, 1996 and April 15, 2002.

(i) Incorporation by reference.

(A) Order ARD–00–001 issued by the New Hampshire DES to Anheuser-Busch Incorporated, effective April 15, 2002.

(B) Env-A 1204.27, ''Applicability Criteria and Compliance Options for Miscellaneous and Multi-category Stationary VOC Sources,'' effective August 21, 1995, is granted full approval for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.

(ii) Additional materials.

(A) Letter from the DES, dated April 15, 2002, submitting revised Anheuser-Busch order to EPA as a SIP revision and withdrawing previous submittal for this facility dated June 20, 2000.

(B) Letter from the DES, dated March 22, 2002, containing information on New Filcas of America.

3. In § 52.1525, Table 52.1525 is amended by adding an entry for ''Env-A 1204.27'' in the State citation chapter column immediately following the entry for ''CH air 1204, Part Env-A 1204 (except 1204.9)'' and by adding an entry for ''Order ARD–00–001'' in the same column immediately following the entry for ''Order ARD 98–001'' to read as follows:

§ 52.1525 EPA—approved New Hampshire state regulations

* * * * *

TABLE 52.1525.—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Explanation
* *		*	*	*		* *
Applicability Criteria and Compliance Options for Miscellaneous and Multi-category Stationary VOC Sources.	Env-A 1204.27	8/21/95 ..	July 23, 2002 ..	[Insert *FR* citation from published date].	(c)(68)	Rule fully approved for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area.
* *		*	*	*		* *
Source Specific Order	Order ARD–00–001	4/15/02 ..	July 23, 2002 ..	[Insert *FR* citation from published date].	(c)(68)	VOC RACT for Anheuser-Busch.
* *		*	*	*		* *

[1] These regulations are applicable statewide unless otherwise noted in the Explanation section.

[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

[FR Doc. 02–18396 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MN 67–01–7292(a); FRL–7248–9]

Approval of Section 112(l) Program of Delegation; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving, through a ''direct final'' procedure, a request from Minnesota for delegation of the Federal air toxics program pursuant to section 112(l) of the Clean Air Act (Act). The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a procedure set forth in a Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency (MPCA) and EPA. This request for approval of a mechanism of delegation applies only to those part 70 sources subject to a section 112 standard in Minnesota. It does not include those sources in Indian country.

DATES: The ''direct final'' is effective on September 23, 2002, unless EPA receives adverse or critical written comments by August 22, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Robert Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

FOR FURTHER INFORMATION CONTACT: Bryan Holtrop, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6204, *holtrop.bryan@epa.gov* or, Rachel Rineheart, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886–7017, *rineheart.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean EPA.

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I. Why Are We Delegating This Program to MPCA?

Section 112(l) of the Act enables the EPA to delegate Federal air toxics programs or rules to be implemented by States in State air toxics programs. The Federal air toxics program implements the requirements found in section 112 of the Act pertaining to the regulation of hazardous air pollutants. Delegation of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) Is ''no less stringent'' than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State agencies, as well as EPA.

II. What Is the History of This Request for Delegation?

On December 12, 1995, Minnesota submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under section 112 of the Act. On February 6, 1996, EPA found the State's submittal complete. This request for delegation included both sources subject to the operating permit requirements of 40 CFR part 70 and sources not subject to the permitting requirements of part 70. On July 26, 2001, Minnesota revised the original request for delegation, and is now seeking delegation only for sources subject to part 70. In this notice EPA is taking final action to approve the program of delegation for Minnesota of parts 61 and 63 standards for all part 70 sources, except for those in Indian country.

III. How Will MPCA Implement This Delegation?

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under part 70 (§ 70.4). In a December 4, 2001 rulemaking, EPA promulgated a final approval of the State of Minnesota's Operating Permit Program under part 70. Sources subject to the part 70 program are those sources that are operating pursuant to a part 70 permit issued by the State or a part 71 permit issued by EPA. Sources not subject to the part 70 program are those sources that are not required to obtain a part 70 permit under Title V of the Act from either the State, Tribes, or EPA (*see* 40 CFR 70.3). This action will provide a mechanism to delegate the authority to implement and enforce the section 112 air toxics program for sources subject to part 70 in the State of Minnesota.

The Minnesota program of delegation will not include delegation of section 112(r) authority. The program will, however, include the delegation of the 40 CFR part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State.

As stated above, this notice constitutes EPA's approval of Minnesota's program of straight delegation of all existing and future air toxics standards, except for section 112(r) standards, as they pertain to part 70 sources. Straight delegation means that the State will not promulgate its own State rules for each section 112 standard promulgated by EPA, but will implement, adopt by reference, and enforce without change the section 112 standards promulgated by EPA. The Minnesota program of straight delegation will operate as follows: For a future section 112 standard for which MPCA intends to accept delegation, EPA will automatically delegate the authority to implement a section 112 standard to the State by letter. If MPCA does not intend to accept delegation of a standard, MPCA will notify EPA within 45 days of EPA final promulgation of the standard. Upon incorporation by reference of the Federal standard into the State Rules, EPA will delegate the authority to enforce the standard as well.

Minnesota will assume responsibility for the timely implementation and enforcement required by each standard, as well as any further activities agreed to by MPCA and EPA. Some activities necessary for effective implementation of a standard include receipt of initial notifications, recordkeeping, reporting, and generally assuring that sources subject to a standard are aware of its existence. When deemed appropriate, MPCA will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism will be set forth in a memorandum of agreement between EPA and MPCA, copies of which will be placed in the official file associated with this rulemaking.

IV. What Requirements Did MPCA Meet To Receive Today's Approval?

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under section 112(l) of the Act. 40 FR 62262. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval pursuant to section 112(l)(5) of the Act, for a program to implement and enforce Federal section 112 rules as promulgated without changes, are found at 40 CFR 63.91. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of § 63.91. A more detailed analysis of the State's submittal pursuant to § 63.91 is contained in the Technical Support Documents, dated August 15, 2001, included in the official file for this rulemaking.

Under section 112(l) of the Act, approval of a State program is granted by the EPA if the Agency finds that: (1) The State program is ''no less stringent'' than the corresponding Federal program, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

V. How Did MPCA Meet the Approval Criteria?

EPA is approving Minnesota's mechanism of delegation because the State's submittal meets all requirements necessary for approval under section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Minnesota program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards.

Second, the State has shown that it has adequate authority and resources to implement the program. The authorities are contained in Attachment B of Minnesota's November 15, 1993, Title V submittal. Section 116.07, subdivision 4a of the Minnesota Statutes authorizes MPCA to issue construction and operating permits to part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the Act. Sources subject to the part 70 program are those sources

that are operating pursuant to a part 70 permit issued by the State, local agency or EPA (part 71), whereas sources not subject to the part 70 program are those sources that are not required to obtain a Title V permit under Federal law from either the State, Tribes, or EPA. Minnesota has the authority under section 116 to include any conditions in an operating permit that are necessary to assure compliance with the Act (including section 112 requirements). Furthermore, Minnesota has the authority to perform inspections, request compliance information, and to bring civil and criminal enforcement actions to recover penalties and fines. (Specifically, the statutory language for the above authorities are found in Minnesota Statutes sections 115.071, 116.091, 116.11, 609.671, and 645.24). Adequate resources will be obtained through State funds, Section 105 grant monies awarded to States by EPA, and through Title V fees that can be used to fund acceptable activities with respect to part 70 sources.

Third, upon promulgation of a standard, Minnesota will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Such schedule is sufficiently expeditious for approval.

Fourth, the Minnesota mechanism for straight delegation is not contrary to Federal guidance.

VI. How Will Applicability Determinations Under Section 112 Be Made?

In approving this delegation, the State will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the Clean Air Act or 40 CFR part 61 and 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

VII. What Is Today's Final Action?

The EPA is promulgating final approval of the December 12, 1995, request and subsequent revision by the State of Minnesota of a mechanism for straight delegation of section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and section 112(l) of the Act. After the effective date of this document and upon signing of the MOA, the implementation and enforcement of all existing section 112 standards, excluding section 112(r), which have been incorporated into the Minnesota Rules, are delegated to the State of Minnesota (specifically 40 CFR part 63, subpart H ''National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks,'' 40 CFR part 63, subpart I ''National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks,'' 40 CFR part 63, subpart L ''National Emission Standards for Coke Oven Batteries,'' 40 CFR part 63, subpart M ''National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities,'' 40 CFR part 63, subpart N ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium electroplating and Chromium Anodizing Tanks,'' 40 CFR part 63, subpart O ''Ethylene Oxide Emissions Standards for Sterilization Facilities,'' 40 CFR part 63, subpart Q ''National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers,'' 40 CFR part 63, subpart R ''National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations),'' 40 CFR part 63, subpart T ''National Emission Standards for Halogenated Solvent Cleaning,'' 40 CFR part 63, subpart U ''National Emission Standards for Hazardous Air Pollutant Emissions Group I Polymers and Resins,'' 40 CFR part 63, subpart W ''National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production, '' 40 CFR part 63, subpart X, ''National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting,'' 40 CFR part 63, subpart Y ''National Emission Standards for Marine Tank Vessel Loading Operations,'' 40 CFR part 63, subpart CC ''National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries,'' 40 CFR part 63, subpart DD ''National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations,'' 40 CFR part 63, subpart EE ''National Emission Standards for Magnetic Tape Manufacturing Operations,'' 40 CFR part 63, subpart GG ''National Emission Standards for Aerospace Manufacturing and Re-Work Facilities,'' 40 CFR part 63, subpart II ''National Emission Standards for Shipbuilding and Ship Repair (Surface Coating),'' 40 CFR part 63, subpart JJ ''National Emission Standards for Wood Furniture Manufacturing Operations,'' 40 CFR part 63, subpart KK ''National Emission Standards for the Printing and Publishing Industry,'' 40 CFR part 63, subpart OO ''National Emission Standards for Tanks—Level 1,'' 40 CFR part 63, subpart PP ''National Emission Standards for Containers,'' 40 CFR part 63, subpart QQ ''National Emission Standards for Surface Impoundments,'' 40 CFR part 63, subpart RR ''National Emission Standards for Individual Drain Systems,'' 40 CFR part 63, subpart VV ''National Emission Standards for Oil-Water Separators and Organic-Water Separators,'' and 40 CFR part 63, subpart JJJ ''National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins''). As for the existing section 112 standards which have not yet been incorporated into the Minnesota Rules, the implementation authority for these standards is delegated to the State of Minnesota after the effective date of this action and upon signing of the MOA. The enforcement authority and the future delegation of the section 112 standards to the State will occur according to the procedures outlined in the MOA.

This delegation does not include authority over sources in Indian country subject to section 112. Under the Act such Indian country sources are regulated directly by the EPA, until such time as a Tribe requests and has approved its own section 112 program or has the Federal program delegated to it as a part of its tribal implementation plan. See the Tribal Authority Rule, 63 FR 7253 (February 12, 1998). At this time no Tribe in Minnesota has requested or received any authorities under section 112, and EPA is directly implementing and enforcing the section 112 program in Indian country in Minnesota.

Effective immediately, all notifications, reports and other correspondence required under section 112 standards for part 70 sources should be sent to the State of Minnesota rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: *Compliance Tracking Coordinator, Majors and Remediation Division, MPCA, 520 Lafayette Road, St. Paul, Minnesota 55155–4194.* Sources not subject to part 70 or that are on a tribal reservation should send all notifications, reports and other correspondence required under section 112 standards to: *Chief, Air Enforcement and Compliance Assurance Branch (AE–17J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.*

EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this

Federal Register publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by August 22, 2002. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on Sepetmber 23, 2002.

VIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state actions as meeting Federal requirements and imposes no additional requirements beyond those Federal requirements currently being imposed by EPA. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this delegation approves pre-existing Federal requirements already required under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state plan for implementing Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing a state's request for section 112 authority, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 112 authority request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 112 authority request, to use VCS in place of a section 112 authority request that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 63

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

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

Dated: June 27, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–18397 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA081–FTA; FRL–7250–5]

Finding of Failure To Attain; California-San Joaquin Valley Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION:

SUMMARY: EPA is today finding that the San Joaquin Valley did not attain the 24-hour and annual particulate matter (PM–10) National Ambient Air Quality Standards (NAAQS) by the deadline mandated in the Clean Air Act (CAA), December 31, 2001.

In response to this finding, the State of California must submit by December 31, 2002 revisions to the California State Implementation Plan (SIP) that provide for attainment of the national PM–10 standards in the San Joaquin Valley and achieve five percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

EFFECTIVE DATE: This finding is effective on August 22, 2002.

ADDRESSES: A copy of this final rule is available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09/air.* The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 972–3980 for assistance.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (415) 947–4148 or Steven Barhite (415) 972–3980, Planning Office Chief (AIR–2), Air Division, EPA Region 9, 75 Hawthorne

Street, San Francisco, CA 94105; *barhite.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2002, EPA proposed to find that the San Joaquin Valley did not attain the 24-hour and annual PM–10 National Ambient Air Quality Standards (NAAQS) by its December 31, 2001 attainment deadline. The San Joaquin Valley's December 31, 2001 attainment deadline was established on January 8, 1993 when EPA determined that the area could not ''practicably'' attain the PM–10 NAAQS by the moderate area attainment deadline, December 31, 1994, and reclassified the San Joaquin Valley nonattainment area as serious (58 FR 3334, 3337). See CAA section 188(b)(1). Pursuant to CAA section 188(c)(2), serious PM–10 nonattainment areas were required to attain by December 31, 2001.

EPA has the responsibility, pursuant to sections 179(c) and 188(b)(2) of the Act, of determining within 6 months of the applicable attainment date (i.e., June 30, 2002), whether the San Joaquin Valley PM–10 nonattainment area has attained the annual and 24-hour NAAQS. Section 179(c)(1) of the Act provides that attainment determinations are to be based upon an area's ''air quality as of the attainment date,'' and section 188(b)(2), which is specific to PM–10, is consistent with that requirement. EPA determines whether an area's air quality is meeting the PM–10 NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area and entered into EPA's Aerometric Information Retrieval System (AIRS). These data are reviewed to determine the area's air quality status in accordance with EPA regulations at 40 CFR part 50, Appendix K.[1]

For details about EPA's proposed failure to attain finding, please see the proposed rulemaking at 67 FR 11633, March 15, 2002.

[1] Pursuant to Appendix K, attainment of the annual PM–10 NAAQS is achieved when the expected annual arithmetic mean PM–10 concentration is less than or equal to the level of the standard (50μg/m^3). Attainment of the 24-hour PM–10 NAAQS is achieved when the expected number of exceedances of the 24-hour NAAQS (150 μg/m^3) per year at each monitoring site is less than or equal to one. A total of three consecutive years of clean air quality data is generally necessary to show attainment of the annual and 24-hour standards for PM–10. A complete year of air quality data, as referred to in 40 CFR part 50, Appendix K, is comprised of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

II. EPA's Responses to Comments on the Proposal

The only comments received on the proposed finding of nonattainment were submitted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). Summaries of the comments and EPA's responses are set forth below.

Comment No. 1: The data set used by EPA to identify sites in nonattainment of the PM–10 NAAQS during the years 1999–2001 appears to have not been complete.

Response: The commenter is correct. The data set used by EPA was based on PM–10 data collected from January 1, 1999 through September 30, 2001. At the time of the proposed rulemaking the San Joaquin Valley PM–10 data for October 1, 2001 to December 31, 2001 was not available. The data for the last quarter of 2001 is now available and is factored into EPA's responses below. In short, the additional data does not change the conclusion in the proposed rule that the San Joaquin Valley did not attain the annual and 24-hour PM–10 standards by its CAA attainment deadline, December 31, 2001. However, as foreseen in the proposal (67 FR 11633, 11634), the additional data collected during October to December 2001 has altered the attainment status of some of the monitoring sites.

For the annual PM–10 NAAQS, the Corcoran site, which was listed as not attaining the annual NAAQS in the proposal, has now been removed from the list of sites not attaining the annual NAAQS since its three-year average annual concentration is 49 μg/m^3 (See response to comment 2 below). The Hanford site is now listed as nonattainment with a three-year average annual concentration of 51 μg/m^3 (See response to comment 3 below). The Fresno-Drummond site may or may not be violating the annual NAAQS; due to an incomplete data set, it is not possible to calculate an accurate three-year annual average at this time (See response to comment 3 below).

For the 24-hour NAAQS, the most significant change from our proposal is that the Modesto-14th Street site is no longer considered nonattainment for the 24-hour NAAQS (See response to comment 5 below).

Comment No. 2: The proposal incorrectly lists the Corcoran monitoring site as nonattainment for the annual PM–10 NAAQS.

Response: The commenter is correct. EPA miscalculated the three-year annual average at the Corcoran site, which resulted in our listing it as nonattainment for the annual PM–10 NAAQS. The correct three-year annual average based on the full complement of 1999–2001 data is 49 μg/m^3. Thus, the Corcoran site did not violate the PM–10 annual NAAQS.

Comment No. 3: Two additional sites, Fresno-Drummond Street and Hanford, may or may not be nonattainment for the annual PM–10 NAAQS depending on whether data substitution is used for filling in missing data points in the 1999–2001 period.

Response: Due to an incomplete data set, EPA was not able to calculate an accurate three-year annual average for these two sites at the time of our proposed action. Using the final 1999–2001 data set and some data substitution in the 4th quarter of 1999,[2] we have determined that the Hanford site definitively violated the annual NAAQS. For missing data in the 4th quarter of 1999, we substituted one half of the minimum detectable concentration of PM–10 (2.5 μg/m^3) and still arrived at a three-year annual average of 51 μg/m^3.

Determining the annual attainment status of the Fresno-Drummond Street site is more difficult. This site has two incomplete quarters of data, the 4th quarter of 1999 and the 4th quarter of 2000. If we substitute one half the minimum detectable concentration for the missing values we calculate a three-year annual average of 47 μg/m^3, which means the site attained the NAAQS. However, if we substitute representative data from other calendar quarters we have a three-year annual average of 53 μg/m^3, which exceeds the NAAQS. The true three-year average probably falls somewhere between this range but we cannot make an absolute determination of attainment at this time.

Comment No. 4: Regarding the 24-hour NAAQS, the commenter states that the Turlock site has recorded only one exceedance of the 24-hour standard during its nine years of operation and could be considered attainment if more than three years are used. 40 CFR part 50, appendix K allows this method.

Response: EPA regulations at 40 CFR part 50, appendix K, section 2.1(a) state that ''[u]nder 40 CFR 50.6(a) the 24-hour primary and secondary standards are attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging

[2] Missing data was substituted using procedures in ''Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards,'' EPA–450/4–87–005, April 1987.

them over the past three calendar years.''

EPA acknowledges that according to appendix K, there may be circumstances when more than three years of data can be used to determine attainment. EPA interprets appendix K to allow additional years of data only in order to reduce the effect of unusual or exceptional events. See appendix K, section 2.4(a).

Appendix K, section 3.1 dictates how to estimate the number of exceedances for a year when a monitoring site operates on a less than everyday schedule. The Turlock PM–10 monitoring site operates on a one in six day schedule. Using the equations in this section, the single observed exceedance at the Turlock site would be adjusted to 11.5 exceedances. Even if we were to average these exceedances over the lifetime of the Turlock PM–10 monitor (it began operation in January 1994, therefore we have eight years of operation, not nine) it still averages 1.4 exceedances per year, and violated the 24-hour PM–10 NAAQS.

Comment No. 5: The Modesto-14th Street station had only one exceedance in the most recent three-year period while sampling at a frequency of once every three days. This site could also be considered attainment if more than three years of data are considered as allowed by 40 CFR part 50, appendix K.

Response: Manual sampling methods for PM–10 are labor and resource intensive and because of this many agencies choose to sample PM–10 on a less than an every day schedule. Since there is not a PM–10 concentration value for each day of the year, EPA regulations at 40 part CFR 50, appendix K require an adjustment to be made to the observed number of exceedances to account for the possible effect of incomplete data. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level.

In order to properly adjust the data to estimate the expected number of exceedances, the sampling frequency of the PM–10 monitoring site must be known. The PM–10 monitoring site at Modesto—14th Street utilized two high volume PM–10 samplers in order to collect data on a one in three day schedule. Under this arrangement each sampler operates once every six days but the schedules are staggered so that a 24-hour PM–10 value is recorded every three days. In February 2001 one of the PM–10 samplers ceased operation. There are two ways we can view the sampling frequency of this site during the first quarter of 2001, either as a one in three day site that is missing nine scheduled samples or as a one in six day site that has six unscheduled, extra samples. Calculating the estimated number of exceedances requires a different approach depending on how we view this site. Since the site continued to operate on a one in six day schedule for the remainder of the calendar year, we believe it is appropriate to view the entire year as operating on a one in six day schedule and to use Equation 3 from 40 CFR part 50, appendix K to calculate the estimated number of excedances. The total number of estimated exceedances for the period 1999—2001 is three, averaging one exceedance per year. Therefore, this site attained the 24-hour PM–10 NAAQS.

See the previous response to comment 4 for a discussion of using more than three years of data for determining attainment.

III. Summary of Changes From the Proposal

Based on data from the last quarter of 2001 and data recalculations discussed in our responses to comments above, EPA has revised Tables 1 and 2 from the proposed rulemaking (67 FR 11633, 11634–11635) to read as follows:

TABLE 1.—SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE ANNUAL PM–10 NAAQS (1999–2001)

Site Name	3 year Annual mean (μg/m³)
Bakersfield-Golden State	55
Visalia	54
Fresno-Drummond	47–53
Hanford	51

TABLE 2. —SAN JOAQUIN VALLEY MONITORING SITES THAT VIOLATE THE 24-HOUR PM–10 NAAQS (1999–2001)

Monitoring station	Estimated exceedance days 1999	Estimated exceedance days 2000	Estimated exceedance days 2001	Average # of exceedances per year 1999–2001
Fresno East Drummond	8.4	0	6	4.8
Fresno First St	0	0	6	2
Clovis	0	0	6	2
Bakersfield Golden State	6	0	12	6
Bakersfield California Ave	0	0	9	3
Oildale	3.75	0	5.63	3.1
Corcoran	6.1	0	7.6	4.6
Hanford	0	0	12.6	4.2
Turlock	11.5	0	0	3.8

EPA also received a request for information about the specific dates when the exceedances occurred. In response to that request, EPA has included Table 3, which lists the observed exceedances in the San Joaquin Valley PM–10 nonattainment area during the three-year period 1999–2001. These are the actual observed exceedances as opposed to the estimated number of exceedances [3] reported in Table 2.

TABLE 3.—DAYS EXCEEDING THE 24-HOUR PM–10 NAAQS IN THE SAN JOAQUIN VALLEY

Date	Monitoring site	Concentration (μg/m³)
January 12, 1999	Oildale	156
October 21, 1999	Fresno—East Drumond	162
	Corcoran	174
	Turlock	157
November 14, 1999	Bakersfield—Golden State Hwy	183
January 1, 2001	Fresno—East Drummond	186
	Fresno—First Street	193
	Fresno—Clovis	155
	Bakersfield—Golden State Hwy	205
	Bakersfield—California Ave	186
	Oildale	158
January 3, 2001	Bakersfield—California Ave	190
January 7, 2001	Bakersfield—Golden State Hwy	174
	Bakersfield—California Ave	159
	Corcoran	165
	Hanford	185
November 9, 2001	Hanford	155

IV. Final Action

EPA is finding that the San Joaquin Valley failed to attain the annual and 24-hour PM–10 NAAQS by the December 31, 2001 attainment deadline as reflected in revised Tables 1 and 2 above.

Under section 189(d) of the Act, serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, ''plan revisions which provide for attainment of the PM–10 air quality standards and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.'' Since the applicable attainment date was December 31, 2001, the deadline for this plan revision is December 31, 2002.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action in and of itself establishes no new requirements, it merely notes that the air quality in the San Joaquin Valley did not meet the federal health standards for PM–10 by the CAA deadline. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's final action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. Because this finding of failure to attain is a factual determination based on air quality considerations, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

[3] As discussed above, EPA estimates total exceedances pursuant to Part 50, Appendix K when there is incomplete monitored data.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 23, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Dated: July 16, 2002.

Keith Takata,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 02–18589 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–P–7612]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Acting Administrator for Federal Insurance and Mitigation Administration reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas: Sebastian (01–06–1837P).	City of Fort Smith.	June 12, 2002; June 19, 2002; *Southwest Times Record*.	The Honorable C. Raymond Baker, Mayor, City of Fort Smith, P.O. Box 1908, Fort Smith, AR 72902.	May 31, 2002	055013
Illinois:					
Will (02–05–2034P).	City of Joliet	June 20, 2002; June 27, 2002; *Farmers Weekly Review*.	The Honorable Arthur Schultz, Mayor, City of Joliet, Municipal Building, 150 West Jefferson Street, Joliet, IL 60432.	September 26, 2002 ..	170702
Cook (01–05–3763P).	Village of Palos Park.	May 1, 2002; May 8, 2002; *Daily Southtown*.	The Honorable Jean Moran, Mayor, Village of Palos Park, 8999 West 123rd Street, Palos Park, IL 60464.	August 7, 2002	170144
Will (02–05–2034P).	Village of Plainfield.	June 19, 2002; June 26, 2002; *The Enterprise*.	Mr. Richard Rock, Village President, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	September 25, 2002 ..	170771
Will (02–05–2034P).	Unincorporated Areas.	June 19, 2002; June 25, 2002; *The Herald News*.	Mr. Joseph Mikan, County Executive, Will County, 302 North Chicago Street, Joliet, IL 60432.	September 24, 2002 ..	170695
Michigan: Wayne (01–05–2843P).	Township of Canton.	July 11, 2002; July 18, 2002; *Michigan Community Newspapers*.	Mr. Thomas Yack, Township Supervisor, Township of Canton, 1150 South Canton Center, Canton, MI 48188.	June 14, 2002	260219
Minnesota:					
Dakota (01–05–2461P).	City of Lakeville	May 1, 2002; May 8, 2002; *The Lakeville Sun-Current*.	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	August 7, 2002	270107
Dakota (02–05–0298P).	City of Lakeville	May 22, 2002; May 29, 2002; *The Lakeville Sun-Current*.	Mr. Robert Erickson, Lakeville City Administrator, 20195 Holyoke Avenue, Lakeville, MN 55044.	August 28, 2002	270107
Lyon (02–05–1586P).	City of Marshall	May 24, 2002; May 31, 2002; *Marshall Independent*.	The Honorable Robert Byrnes, Mayor, City of Marshall, 344 West Main Street, Marshall, MN 56258.	August 30, 2002	270258
Missouri: Howell (00–07–791P).	City of West Plains.	June 21, 2002; June 28, 2002; *West Plains Daily Quill*.	The Honorable Joe Paul Evans, Mayor, City of West Plains, P.O. Box 710, West Plains, MO 65775.	December 6, 2002	290166
Ohio:					
Lorain (02–05–1841P).	City of Avon Lake.	May 23, 2002; May 30, 2002; *The Sun*.	The Honorable Robert Berner, Mayor, City of Avon Lake, 150 Avon-Belden Road Avon Lake, OH 44012.	August 28, 2002	390602
Cuyahoga (01–05–542P).	City of Parma Heights.	May 2, 2002; May 9, 2002; *Parma Sun Post*.	The Honorable Paul Cassidy, Mayor, City of Parma Heights, 6281 Pearl Road, Parma Heights, OH 44130.	August 8, 2002	390124
Franklin and Delaware (02–05–1465P).	City of Westerville.	May 22, 2002; May 29, 2002; *Westerville News and Public Opinion*.	The Honorable Stewart Flaherty, Mayor, City of Westerville, 21 South State Street, Westerville, OH 43081.	August 28, 2002	390179
Oklahoma:					
Tulsa (01–06–701P).	City of Bixby	April 25, 2002; May 2, 2002; *Bixby Bulletin*.	The Honorable Joe Williams, Mayor, City of Bixby, 116 West Needles Street, Bixby, OK 74008.	August 1, 2002	400207
Oklahoma, Candian, Cleveland, McClain, and Pottawatomie (01–06–2001P).	City of Oklahoma	June 18, 2002; June 25, 2002; *The Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, Suite 302, Oklahoma City, OK 73102.	September 24, 2002	405378
Texas:					
Collin (02–06–1539).	City of Allen	May 29, 2002; June 5, 2002; *The Allen American*.	The Honorable Steve Terrell, Mayor, City of Allen, One Allen Civic Plaza, Allen, TX 75013.	September 4, 2002 ...	480131
Collin (01–06–820P).	City of Allen	June 12, 2002; June 19, 2002; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, One Allen Civic Plaza, Allen, TX 75013.	September 18, 2002	480131

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Travis (02–06–826P).	City of Austin	April 30, 2002; May 7, 2002; *Austin American Statesman*.	The Honorable Kirk P. Watson, Mayor, City of Austin, 124 West 8th Street, Austin, TX 78701.	August 6, 2002	480624
Travis (01–06–338P).	City of Austin	May 31, 2002; June 7, 2002; *Austin American Statesman*.	The Honorable Gus Garcia, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	September 6, 2002 ...	480624
Bexar (02–06–761P).	Unincorporated Areas.	May 9, 2002; May 16, 2002; *San Antonio Express-News*.	The Honorable Nelson W. Wolff, Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonio, TX 78205.	August 15, 2002	480035
Bexar (01–06–1795P).	Unincorporated Areas.	May 24, 2002; May 31, 2002; *San Antonio Express News*.	The Honorable Nelson W. Wolff, County Judge, Bexar County, 100 Dolorosa, Suite 120, San Antonia, TX 78205.	August 30, 2002	480035
Brazos (02–06–031P).	City of College Station.	May 24, 2002; May 31, 2002; *The Bryan/College Station Eagle*.	The Honorable Lynn McIlhaney, Mayor, City of College Station, P.O. Box 9960, College Station, TX 77842–9960.	August 30, 2002	480083
Denton (02–06–276P).	City of Denton ...	May 22, 2002; May 29, 2002; *Denton Record Chronicle*.	The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201.	May 2, 2002	480194
Tarrant (01–06–982P).	City of Fort Worth.	June 7, 2002; June 14, 2002; *Fort Worth Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, City Hall 1000 Throckmorton Street, Fort Worth, TX 76102.	September 13, 2002 ..	480596
Gillespie (00–06–1860P).	City of Fredericksburg.	May 22, 2002; May 29, 2002; *Fredericksburg Standard Radio Post*.	The Honorable Tim Crenweldge, Mayor, City of Fredericksburg, 126 West Main Street, Fredericksburg, TX 78624–3708.	August 28, 2002	480252
Dallas (02–05–151P).	City of Garland ..	May 2, 2002; May 9, 2002; *Garland Morning News*.	The Honorable Jim Spence, Mayor, City of Garland, P.O. Box 469002, Garland, TX 75046–9002.	August 8, 2002	485471
Hood (02–06–198P).	City of Granbury	May 30, 2002; June 6, 2002; *Hood County News*.	The Honorable David Southern, Mayor, City of Granbury, P.O. Box 969, Granbury, TX 76048.	September 5, 2002 ...	480357
Dallas (01–06–1213P).	City of Glenn Heights.	May 22, 2002; May 29, 2002; *Focus Daily News*.	The Honorable Mary Coffman, Mayor, City of Glenn Heights, 1938 South Hampton, Glenn Heights, TX 75154.	August 28, 2002	481265
Hidalgo (02–06–715P).	Unincorporated Areas.	June 20, 2002; June 27, 2002; *The Monitor*.	The Honorable Jose E. Pulido, County Judge, Hidalgo County, 100 E. Cano Street, Edinburg, TX 78539.	May 30, 2002	480334
Hood (02–06–198P).	Unincorporated Areas.	May 30, 2002; June 6, 2002; *Hood County News*.	The Honorable Linda Steen, Judge, Hood County, 100 East Pearl Street, Granbury, TX 76048.	September 5, 2002 ...	480356
Tarrant, (01–06–1481P).	City of Hurst	May 24, 2002; May 31, 2002; *Dallas Morning News*.	The Honorable Bill Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	April 30, 2002	480601
Gregg and Harrison (02–06–512P).	City of Longview	May 10, 2002; May 17, 2002; *Longview News Journal*.	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, 300 West Cotton Street, Longview, TX 75606.	August 16, 2002	480264
Collin (01–06–1229P).	City of McKinney	May 7, 2002; May 14, 2002; *McKinney Courier-Gazette*.	The Honorable Don Dozier, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070.	August 13, 2002	480135
Montgomery (02–06–763P).	Unincorporated Areas.	May 1, 2002; May 8, 2002; *The Courier*.	The Honorable Alan B. Sadler Judge, Montgomery County, 301 North Thompson Street, Suite 210, Conroe, TX 77301.	August 7, 2002	480483

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 15, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18528 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA makes final determinations listed below of BFEs and modified BFEs for each community listed. The proposed BFEs and proposed modified BFEs were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed BFEs and proposed modified BFEs were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator of the Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Iowa	Marshall County (Unincorporated Areas) (FEMA Docket No. 7605).	Iowa River		*861 to *881
Maps are available for inspection at the Marshall County Courthouse, 1 East Main Street, Marshalltown, Iowa.				
Kansas	Winfield (City), Cowley County (FEMA Docket No. 7603).	Walnut River	At 0.9 mile downstream of 14th Avenue	*1126
			At approximately 0.4 mile upstream of Highway 160.	*1130
			At approximately 1.5 miles upstream of Highway 160.	*1133
		Black Crook Creek	Just upstream of Joel Mack Road	*1120
			At approximately 0.7 mile upstream of Joel Mack Road.	*1120
Maps are available for inspection at the Public Works/Engineering Department, City Hall, 200 East Ninth Avenue, Winfield, Kansas.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
Minnesota	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).	.....	Pond west of McMenemy Road, north of Meadowood Lane, and southeast Foothill Trail.	*889
			Ponding area northeast of the intersection of McMenemy Road and Commerce Court.	*892
			Ponding area north of Commerce Court and south of Oak Grove Parkway and west of SOO Line Railroad.	*904
			Ponding area north of Oak Grove Parkway approximately 1,500 feet east of its intersection with McMenemy Road.	*918
	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).	.....	Ponding area east of the SOO Line Railroad, north of Spring Hill Road and west of Morningside Avenue.	*912
			Pond north of Willow Grove Lane and west of Greenhaven Drive.	*915
			Pond north of Clearbrook Lane, east of Bramblewood Avenue, west of Evergreen Drive and South of Birch Ridge Road.	*920
			Pond north of Heritage Court East and South of Valley Oaks Road.	*941
			Ponding area south of Westfield Lane, east and north of Oakcrest Drive and north of South Oak Drive.	*902
			Ponding area south of North Oak Drive, west of Thornhill Lane, and North of County Road ''F''.	*898
			Ponding area south of Bridgewood Terrace, east of Thornhill Lane and west of Centerville Road.	*907
			Ponding area north of County Road ''F'', east of Thornhill Lane and west of Centerville Road.	*901
	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).	.....	Ponding area along Edgerton Street south of Bear Avenue North and north of Stockdale Road.	*897
			Ponding area along Arcade Street and Stockdale Road south of County Road ''F'', north of Kohler Road, east of Stockdale Drive and west of Centerville Road.	*896
			Ponding area east of Interstate 35E, south of the Burlington Northern Railroad, west of Labore Road and north of County Road ''E''.	*908
			Ponding area north of Hiawatha Avenue, west of Greenbrier Street, and south of the Burlington Northern Railroad.	*904
			Ponding area east of Centerville Road, and north of Vadnais Road.	*900
			Pond south of Manor Street and north of Interstate 694.	*909
			Ponds south of Vadnais Center Drive, east of Interstate 35 and west of the interstate 35 and west of the intersection of Labore Road and Willow Lake Boulevard.	*915
	Vadnais Heights (City), Ramsey County (FEMA Docket No. 7605).	.....	Willow Lake	*884
			Ponding area south of County Road ''E'', east of Montmorency Street and north of Willow Lake Boulevard.	*949
Maps are available for inspection at City Hall, 800 East County Road E, Vadnais Heights, Minnesota.				
Missouri	Madison County, (Unincorporated Areas) (FEMA Docket No. 7605).	Little St. Francis River.	Approximately 8,550 feet downstream of West Main Street.	*703

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified
			Approximately 3,960 feet downstream of the Missouri Pacific Railroad.	*716
		Saline Creek	Approximately 530 feet upstream of the abandoned Railroad Spur.	*718
			Approximately 2,510 feet upstream of the abandoned Railroad Spur.	*726
		Village Creek	Just downstream of Catherine Mine Road.	*707
			Just downstream of the Missouri Pacific Railroad.	*709
Maps are available for isnpection at the Madison County Courthouse, #1 Courthouse Square, Fredericktown, Missouri.				
Texas	Leona (Town), Leon County (FEMA Docket No. 7605).	Adkisson Branch	.....	*298 to 325
		Leona Branch	.....	*300 to 356
		Leona Branch Tributary 1.	.....	*315 to 349
		Leona Branch Tributary 2.	.....	*299 to 315
Maps are available for inspection at City Hall, Highway 75, Leona, Texas..				

* National Geodetic Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 15, 2002.

Robert F. Shea, Jr.

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18527 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–263; DA 02–1474]

Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petitions for reconsideration.

SUMMARY: This document dismisses two petitions for reconsideration involving customer service standards adopted pursuant to the Cable Television Consumer Protection and Competition Act of 1992.

FOR FURTHER INFORMATION CONTACT: John Norton, Policy Division, Media Bureau, (202) 418–7037, TTY (202) 418–2989 or *jnorton@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Order of Dismissal (''*Order*'') in MM 92–263; DA 02–1474, adopted June 20, 2002 and released June 24, 2002. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via email *qualexint@aol.com.*

Synopsis of Order

Pursuant to Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), Public Law 102–385, the Commission established customer service standards which are subject to enforcement by local franchising authorities. **Federal Register** document published on April 19, 1993, 58 FR 21107, 47 CFR 76.309. Petitions seeking reconsideration of the adoption of particular aspects of the customer service standards were filed by the National Cable & Telecommunications Association (NCTA) and the Coalition of Small System Operators (Coalition). Due to the passage of time, and with no objections put forth by petitioners, we are dismissing the NCTA and Coalition petitions without prejudice.

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

[FR Doc. 02–18349 Filed 7–22–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1502

[Docket No. TSA–2002–12742]

RIN 2110–AA02

Responsibilities of the Under Secretary of Transportation for Security

AGENCY: Transportation Security Administration, DOT.

ACTION: Final rule.

SUMMARY: In this final rule, the Transportation Security Administration (TSA) states the responsibilities of the Under Secretary of Transportation for Security and designates the Deputy Under Secretary of Transportation for Security/Chief Operating Officer as the ''first assistant'' to the Under Secretary of Transportation for Security for purposes of the Federal Vacancies Reform Act of 1998. As ''first assistant,'' the Deputy Under Secretary of Transportation for Security/Chief Operating Officer serves as the Acting Under Secretary of Transportation for

Security when the Under Secretary of Transportation for Security dies, resigns, or is otherwise unable to perform the functions and duties of the office.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: David K. Tochen, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights, and General Law, Department of Transportation, 400 Seventh Street, SW., Room 10102, Washington, DC 20590; Telephone: (202) 366–9153.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

An electronic copy of this document may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Boards Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov.* You can also view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov*). On that webpage, click on ''search.'' On the next page, type in the four-digit docket number shown on the first page of this document. Then click on ''search.''

Background

The Aviation and Transportation Security Act, Public Law 107–71, enacted into law on November 19, 2001, established the Transportation Security Administration (TSA) as a new operating administration within the Department of Transportation. The TSA is headed by the Under Secretary of Transportation for Security. As specified in the Aviation and Transportation Security Act, the Under Secretary of Transportation for Security is responsible for security in all modes of transportation, including carrying out chapter 449 of title 49 of the United States Code, relating to civil aviation security and related research and development activities. This rule states the responsibilities of the Under Secretary of Transportation for Security.

This rule also provides that the Deputy Under Secretary of Transportation for Security/Chief Operating Officer shall serve as the ''first assistant'' to the Under Secretary of Transportation for Security within the meaning of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d. The Federal Vacancies Reform Act provides that in the event of a vacancy in an office headed by an officer whose appointment is required to be made by the President, with the advice and consent of the Senate, the ''first assistant'' shall perform the functions and duties of the vacant position in an acting capacity and on a temporary basis, subject to certain narrow exceptions. Since the Aviation and Transportation Security Act did not establish a ''first assistant'' to the Under Secretary of Transportation for Security within TSA, the Secretary of Transportation is authorized to designate a ''first assistant'' and hereby does so by this action.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553 and, as such, it may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d). The Regulatory Flexibility Act does not apply to this rulemaking since, under 5 U.S.C. 553, the Department is not required to publish a notice of proposed rulemaking. However, we note that this rule does not have a significant economic impact on a substantial number of small entities since it relates to DOT management, procedures, and practice. This rule is not considered to be a rule within the meaning of section 3(d) of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget pursuant to that Order. Finally, the rule does not have federalism implications under Executive Order 13132.

List of Subjects in 49 CFR Part 1502

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

Issued this 17th day of July, 2002, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

In consideration of the foregoing, a new part 1502 consisting of ''1502.1 is added to Title 49 in chapter XII, subchapter A, of the Code of Federal Regulations, to read as follows:

PART 1502—ORGANIZATION, FUNCTIONS, AND PROCEDURES

Authority: 5 U.S.C. 3345, 49 U.S.C. 114, 40119, 44901–44907, 44913–44914, 44916–44920, 44935–44936, 44942, 46101–46105, 45107, 46110.

1502.1 Responsibilities of the Under Secretary of Transportation for Security.

(a) The Under Secretary of Transportation for Security is responsible for the planning, direction, and control of the Transportation Security Administration (TSA) and for security in all modes of transportation. The Under Secretary of Transportation for Security's responsibility includes carrying out chapter 449 of title 49, United States Code, relating to civil aviation security, and related research and development activities, and security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(b) The Deputy Under Secretary of Transportation for Security/Chief Operating Officer is the ''first assistant'' to the Under Secretary of Transportation for Security for purposes of the Federal Vacancies Reform Act of 1998, and shall, in the event the Under Secretary of Transportation for Security dies, resigns, or is otherwise unable to perform the functions and duties of the office, serve as the Acting Under Secretary of Transportation for Security, subject to the limitations in the Federal Vacancies Reform Act of 1998. In the event of the absence or disability of both the Under Secretary of Transportation for Security and the Deputy Under Secretary of Transportation for Security/Chief Operating Officer, officials designated by TSA's internal order on succession shall serve as Acting Deputy Under Secretary of Transportation for Security/Chief Operating Officer and shall perform the duties of the Under Secretary of Transportation for Security, except for any non-delegable statutory and/or regulatory duties.

[FR Doc. 02–18524 Filed 7–18–02; 11:46 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 67, No. 141
Tuesday, July 23, 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

Agricultural Marketing Service

7 CFR Part 27

[Doc. # CN–01–004]

RIN 0581–ACOO

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is proposing to amend the regulation concerning designation of the spot markets used to calculate differences for tenderable qualities delivered against cotton futures contracts. The re-designated spot markets will better reflect the trading value of tenderable qualities. Presently, regulations provide for the Secretary of Agriculture to determine and designate spot markets from which spot cotton price information can be collected. Currently, there are seven designated markets that qualify under the Cotton Futures Act requirements and five of those are designated to determine differences for the settlement of futures contracts. The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade that the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries be re-designated. The requested changes were as follows: Replace the South Delta quote with the West Texas quote; and replace the North Delta quote with the average of the combined North and South Delta quotes. Including West Texas quotes and combining and averaging North and South Delta quotes provides a more accurate reflection of cotton that is traded for cotton futures contracts.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Comments should be submitted in triplicate. Comments may also be submitted electronically to: *cottoncomments@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments will be available for public inspection at Cotton Program, AMS, USDA, Room 2641–S, 1400 Independence Avenue, SW., Washington, DC 20250 during regular business. A copy of this notice may be found at: *www.ams.usda.gov/cotton/rulemaking.htm.*

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The New York Cotton Future Market traders include the entire cotton industry: farmers, merchants, and textile mill owners. There are an estimated 3,000 traders. This proposed rule would affect all such traders. The majority of the traders are small businesses under the criteria established by the Small Business Administration. Amending the regulations to change the designated spot markets for determining tenderable differences will not significantly affect small businesses as defined under the RFA because:

(1) The information gathered will be more reflective of the cotton traded for cotton futures contracts and add more transparency to the market;

(2) The competitive position or market access of small entities in the cotton industry would not be affected;

(3) No new costs would be imposed on the affected industry.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581–0029 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are seven such designated markets that qualify under the Cotton Futures Act requirements. The seven designated markets are as follows: Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. For the purposes of determining settlement of futures contracts five of the seven spot markets are used. They are Southeastern, North Delta, South Delta, East Texas and Oklahoma, and Desert Southwest. The Cotton Program of the Agricultural Marketing Service provides market information from these spot markets under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the

Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

The Commodity Futures Trading Commission, in an effort to better reflect market transparency, approved a request from the New York Board of Trade to change the spot markets used to calculate commercial differences in Cotton Futures Exchange deliveries. This proposed rule would change the designation of the spot markets which are used daily to calculate price differences for cotton futures contracts. The current designations were published in the **Federal Register** on August 4, 1988 (53 FR 29327). As previously stated, differences are quoted for those qualities of cotton which are tenderable on active futures contracts in five designated markets. These differences are averaged to obtain the differences quoted for futures settlement.

This proposed rule would provide that differences would continue to be quoted for those qualities of cotton which are tenderable on active futures contracts in all of the five markets currently designated for this purpose. However, the West Texas spot market would be added as a bone fide spot market for the settlement of futures contracts, and the North Delta and South Delta spot markets would be combined and averaged together when used for this purpose of calculating differences of tenderable qualities for the settlement of futures contracts. This proposed rule would change the calculation of differences of tenderable qualities for the settlement of futures contracts to be the average of the differences of (1) the Southeastern spot market; (2) the East Texas/Oklahoma spot market; (3) the West Texas spot market; (4) the Desert Southwest spot market; and (5) the combination and averaging of the North Delta and South Delta spot markets. The remaining designated spot markets would not change. These proposed modifications are expected to more accurately reflect the trading value of tenderable cotton on futures contracts and add more transparency in the market.

List of Subjects in 7 CFR Part 27

Commodity futures, Cotton.

For the reasons set forth in the preamble, 7 CFR Part 27 is proposed to be amended as follows:

PART 27—[AMENDED]

1.The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. Section 27.94 is amended by revising paragraph (a) to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

(a) For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North and South Delta, Eastern Texas and Oklahoma, West Texas, and Desert Southwest.

* * * * *

Dated: July 15, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18255 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 945 and 980

[Docket No. FV00–945–2 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, OR, and Irish Potatoes Imported into the United States; Proposed Modification of Handling and Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the reference to Norgold variety potatoes from the handling regulation issued under the marketing order for Idaho-Eastern Oregon potatoes. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order and the less restrictive requirements are not needed. As required under section 608e of the Agricultural Marketing Agreement Act of 1937, the maturity requirements for potato imports would be changed accordingly.

DATES: Comments must be received by September 23, 2002.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This proposed rule also is issued under § 608e of the Act, which provides that whenever certain specified commodities, including potatoes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

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

The Act provides that administrative proceedings must be exhausted before

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under § 608e of the Act.

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.341 establishes minimum maturity and pack requirements for potatoes handled subject to the order. Current requirements provide, in part, that all potatoes packed in cartons shall be inspected and certified as meeting U.S. No. 1 grade or better. All varieties shall meet the maturity requirement of slightly skinned (except the Norgold variety from August 1–15, and the White Rose and red skinned varieties from August 1–December 31 can be moderately skinned). During other periods of the year, the White Rose and red skinned varieties are not subject to maturity requirements. Size shall be conspicuously marked on all cartons (except when used as a master container). The grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR 51.1540–51.1566), and the size must be marked consistent with § 51.1545 of the standards.

This rule would remove the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under § 608e of the Act, the maturity requirements for potato imports would change accordingly. This rule would also remove outdated language and make other conforming changes to the handling and import regulations.

The Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the order, met on November 9, 1999, and unanimously recommended the removal of reference to Norgold variety potatoes from the handling regulations.

Currently, the Norgold variety of potatoes is specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) can be applied during a 15-day period (August 1–August 15) at the beginning of each shipping season. This proposed rule would remove the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. The Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area.

Production of this long type variety was discontinued due in part to the Norgold variety's inherent propensity to have lighter, thinner skin early in the season compared to the varieties produced today. Newer replacement varieties are less prone to early season maturity problems, which enables the industry to maintain a consistent maturity level throughout the entire shipping season.

In addition, buyers are accustomed to long type potatoes having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. The degree of skinning or maturity is differentiated by the amount of loss of the outer surface or skin layer. ''Slightly skinned'' means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while ''moderately skinned'' potatoes can have one-half of the skin missing.

This proposed change would not have any economic impact upon producers or handlers, but would simply update the current handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, § 608e of the Act requires that, when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 608e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must then meet the minimum requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under the order since it was established. The current import regulation in § 980.1 specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This proposal would remove reference to Norgold variety potatoes from the maturity requirements of the handling regulation.

While no changes are required in the language of § 980.1, imports of Norgold variety potatoes from August 1–15 would be required to meet the modified maturity requirement of ''slightly skinned.'' This proposal is not expected to have any economic impact upon importers. Nearly all potato imports come from Canada, and representatives of USDA's Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada.

This proposed rule also removes § 945.130 of the rules and regulations which is obsolete, and revises and updates language in § 980.1, Import regulations; Irish potatoes. Sections 945.22 and 945.23 of the order, regarding committee membership districts within the production area and redistricting and committee reapportionment, were amended on June 5, 1995 (60 FR 29724), and § 945.130 is no longer needed. In addition, this rule would remove references in the potato import regulation to the terminated marketing orders for Red River Valley and Maine potatoes, remove outdated language regarding import regulations in effect during 1970 and 1971, update the list and addresses of inspection offices for imports, and update the references in the import regulation to government agencies.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 63 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the order and about 1,600 potato producers in the regulated area. There are approximately 161 importers of potatoes. Small agricultural service firms, which include potato handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. A majority of these handlers, importers, and producers may be classified as small entities.

This rule would remove the reference to Norgold variety potatoes from the maturity requirements in the handling regulation. The Norgold variety is specifically referenced to establish less restrictive maturity requirements for early season shipments. Norgold variety potatoes are no longer produced in the production area covered under the marketing order. As required under § 608e of the Act, the maturity requirements for potato imports would be changed accordingly.

The Committee met on November 9, 1999, and unanimously recommended the removal of the reference to Norgold variety potatoes from the handling regulations.

Currently, the Norgold variety of potatoes is specifically referenced in the handling regulations so a less restrictive maturity requirement (moderately skinned) can be applied during a 15-day period (August 1–15) at the beginning of each shipping season. This proposed rule would remove the reference to Norgold potatoes as a separate variety from the minimum maturity requirements of the handling regulations. The Committee recommended this change in the regulations because Norgold variety potatoes are no longer produced in the production area. In addition, buyers have become accustomed to long type potatoes (such as Norgold variety potatoes) having a higher maturity level than this minimum requirement allowed. To meet buyer expectations, all varieties of long type potatoes currently produced are required to be of a higher maturity level (slightly skinned) throughout the marketing year. ''Slightly skinned'' means that up to 10 percent of the potatoes in any inspected lot can have one-fourth of the outer skin missing, while ''moderately skinned'' potatoes can have one-half of the skin missing. This proposed change would not have any economic impact upon producers or handlers, but would simply update the current handling regulations to recognize that the Norgold variety is no longer being produced within the production area.

As mentioned earlier, section 608e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. The current import regulation specifies that import requirements for long type potatoes be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, during each month of the marketing year. This proposal would remove reference to Norgold variety potatoes from the maturity requirements of the handling regulation. While no changes are required in the language of § 980.1, imports of Norgold variety potatoes from August 1–15 would be required to meet the modified maturity requirement of ''slightly skinned.''

This proposal is not expected to have an economic impact upon importers. There are no potato imports during the period of August 1–15. In addition, representatives of the USDA Market News Service have indicated that their contacts in Canada have reported that Norgold variety potatoes are no longer commercially produced in Canada. Nearly all potato imports come from Canada, but there are no shipments until the latter part of September.

The removal of the references to Norgold variety potatoes is not expected to impose any additional costs on handlers, importers, or producers.

As alternatives to the proposal, the Committee discussed leaving the handling regulation as currently issued. The Committee rejected this idea because it would have left outdated language in the rules and regulations.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large potato handlers and importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Further, the Committee's meeting was widely publicized throughout the potato industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 9, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

In accordance with section 608e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

For the reasons set forth above, 7 CFR parts 945 and 980 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 945 and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

§ 945.130 [Removed]

2. Section 945.130 is removed.

§ 945.341 [Amended]

3. In § 945.341, paragraph (b)(2) is removed, and paragraphs (b)(3) and

(b)(4) are redesignated as paragraphs (b)(2) and (b)(3), respectively.

PART 980—VEGETABLES; IMPORT REGULATIONS

4. Section 980.1 is amended as follows:

a. Revise paragraphs (a)(1)(i), (a)(2)(ii), (b)(2), (e), (f), and (g)(1)(ii).

b. Redesignate paragraph (i) as paragraph (j).

c. Redesignate paragraphs (h)(1) and (h)(2) as paragraphs (i)(1) and (i)(2) and revise newly designated paragraphs (i)(1) and (i)(2). The revisions read as follows:

§ 980.1 Import regulations; Irish potatoes.

* * * * *

(a) * * *

(1) * * *

(i) Grade, size, quality, and maturity regulations have been issued from time to time pursuant to the following marketing orders: No. 945 (part 945 of this chapter), No. 948 (part 948 of this chapter), No. 947 (part 947 of this chapter), No. 946 (part 946 of this chapter), and No. 953 (part 953 of this chapter).

* * * * *

(2) * * *

(ii) Imports of all other round type potatoes during the period June 5 through July 31 are in most direct competition with the marketing of the same type of potatoes produced in the Southeastern States covered by Order No. 953 (part 953 of this chapter); and during the period of August 1 through June 4 of the following year they are in most direct competition with all other round type potatoes produced in Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter).

* * * * *

(b) * * *

(2) During the period June 5 through July 31 of each marketing year, the grade, size, quality, and maturity requirements of Marketing Order No. 953 (part 953 of this chapter) applicable to potatoes of the round type shall be the respective grade, size, quality, and maturity requirements for imports of other round type potatoes; and during the period August 1 through the following June 4 of each year the grade, size, quality, and maturity requirements of Area No. 3, Colorado (Northern Colorado) covered by Marketing Order No. 948, as amended (part 948 of this chapter) shall be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

* * * * *

(e) *Certified seed.* Certified seed potatoes shall include only those potatoes which are officially certified and tagged as seed potatoes by the Plant Health and Production Division, Plant Products Directorate, Canadian Food Inspection Agency, and which are subsequently used as seed.

(f) *Designation of governmental inspection services.* The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of § 608e of the Act.

(g) * * *

(1) * * *

(ii) Since inspectors may not be stationed in the immediate vicinity of a port, or point of entry, an importer of uninspected and uncertified Irish potatoes should make advance arrangements for inspection. Each importer should give at least the specified advance notice to one of the following applicable inspection offices prior to the time the Irish potatoes would be imported.

Ports and points	Inspection offices	Advance notice (days)
All Maine ports and points of entry	In-Charge, Post Office Box 1058, Presque Isle, ME 04767 (PH 207–764–2100)	1
Port of Boston, MA	In-Charge, Boston Market Terminal Building, Room 1, 34 Market Street, Everett, MA 02149 (PH 617–389–2480).	1
Port of New York, NY	In-Charge, 465B New York City Terminal Market, Bronx, NY 10474 (PH 718–991–7665).	1
Port of Philadelphia, PA	In-Charge, 210 Produce Building, 3301 South Galloway Street, Philadelphia, PA 19148 (PH 215–336–0845.	1
All other ports and points of entry.	Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, AMS, USDA, Washington, DC 20250 (PH 1–800–811–2373).	3

* * * * *

(i) *Definitions.* (1) For the purpose of this part potatoes meeting the requirements of Canada No. 1 grade and Canada No. 2 grade shall be deemed to comply with the requirements of the U.S. No. 1 grade and U.S. No. 2 grade, respectively, and the tolerances for size, as set forth in the U.S. Standards for Grades of Potatoes (§§ 51.1540 to 51.1556, inclusive of this title) may be used.

(2) *Importation* means release from the custody of the U.S. Customs Service.

* * * * *

Dated: July 17, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18572 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Insurance of State Banks Chartered as Limited Liability Companies

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: One of the statutory requirements for a State-chartered bank to be eligible for Federal deposit insurance is that it be ''incorporated under the laws of any State.'' In the recent past the FDIC has received two inquiries regarding whether a State bank that is chartered as a limited liability company (LLC) could be considered to be ''incorporated'' for purposes of that requirement. The FDIC proposes to issue a regulation that would clarify that a bank that is chartered as an LLC under State law would be considered to be ''incorporated'' under State law if it meets certain criteria.

DATES: Written comments must be received on or before October 21, 2002.

ADDRESSES: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. Send facsimile transmissions to (202) 898–3838. Comments may be submitted electronically to *comments@FDIC.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6759, or Robert C. Fick, Counsel, Legal Division, (202) 898–8962, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, the FDIC may grant deposit insurance only to depository institutions that are engaged in the business of receiving deposits other than trust funds.[1] The term ''depository institution'' is defined in the Federal Deposit Insurance Act (FDI Act) to mean any bank or savings association.[2] The term ''bank'' is also defined in the FDI Act to include any State bank.[3] Finally, ''State bank'' means

> any bank, banking association, trust company, savings bank, industrial bank * * * or other banking institution which—
>
> (A) is engaged in the business of receiving deposits other than trust funds * * * and
>
> (B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia (except a national bank), including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before August 9, 1989.[4]

Traditionally, the term ''incorporated'' has been applied such that only those legal entities that have been identified as corporations under State law have been considered eligible to become insured. However, recently, two banks have expressed interest in obtaining Federal deposit insurance for a State bank that would be chartered as an LLC. Proponents have argued specifically that the term ''incorporated'' should not be interpreted to preclude an LLC from becoming an insured depository institution. A common understanding of the term ''incorporated'' is ''formed or constituted as a legal corporation.''[5] In addition, Black's Law Dictionary defines ''incorporate'' as ''to form a legal corporation.''[6] The FDI Act provides no definition of the term ''incorporated,'' and there is no judicial guidance on the meaning of ''incorporated'' as used in the FDI Act. Consequently, in view of the arguments offered regarding LLCs and the lack of direct legislative or judicial guidance, there is some ambiguity as to the meaning of the word ''incorporated.''

II. Corporations and Other Business Entities

At common law there were three types of business entities: proprietorships, partnerships and corporations. Proprietorships and partnerships had no existence separate and apart from their owners. Corporations, on the other hand, were created and existed by virtue of a grant of authority from the sovereign. Although there appears to be no universally accepted definition of ''corporation,'' most definitions of the term are pervaded by the notion of ''an 'artificial legal creation,' the continuance of which does not depend on that of the component persons, and the being or existence of which is owed to an act of state.''[7] One of the earliest judicial definitions reflecting that notion is that enunciated in the 1819 case of *Trustees of Dartmouth College* v. *Woodward.*[8] In *Dartmouth College,* Chief Justice Marshall stated that

> [a] corporation is an artificial being, * * * existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it * * *. Among the most important are immortality and * * * individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.[9]

Description of Four Corporate Attributes

There is also no universal agreement as to the characteristics generally attributed to a modern corporation. This may have resulted from the fact that the characteristics of a modern corporation have evolved over time[10] and also possibly from the fact that the nature of a corporation was subject to the varying notions of the individual State legislatures. However, it is generally accepted that there are four attributes of a corporation that distinguish it from other forms of business entities; they are: perpetual succession, centralized management, limited liability, and free transferability of interests.

Perpetual succession (also sometimes known as continuity of life) is not generally construed to mean immortality; rather perpetual succession means that the entity continues to exist independent of its owners. In the case of a corporation, the death or withdrawal of a shareholder does not terminate the existence of the corporation. Perpetual succession is an attribute that distinguishes corporations from partnerships because partnerships are created and exist by agreement of the partners. The death or withdrawal of a partner generally terminates the partnership.

Centralized management generally means that management of the entity is vested in a group of individuals appointed or elected by the owners; each owner, therefore, does not have the authority to directly participate in the management of the entity. In a partnership the general partner(s) manage the affairs of the partnership.

Limited liability means that an owner of the entity is generally not personally liable for the debts of the entity; rather, the maximum potential liability of an owner is generally limited to the owner's investment in the entity. In a corporation the shareholders of a corporation are generally not liable for the corporation's debts. This attribute also distinguishes a corporation from a partnership because in a partnership a general partner is fully liable for the debts of the partnership.

Free transferability of interests generally means that an owner of the entity may transfer an ownership interest in the entity without the consent or approval of the other owners. In a corporation a shareholder can generally transfer all or a part of his/her shares to another person without the consent or approval of the other shareholders. However, in closely-held

[1] *See* 12 U.S.C. 1815.

[2] *See* 12 U.S.C. 1813(c)(1).

[3] *See* 12 U.S.C. 1813(a)(1).

[4] 12 U.S.C. 1813(a)(2).

[5] The Random House Dictionary of the English Language 968 (2d ed. 1987).

[6] Black's Law Dictionary 769 (7th ed. 1999).

[7] 1 William Meade Fletcher et al., Fletcher's Cyclopedia of the Law of Private Corporations § 4 (perm. ed., rev. vol. 2001).

[8] *Trustees of Dartmouth College* v. *Woodward,* 17 U.S. (4 Wheat.) 518 (1819).

[9] *Dartmouth College,* 17 U.S. at 636.

[10] *See* Douglas Arner, *Development of the American Law of Corporations to 1832,* 55 SMU Law Review 23, 43–54, 2002.

corporations, it is a common practice for shareholders to enter into agreements requiring a selling shareholder to obtain the prior approval of the remaining shareholders. In partnerships, a partner generally cannot transfer his/her interest without the consent of the other partners. However, even when the other partners consent, the original partnership technically is terminated, and a new partnership is created.[11]

Partnership Distinguished

In addition to the differences noted above, there are other characteristics that distinguish a corporation from a partnership. A generally accepted definition of a partnership is an association of two or more persons to carry on as co-owners a business for profit.[12] A principal distinction between a corporation and a partnership is that generally a partnership can be created by agreement among the co-owners, whereas a corporation requires a grant of authority from the State. In addition, a partnership, unlike a corporation, is not a legal entity separate from its owners. Because of this fact, for federal income tax purposes, the partnership's income is not taxed at the partnership level, but is attributed to the partners and taxed only at the individual partners' level. This feature of a partnership is sometimes called ''pass-through tax treatment,'' and is generally considered to be a significant advantage over the tax treatment of a corporation's income. A corporation's income is said to be taxed twice, once at the corporation level, and again at the shareholders' level when the shareholders receive the corporation's income as dividends.

Internal Revenue Service Rules

Since the characterization of a business entity as a ''corporation'' has significant tax implications, the Internal Revenue Service (IRS) established rules to determine whether an entity would be taxed as a corporation or a partnership. Prior to its amendment in 1997, Treas. Reg. § 301.7701–2 classified an association of two or more persons who had the purpose of carrying on a business and dividing the profits as either a partnership or a corporation depending upon whether the association possessed more corporate characteristics than noncorporate characteristics. The four corporate characteristics that the IRS utilized were: continuity of life (perpetual succession), centralized management, limited liability, and free transferability of interests. Under the old IRS regulations, if an association possessed at least three of the four corporate characteristics, then it would be treated as a corporation for federal income tax purposes. As noted above, after 1996 the IRS no longer utilized the corporate characteristics test and now permits business entities that are not specifically classified as corporations in the regulation to elect partnership tax treatment.[13] In that regard, we note that one of the entities specifically classified as a corporation in the regulation is a ''[s]tate-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act.''[14] As a result, an FDIC-insured, State bank that is chartered as an LLC would not qualify for partnership tax treatment for Federal income tax purposes.

Subchapter S Corporations

In August 1996 Congress amended the Internal Revenue Code to allow eligible financial institutions to elect Subchapter S status for federal income tax purposes.[15] A principal advantage of such status is that a Subchapter S corporation is taxed the same as a partnership, *i.e.,* a Subchapter S corporation is entitled to pass-through tax treatment. There are, however, limits on both the number and type of shareholders permissible for a Subchapter S corporation. The maximum number of shareholders of a Subchapter S corporation is 75, and only individuals, estates, certain trusts, and certain tax-exempt organizations may be shareholders. Also, there can only be one class of stock in a Subchapter S corporation, and no nonresident aliens may be shareholders.[16]

Limited Liability Companies

Generally, an LLC is a business entity that combines the limited liability of a corporation with the pass-through tax treatment of a partnership.[17] Wyoming was the first State to authorize LLCs in 1977; since that time the remaining forty-nine States and the District of Columbia have all enacted LLC statutes.[18] Generally, LLC statutes were crafted to authorize a business entity that is neither a partnership nor a corporation, but an entity that has some of the more desirable features of each form of business organization.[19] As a result, an LLC has characteristics of both a partnership and a corporation. However, because an LLC is neither a partnership nor a corporation, State partnership laws and State corporation laws generally do not apply. For example, State corporation laws that require a board of directors, that specify how ownership interests (shares) may be issued, and that impose capital requirements generally do not apply to an LLC. LLC statutes generally allow the owners broad discretion in setting up an LLC. According to some legal scholars, ''[w]hole bodies of corporate law doctrine * * * are rendered irrelevant'' when an LLC is utilized.[20]

An LLC is established by filing articles of organization with the State. These articles are roughly equivalent to a corporation's articles of incorporation. Every LLC has an operating agreement which is a contract executed by the members that sets forth the manner in which the business of the LLC will be conducted. The operating agreement establishes the rights and liabilities of the members with respect to each other and with respect to the LLC. It contains provisions detailing such matters as the LLC's management structure, capital contributions, accounting, distributions, transfers of a member's interest, and dissolution. As used in many LLC statutes, a ''member'' of an LLC is a person who owns an interest in the LLC and is roughly equivalent to a shareholder of a corporation. Furthermore, a ''member's interest'' in an LLC is generally the member's ownership interest in the LLC, and a member's interest in an LLC is sometimes evidenced by a certificate which is roughly equivalent to a stock certificate of a corporation.

Consistency of the LLC Structure with Corporate Attributes

Many LLC statutes authorize entities that do not exhibit all of the four corporate attributes. First, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will automatically terminate, or dissolve, or that its operations will be suspended pending the consent of the remaining members, upon the death, disability, bankruptcy, withdrawal, or expulsion of a member, or upon the happening of some other specified event. These

[11] *See* Flectcher, *supra* note 7, § 20.

[12] *See* Unif. Partnership Act, sec. 101(6) (1997), 6 U.L.A. 61 (Supp. 2002).

[13] *See* Treas. Reg. §§ 301.7701–2, 7701–3 (1997).

[14] Treas. Reg. § 301.7701–2(b)(5) (1997).

[15] *See* Small Business Job Protection Act, Pub. L. 104–188 § 1315, 26 U.S.C. 1361(b)(1996).

[16] *See Id.*

[17] *See* Mark A. Sargent & Walter D. Schwidetzky, Limited Liability Company Handbook § 1:3 (rev. 2002).

[18] *See Id.*

[19] *See* ''Unif. Limited Liability Company Act,'' Prefatory Note, (amended 1996) 6A U.L.A. 426 (Supp. 2002).

[20] *See* Sargent & Schwidetzky, *supra* note 17, § 1:3.

automatic termination/dissolution/suspension provisions are inconsistent with the notion of perpetual succession because the continued existence and operation of the entity directly depends upon the existence of its owners. Second, some State LLC statutes require, or permit LLC members to provide in the operating agreement, that the LLC will be managed solely and directly by the members. Such member-management also tends to be inconsistent with the corporate attribute of centralized management (usually a board of directors) because there is no central management group (i) that has full authority to act for the entity, and (ii) that is not so large or so small as to present operational problems for the entity. Third, members of an LLC are generally not liable for the debts of the LLC in excess of the amount of their investment in the LLC and, therefore, generally have limited liability. Finally, some State LLC statutes require, or permit LLC members to provide in the operating agreement, either that LLC members may not transfer their interests in the LLC without the consent of the remaining members, or that a member may not transfer the managerial or voting rights that accompany membership without the consent of the remaining members. Such a provision tends to be inconsistent with the concept of free transferability of interests because the requirement for prior consent restrains or prevents the transfer of an ownership interest.

III. Interpretation of ''Incorporated''

In resolving any ambiguity in a statute it is always helpful to try to determine what Congress intended by its choice of the particular words of the statute. In this case there is no legislative history that sheds any light on their intent. The phrase ''incorporated under the laws of any State'' first appeared in the definition of ''State bank'' with the Banking Act of 1935.[21] As noted above, there is also no judicial guidance on the meaning of ''incorporated'' as used in the FDI Act. In the absence of such guidance, the FDIC believes that it is reasonable to interpret the term ''incorporated'' in such a way as to aid the FDIC in carrying out the purposes of the FDI Act. Specifically, the FDIC believes that reviewing the corporate attributes, in light of the purposes of the FDI Act, may indicate a rational basis for applying the ''incorporated'' requirement and may further indicate which of the corporate attributes are necessary or desirable for purposes of determining which institutions qualify as ''State banks.''

Congress created the Federal Deposit Insurance Corporation in 1933 to restore and maintain public confidence in the nation's banking system. One of the principal purposes of the FDI Act is to promote the safety and soundness of the institutions whose deposits the FDIC insures.[22] Consequently, the FDIC is charged with maintaining public confidence in the nation's banking system and promoting the safety and soundness of the institutions that it insures.

As noted above, the attributes that are commonly identified as distinguishing a corporation from other forms of business organizations are: perpetual succession, centralized management, free transferability of interests, and limited liability.

Perpetual Succession

The first attribute, perpetual succession, is very important to the FDIC's efforts to promote public confidence in the nation's banking industry. An institution that automatically terminated, dissolved, or suspended operations upon the happening of some event would most likely have a substantial adverse effect on public confidence. A depositor in such an institution would have no way of knowing from one day to the next whether the institution will continue in existence, and whether he/she will be able to retrieve his/her money when desired. Furthermore, such an automatic termination, dissolution, or suspension feature would have a significantly adverse effect on the FDIC's efforts to resolve failed institutions. The FDIC is not only charged with promoting the safety and soundness of banking institutions, but is also charged with the duty of resolving failed institutions in an orderly, least costly manner. The FDIC would have no practical opportunity to plan and execute an orderly resolution of an institution that, without any warning or advance notice, was terminated or dissolved or whose operations were suspended. Most likely it would not be possible to arrange for a healthy institution to purchase the assets and assume the deposit liabilities of the failed institution in order to continue to serve the affected community with the least disruption. The cost of resolving such an institution would likely be significantly higher than necessary as a result. Depositors of the failed institution would be paid to the extent of their insured deposits, and then would have to open new accounts with another institution. Checks that were in transit at the time of the bank's failure, but that had not yet been paid, would be rejected. The disruption to the community would be substantial. Consequently, the FDIC believes that perpetual succession is an essential prerequisite for an insured depository institution, and that automatic termination/dissolution/suspension features are inconsistent with the FDIC's duties and the purposes of the FDI Act.

Centralized Management

Centralized management is also an important attribute. Centralized management in the form of a board of directors provides the FDIC with a discrete group of individuals who are capable of acting for, and representing, the institution in virtually all matters. The typical rights, liabilities, powers, and responsibilities of this group are well established. Management of an institution directly and solely by all of its owners presents a variety of problems both from an operational standpoint and from an enforcement standpoint. If there is a large group of owners, it may be excessively difficult to conduct business in a timely fashion. With a large group, activities such as coordinating meetings, providing every owner with information and notices, determining who represents the institution and the extent of his/her authority become substantial undertakings. If there are too few owners, the group may not provide sufficient management depth and expertise. Ensuring that the institution is run by experienced, competent management may be especially difficult if the owners do not happen to possess adequate banking experience and competence. Finally, removing an individual from a management position may be complicated when the manager is also an owner of the institution. Consequently, centralized management is also an important attribute for purposes of the FDI Act.

Limited Liability

Limited liability, of course, encourages investment in the enterprise. Potential owners are more likely to invest in an enterprise when their liability is limited to the amount of their investment. Attracting and maintaining sufficient capital helps to ensure an adequate cushion to protect an institution during periods of economic stress. Since banks and savings associations are subject to periods of economic stress just as other businesses are, the FDIC believes that the owners of banks and savings associations

[21] *See* Banking Act of 1935, Pub. L. 74–305, sec. 101, 49 Stat. 684.

[22] *See FDIC* v. *Philadelphia Gear Corp.,* 106 S. Ct. 1931, 1935 (1986).

should also have limited liability to encourage the maintenance of adequate capital.

Free Transferability of Ownership Interests

Finally, the free transferability of ownership interests also tends to aid in attracting and maintaining capital. Requiring the prior consent of the remaining owners in order to transfer an ownership interest impairs an institution's ability to attract additional investors. At worst, prior consent to a transfer limits the pool of available investors; at best, it delays the additional investment. While the FDIC currently insures approximately 700 mutual institutions (that issue no stock) and more than 1700 closely-held institutions (some of which may have stock-transfer restrictions in the form of shareholder agreements), the FDIC has substantial experience with their structure, operations, and capital maintenance capabilities. The FDIC has no similar experience with institutions organized as LLCs, and that lack of similar experience argues for facilitating, rather than impairing, the maintenance of a capital cushion.

In summary, the FDIC believes that all of the above four attributes that are peculiar to corporations are attributes that a State bank should have in order to be ''incorporated'' as used in the definition of ''State bank'' in the FDI Act. Therefore, a banking institution that is chartered as an LLC under the law of any State and that has all of the above four corporate attributes would be considered to be ''incorporated'' under the law of the State for purposes of the definition of ''State bank.'' Furthermore, such a banking institution would be eligible to apply for Federal deposit insurance as a State bank under section 5 of the FDI Act, 12 U.S.C. 1815.

The proposed regulation reflects these conclusions. It provides generally that a banking institution that is chartered by a State as an LLC will be deemed to be ''incorporated'' if it has each of the four corporate attributes. The proposed regulation also specifies that for purposes of the FDI Act and the FDIC's regulations, an owner of an interest in an LLC is a ''shareholder;'' a manager of an LLC is a ''director;'' an officer of an LLC is an ''officer;'' and a certificate or other evidence of an ownership interest in an LLC is both ''voting stock'' and a ''voting security.'' These provisions are intended to remove any ambiguity as to how the rest of the FDI Act and the FDIC's regulations apply to banking institutions chartered as LLCs.

IV. Request for Comments

The FDIC's Board of Directors (Board) is seeking comment on whether the agency should permit a State bank that is organized as an LLC to obtain Federal deposit insurance; whether use of some or all of the four corporate attributes is the most appropriate method of determining whether an institution is ''incorporated;'' and if not, how the term ''incorporated'' should be interpreted. The Board invites comments on all of the following questions:

1. Should the FDIC permit a State bank that is organized as an LLC to obtain Federal deposit insurance?

2. If so, should the FDIC interpret the term ''incorporated'' utilizing some, all, or none of the traditional four corporate attributes?

3. If the FDIC should not utilize any of the four corporate attributes, how should it interpret the term ''incorporated?''

V. Paperwork Reduction Act

The proposed rule would not involve any collections of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VI. Regulatory Flexibilty Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule describes the circumstances under which a banking institution that is chartered under State law as a limited liability company would be considered to be ''incorporated'' for purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2). It does not require any banking institution to organize as a limited liability company, and it imposes no new reporting, recordkeeping or other compliance requirements. Accordingly, the requirements relating to an initial and final regulatory flexibility analysis are not applicable.

VII. Impact on Families

The proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Foreign banking, Golden parachute payments, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 303 of Title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207; 15 U.S.C. 1601–1607.

2. New § 303.15 is added to subpart A to read as follows:

§ 303.15 Certain limited liability companies deemed incorporated under State law.

(a) For purposes of the definition of ''State bank'' in 12 U.S.C. 1813(a)(2), a banking institution that is chartered as a limited liability company (LLC) under the law of any State is deemed to be ''incorporated'' under the law of the State, if:

(1) The LLC's existence is independent of the life or lives of its owner(s) and specifically is not subject to automatic termination, dissolution, or suspension upon the happening of some event including the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the LLC;

(2) The LLC is managed by a board of managers or directors that operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, responsibilities, and composition as, a board of directors of a State bank chartered as a stock corporation;

(3) Each ownership interest in the LLC, including all management rights and voting rights, is transferable without the consent of any other owner of the LLC; and

(4) Each owner of the LLC is not liable for the debts, liabilities, and obligations of the LLC in excess of the amount of the owner's investment.

(b) For purposes of the Federal Deposit Insurance Act and chapter III, title 12 of the Code of Federal Regulations:

(1) The term ''shareholder'' includes an owner of any interest in an LLC,

including a member or participant of an LLC;

(2) The term ''director'' includes a manager, director, or other person with substantially similar authority, of an LLC;

(3) The terms ''voting stock'' and ''voting securities'' each includes certificates or other evidence of ownership interests in an LLC; and

(4) The term ''officer'' includes an officer, or other person with substantially similar authority, of an LLC.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of July, 2002.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary/Supervisory Counsel.

[FR Doc. 02–18467 Filed 7–22–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt and Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt and Whitney (PW) model PW4000 series turbofan engines. That AD currently requires the number of PW4000 engines with potentially reduced stability margin to be limited to no more than one engine on each airplane, and removing engines that exceed high pressure compressor (HPC) cycles-since-overhaul (CSO) or cycles-since-new (CSN) from service based on the engine's configuration and category. That AD also requires establishing a minimum build standard for engines that are returned to service, and performing cool-engine fuel spike testing (Testing-21) on engines to be returned to service after having exceeded HPC cyclic limits or after shop maintenance.

This proposal would establish requirements similar to those in the existing AD, and would introduce a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes. This proposal would also add new requirements to manage the engine configurations installed on Boeing 747 airplanes, and would require repetitive Testing-21 to be performed on certain configuration engines. This proposal would also establish criteria which would require Testing-21 on certain engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations. In addition, this proposal would re-establish high pressure compressor (HPC)-to-high pressure turbine (HPT) cycles-since-overhaul (CSO) cyclic mismatch criteria, and add criteria to address engine installation changes, engine transfers, and thrust rating changes. Also, this proposal would establish criteria to allow engine stagger without performing Testing-21 for engines over their respective limits. This proposal is prompted by investigation and evaluation of PW4000 series turbofan engines surge data, and continuing reports of surges in the PW4000 fleet. The actions specified by this AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Comments must be received by August 22, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8:00 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, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. 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: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; telephone (781) 238–7133; 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 2000–NE–47–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. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 12, 2001, the Federal Aviation Administration (FAA) issued AD 2001–25–11, Amendment 39–12564 (67 FR 1, January 2, 2002) which applies to PW model PW4000 series turbofan engines. That AD was issued as an interim action to address the engine takeoff power loss events while investigation continued. AD 2001–25–11 requires:

- Limiting the number of engines with the HPC cut-back stator (CBS) configuration to one on each airplane before further flight after the effective date of that AD.
- Limiting the number of PW4000 engines with potentially reduced stability margin, to no more than one engine on each airplane.

• Removing engines that exceed HPC cycles-since-overhaul or cycles-since-new (CSN) from service based on the engine's configuration.

• Performing a cool-engine fuel spike test (Testing-21) on engines that experience a certain type of surge.

• Establishing a minimum build standard for engines that are returned to service.

• Performing Testing-21 on engines to be returned to service after having exceeded HPC cyclic limits or after shop maintenance.

• AD 2001–25–11 also establishes reporting requirements for Testing-21 data. That AD was prompted by reports of surges during takeoff on airplanes equipped with PW4000 series turbofan engines.

Based on continued investigation and evaluation of the PW4000 HPC surge data, the field management plan has been refined to better address engine takeoff surges and minimize the risk of dual engine surges. The FAA has also reviewed the comments received in response to AD 2001–25–11. This proposal would require similar requirements as compared to AD 2001–25–11, and would also:

• Use a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes instead of the list of engine serial numbers used in AD 2001–25–11.

• Add new requirements to manage the engine configurations installed on Boeing 747 airplanes. This engine and airplane combination would allow, for certain engine configurations, one of the four installed engines to remain on-wing until the HPC has accumulated up to 2,600 CSN or CSO before Testing-21 or an HPC overhaul is required.

• Require configuration F engines to repeat Testing-21 every 800 HPC cycles since passing Testing-21 (CST).

• Establish criteria, based on the requirements of AD 2001–01–10, AD 2001–09–05, and AD 2001–09–10, which would require Testing-21 on engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations.

• Re-establish the HPC-to-HPT CSO cyclic mismatch criteria and would add new criteria to address engine installation changes, engine transfers, and thrust rating changes.

• Establish criteria to allow an engine to be removed from service and reinstalled on an airplane, without requiring Testing 21, if this engine is the unmanaged engine for that airplane.

The actions specified by the proposed AD are intended to prevent engine takeoff power losses due to HPC surge.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of the following Pratt & Whitney service information:

• Service Bulletin PW4ENG72–714, Revision 1, dated November 8, 2001.

• Internal Engineering Notice IEN 96KC973D, dated October 12, 2001.

• Temporary Revision (TR) TR 71–0018, dated November 14, 2001.

• TR 71–0026, dated November 14, 2001.

• TR 71 71–0035, dated November 14, 2001.

• Cleaning, Inspection, and Repair (CIR) procedure CIR 51A357, Section 72–35–68, Inspection/Check-04, Indexes 8–11, dated September 15, 2001.

• CIR 51A357, Section 72–35–68, Repair 16, dated June 15, 1996.

• PW4000 PW engine manual (EM) 50A443, 71–00–00, TESTING–21, dated November 14, 2001.

• PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated November 14, 2001.

• PW 4000 PW EM 50A605, 71–00–00, TESTING–21, dated November 14, 2001.

This service information describes procedures for inspections required by the proposed AD.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney PW4000 series turbofan engines of this same type design, the proposed AD would be issued to prevent engine takeoff power losses due to HPC surges, and would supersede AD 2001–25–11 to require:

• Establishing requirements similar to those in the existing AD, and use of a rules-based criterion to determine the engine category classification for engines installed on Airbus A300 airplanes.

• Adding new requirements to manage the engine configurations installed on Boeing 747 airplanes. This engine and airplane combination would allow, for certain engine configurations, one of the four installed engines to remain on-wing until the HPC has accumulated up to 2,600 CSN or CSO before Testing-21 or until an HPC overhaul is required.

• Configuration F engines to repeat Testing-21 every 800 CST.

• Establishing criteria which would require Testing-21 on engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 7, 2001); AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001).

• Re-establishing HPC-to-HPT CSO cyclic mismatch criteria.

• Establishing criteria to address engine installation changes, engine transfers, and thrust rating changes.

• Establishing criteria to allow an engine to be removed from service and reinstalled on an airplane, without requiring Testing-21, if this engine is the unmanaged engine for that airplane.

The actions are required to be done in accordance with the service information described previously. This proposal has been coordinated with the Transport Airplane Directorate.

Economic Analysis

There are approximately 2,100 engines of the affected design in the worldwide fleet. The FAA estimates that 625 engines installed on airplanes of U.S. registry would be affected by this proposed AD. The FAA also estimates that, on average, approximately 100 test cell stability tests and 36 HPC overhauls will be required annually. It is estimated that the cost to industry of a test cell stability test will average $15,000 and an HPC overhaul will cost approximately $400,000. Based on these figures, the total average annual cost of the proposed AD to U.S. operators is estimated to be $15,900,000.

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 removing Amendment 39–12564, (67 FR 1, January 2, 2002), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000-NE–47-AD. Supersedes AD 2001–25–11, Amendment 39–12564.

Applicability

This airworthiness directive (AD) is applicable to Pratt and Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (t) 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 engine takeoff power losses due to HPC surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration Designator	Description
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back (1TVCB)	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any revision of service bulletin (SB) PW4ENG 72–514.
(2) Phase 1 with 1TVCB	B	Same as configuration designator (A) except that HPT 1TVCB has been incorporated using any revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one high pressure compressor (HPC) overhaul since new.
(4) Phase 3, 1st Run	D	Same as configuration designator (C) except that the engine has not had an HPC overhaul since new.
(5) HPC Cutback Stator Configuration Engines	E	Engines that currently incorporate any revision of SB's PW4ENG72–706, PW4ENG72–704, or PW4ENG72–711.
(6) Engines that have passed Testing–21	F	Engines which have successfully passed that have passed Testing–21 performed in accordance with paragraph (h) of this AD. Once an engine has passed a Testing–21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC.

Engines Installed on Boeing 767 and MD–11 Airplanes

(b) For engines installed on Boeing 767 and MD–11 airplanes, except as provided in paragraph (c) of this AD, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the HPC cycles-since-new (CSN), HPC cycles-since-overhaul (CSO), or HPC cycles since passing Testing–21 (CST) limits listed in the following Table 2, to not more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit listed in Table 2 of this AD. See paragraph (h) of this AD for return to service requirements.

Table 2 follows:

TABLE 2.—ENGINE STAGGER LIMITS FOR BOEING AIRPLANES

Configuration designator	B747—PW4056	B767—PW4052	B767—PW4056	B767—PW4060, PW4060A, PW4060C, PW4062	MD–11, PW4460, PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO.
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO.
C	2,100 CSO	4,400 CSO	2,800 CSO	2,000 CSO	1,300 CSO.
D	2,600 CSN	4,400 CSN	3,000 CSN	2,200 CSN	2,000 CSN.
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO.
F	800 CST	800 CST	800 CST	800 CST	800 CST.

Configuration E Engines Installed on Boeing 747, 767, and MD–11 Airplanes

(c) For configuration E engines, do the following:

(1) Before further flight, limit the number of engines with configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with configuration E from service before accumulating 1,300 CSN or cycles-since-conversion to configuration E, whichever is later.

Engines Installed on Boeing 747 Airplanes

(d) Except as provided in paragraph (c) of this AD, within 50 airplane cycles after the effective date of this AD, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 2 of this AD, to not more than one engine per airplane.

(2) The one configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 2 of this AD, must be limited to 2,600 HPC CSN or CSO for configuration A, B or C engines, or 1,300 HPC CSN or cycles-since-conversion to configuration E, whichever is later, for configuration E engines.

(3) Remove from service configuration D engines before accumulating 2,600 CSN.

(4) Remove from service configuration F engines before accumulating 800 CST.

(5) Configuration A, B, C, D, and F engines may be returned to service after completing paragraph (h) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(e) Use the following paragraphs (e)(1) through (e)(9) to determine which Airbus A300 PW4158 engine category 1, 2, or 3 limits of the following Table 3 of this AD apply to your engine fleet:

TABLE 3.—ENGINE STAGGER LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 category 1, and A310 PW4156 and PW4156A	A300 PW4158 A300 PW4158 category 2, and A310 PW4152	A300 PW4158 category 3
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO.
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO.
C	2,200 CSO	4,400 CSO	1,600 CSO.
D	4,400 CSN	4,400 CSN	4,400 CSN.
E	Not Applicable	Not Applicable	Not Applicable.
F	800 CST	800 CST	800 CST.

(1) Determine the number of Group 3 takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW 4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (i.e. 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. See paragraph (s)(5) of this AD for a definition of a Group 3 takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 takeoff surges determined in paragraph (e)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (e)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (e)(3) of this AD is less than 0.005, go to paragraph (e)(5) of this AD. If the surge rate calculated in paragraph (e)(3) of this AD is greater than or equal to 0.005, go to paragraph (e)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (e)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 3 of this AD. If less than 200,000 cycles, go to paragraph (e)(7) of this AD.

(6) If the surge rate calculated in paragraph (e)(3) of this AD is greater than 0.035, use A300 PW 4158 Category 3 limits of Table 3 of this AD. If less than or equal to 0.035, go to paragraph (e)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your

fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that has occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (s)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (e)(7) of this AD, use A300 PW4158 Category 3 limits of Table 3 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (e)(7) of this AD is greater than 27%, use A300 PW 4158 Category 3 limits listed in Table 3 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (e)(7) of this AD is less than or equal to 27%, use A300 PW 4158 Category 1 limits listed in Table 3 of this AD.

(f) For engines installed on Airbus A300 or A310 airplanes, within 50 airplane cycles after the effective date of this AD, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 3 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 3 of this AD. See paragraph (h) of this AD for return to service requirements.

(g) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (e)(6) of this AD, re-evaluate your fleet category within 6 months from the effective date of this AD, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (e) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (s)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (g)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is greater than 27%, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is less than or equal to 27%, use A300 PW4158 Category 1 limits listed in Table 3 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (e) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. See paragraph (s)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (g)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 3 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is greater than or equal to 13% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 3 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (g)(1) of this AD is less than 13%, use A300 PW4158 Category 2 limits listed in Table 3 of this AD.

Return To Service Requirements for All Engines

(h) Engines removed from service in accordance with paragraph (b), (d), or (f) of this AD may be returned to service under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with one of the following PW4000 Engine Manuals (EM) as applicable, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge:

(i) PW4000 PW EM 50A443, 71–00–00, TESTING–21, dated November 14, 2001.

(ii) PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated November 14, 2001.

(iii) PW 4000 PW EM 50A605, 71–00–00, TESTING–21, dated November 14, 2001; or

(2) Engines tested before the effective date of this AD, in accordance with any of the following PW4000 EM Temporary Revisions, meet the requirements of Testing–21:

(i) PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001.

(ii) PW4000 EM50A822, Temporary Revision No. 71–0018, dated November 14, 2001.

(iii) PW4000 EM50A605, Temporary Revision No. 71–0035, dated November 14, 2001; or

(3) Engines tested before the effective date of this AD, in accordance with PW IEN 96KC973D, dated October 12, 2001, meet the requirements of Testing–21; or

(4) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(5) The engine HPC has been overhauled, or the engine HPC replaced with an overhauled HPC with zero cycles since overhaul; or

(6) An engine that is either below or exceeding the limits of Table 2 or Table 3 of this AD may be removed and installed on another airplane without Testing–21 as long as the requirements of paragraph (b), (d) or (f) AD are met at the time of engine installation.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(i) For engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001), AD 2001–09–10, (66 FR 21853, May 2, 2001), or AD 2001–01–10, (66 FR 6449, January 22, 2001), do the following:

(1) Operators complying with the AD's listed in paragraph (i) of this AD using the weight restriction compliance method, must perform Testing–21 in accordance with paragraph (h)(1) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between ''A'' flange and ''T'' flange, does not occur.

(2) Testing–21 in accordance with paragraph (h)(1) of this AD is required if an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method, each time fan blade leading edge recontouring is done after the effective date of this AD, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard

(j) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or greater than the CSN or CSO of the HPT.

(k) For any engine that undergoes an HPC overhaul after the effective date of this AD, do the following:

(1) Inspect the HPC mid hook and rear hook of the HPC inner case for wear in accordance with PW4000 Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check–04, Indexes 8–11, dated September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG72–714, Revision 1, dated November 8, 2001, or Chromalloy Florida Repair Procedure 00–CFL–039–0. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with PW4000 CIR PN 51A357 Section 72–35–68, Repair–16.

(2) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of PW SB PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(l) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

Stability Testing Requirements

(m) After the effective date of this AD, Testing–21 must be performed in accordance with paragraph (h)(1) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The engine HPC was overhauled, or replaced with an overhauled HPC with zero cycles since overhaul; or

(2) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(3) The shop visit did not result in the separation of a major engine flange located between ''A'' flange and ''T'' flange.

Thrust Rating Changes, Installation Changes, and Engine Transfers

(n) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul period, use the lowest cyclic limit of Table 2 or Table 3 of this AD, associated with any engine thrust rating change or with any installation change made during the affected HPC overhaul period. See paragraph (s)(2) for definition of HPC overhaul period.

(o) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 3 of this AD that was used or will be used during the affected HPC overhaul period.

(p) When a PW 4158 engine operator whose engine fleet changes category in accordance with paragraph (g) of this AD, use the lowest cyclic limits in Table 3 of this AD that were used during the affected HPC overhaul period.

(q) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (g) of this AD in the direction of lower to higher Table 3 limits, are exempt from the lowest cyclic limit requirement in paragraphs (n), (o), and (p) of this AD.

Engines That Surge

(r) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service before further flight and perform an HPC overhaul.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For configuration A, B, C, D, and F engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (h)(1) of this AD.

(ii) For configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

Definitions

(s) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (-3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a ''CN'' suffix after the engine serial number if the engine was converted using PW SB's PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after following airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud ''bang(s).''

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (see Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25 " 0.30 Mn, using an aircraft automatic data recording system.

Alternative Methods of Compliance

(t) 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 requests 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

(u) 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.

Testing-21 Reports

(v) Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to 9-ane-surge-ad-reporting@faa.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Issued in Burlington Massachusetts, on July 15, 2002.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–18332 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AWP–4]

Proposed Establishment of Class D Airspace; Henderson Airport; Las Vegas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class D surface area at Henderson Airport in Las Vegas, NV. A Federal Contract Tower provides air traffic control services at this location on a part-time basis. Henderson Airport routinely serves a large volume of air tour operator traffic to and from the Grand Canyon area, as well as considerable general aviation activity operating under visual flight rules. Henderson Tower controllers are certified by the National Weather Service (NWS) to provide surface

weather observations at Henderson Airport. Adequate communication capabilities exist to support the establishment of Class D airspace. A review of current and projected operations and procedures at Henderson Airport has indicated the need for Class D airspace to enhance aviation safety. This action would establish Class D airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace.

DATES: Comments must be received on or before September 6, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, Docket No. 02–AWP–4; Air Traffic Division (AWP–500); P.O. Box 92007; Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261. An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide that factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–AWP–4.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 that would establish a Class D surface area at Henderson Airport in Las Vegas, NV. A Federal Contract Tower provides air traffic control services at this location on a part-time basis. The Henderson Airport routinely serves a large volume of air tour operator traffic to and from the Grand Canyon area in addition to considerable general aviation activity. Henderson Tower controllers are certified as weather observers for this airport, and adequate communication facilities have been established to support Class D airspace. A review of current and projected operations and procedures at Henderson Airport indicates the need for Class D airspace to enhance aviation safety, and in the interest of the commerce and welfare of the community. This action would establish Class D airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in the document would be published subsequently in that Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Henderson Airport, NV [New]

Henderson Airport, NV

(Lat. 35°58′35″N, long. 115°07′58″W)

That airspace extending upward from the surface to, but not including, 4,000 feet MSL within a 4.1-mile radius of Henderson Airport, excluding Las Vegas Class B airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on June 28, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–18471 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–8]

Proposed Establishment of Class E Airspace; Poplarville, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Poplarville, MS. A Visual Omni Range/Distance Measuring Equipment (VOR/DME)—A, Standard Instrument Approach Procedure (SIAP), has been developed for Oreck Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Oreck Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 02–ASO–8, Manager, Airspace Branch, ASO–520, PO Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 02–ASO–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Poplarville, MS. A VOR/DME–A SIAP has been developed for Oreck Airport. As a result, controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Oreck Airport. The operating status of the airport will change from VFR to include IFR operations concurrent with the publication of the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO MS E5 Poplarville, MS [NEW]

Oreck Airport, MS

(Lat. 30°46′38″ N, long. 89°43′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Oreck Airport; excluding that airspace within the Bogalusa, LA, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on July 9, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–18472 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124256–02]

RIN 1545–BA82

Earnings Calculation for Returned or Recharacterized IRA Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations provide a new method to be used for calculating the net income attributable to IRA contributions that are distributed as a returned contribution pursuant to section 408(d)(4) of the Internal Revenue Code or recharacterized pursuant to section 408A(d)(6). The regulations will affect IRA owners and IRA trustees, custodians and issuers.

DATES: Written or electronic comments must be received by October 21, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–124256–02), 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–124256–02), 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.*

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at 622–6090.

SUPPLEMENTARY INFORMATION:

Background

Section 408(d)(4) provides that an IRA contribution will not be included in the IRA owner's gross income when distributed as a returned contribution if: (1) It is received by the IRA owner on or before the day prescribed by law (including extensions) for filing the owner's Federal income tax return for the year of the contribution; (2) no deduction is allowed with respect to the contribution; and (3) the distribution is accompanied by the amount of net income attributable to the contribution.

Section 408A governs Roth IRAs and was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788). Section 408A(d)(6) provides that a contribution made to one type of IRA may be recharacterized as having been made to another type of IRA if: (1) The recharacterization transfer occurs on or before the date prescribed by law (including extensions) for filing the IRA owner's Federal income tax return for the year for which the contribution was made; (2) no deduction is allowed with respect to the contribution to the transferor IRA; and (3) the transfer is accompanied by any net income allocable to the contribution.

Section 1.408–4(c)(2)(ii) of the Income Tax Regulations prescribes the method (the old method) for calculating the amount of net income attributable to a contribution distributed pursuant to section 408(d)(4). The old method bases the calculation of the amount of net income attributable to a contribution on the income earned by the IRA during the period beginning on the first day of the taxable year in which the contribution is made and ending on the date of the distribution from the account. Under the old method, net income cannot be negative.

Section 1.408A–5, A–2(c), provides that if a contribution being recharacterized is in an IRA that at any time contained other contributions, the net income attributable to the contribution being recharacterized is calculated in the manner prescribed by § 1.408–4(c)(2)(ii) (the old method), except that net income can be negative. Section 1.408A–5, A–2(b), provides that if an IRA is established with a contribution and no other contributions or distributions are made, then the subsequent recharacterization transfer of the entire account balance of the IRA will satisfy the requirement that the transfer be accompanied by any net income allocable to the contribution.

In connection with issuing the regulations under section 408A governing Roth IRAs, it became apparent that the old method produced anomalous results for contributions made late in the year. This is because, under the old method, account activity in the part of the year that precedes the date the contribution is made is taken into account in the calculation of the net income attributable to the contribution.

In response to this concern, the IRS issued Notice 2000–39 (2000–30 I.R.B. 132), which provided a new method for calculating net income that generally bases the calculation of the amount of net income attributable to a contribution on the actual earnings and losses of the IRA during the time it held the contribution. Under this new method, net income can be negative. Notice 2000–39 provided that until further guidance is issued, either the old method or the new method may be used to calculate net income. Notice 2000–39 also requested comments regarding the new method.

The Service received comments on the new method which were generally favorable. However, commentators provided a number of suggestions for improving the method, including: (1) Allowing a single computation period to be used in the case of multiple IRA contributions; (2) clarifying how transfers in or out of IRAs are treated under the new method; and (3) allowing net income to be determined on the basis of tracing specific assets, rather than dollar amounts. This last suggestion was focused primarily on the calculation of net income in the case of a recharacterization back to a traditional IRA following a conversion of an amount in a traditional IRA to a Roth IRA.

Explanation of Provisions

New Method for Net Income Calculation Under Section 408(d)(4)

These proposed regulations would incorporate, with certain modifications, the new method provided in Notice 2000–39. Under the proposed regulations, for purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution is determined by allocating to the contribution a pro-rata portion of the net income on the assets in the IRA (whether positive or negative) during the period the IRA held the contribution. This new method is represented by the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

Under this formula, the opening balance is the fair market value of the IRA immediately before the contribution being returned is made to the account and the closing balance is the fair market value of the account immediately before the contribution is removed. The opening balance then is adjusted to include the amount of any contributions or transfers made to the IRA during the computation period. In addition, the closing balance is adjusted to include the amount of any distributions or transfers made from the IRA during the computation period. In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

In response to comments received, the proposed regulations would clarify that a transfer made in or out of an IRA during the computation period is treated in the same manner as a contribution or distribution made to or from the IRA. The proposed regulations also provide that a single computation period is used if more than one contribution was made to the IRA as a regular contribution.

New Method for Net Income Calculation Under Section 408A(d)(6)

The proposed regulations would provide rules for calculating net income allocable to a contribution being recharacterized under section 408A(d)(6) that are substantially similar to the rules applicable to contributions being returned under section 408(d)(4). However, if more than one contribution is being recharacterized, different rules apply. In the case of multiple contributions for a particular year that are eligible for recharacterization, the IRA owner chooses (by date and dollar amount, not by specific assets acquired with those dollars) which contribution is to be recharacterized. In addition, if a series of regular contributions was made, and consecutive contributions in that series are being recharacterized, the computation period is determined using a single computation period, based on the first contribution in the series.

The proposed regulations would retain the rule that net income calculations must be based on the overall value of an IRA and the dollar amounts contributed, distributed or recharacterized to or from the IRA. Even in a recharacterization of an amount converted to a Roth IRA, the proposed regulations would not permit net income to be calculated on the basis of the return on specific assets. The dollars contributed to an IRA are invested in assets that generate gains and losses. Once contributions are commingled in an account, those dollars are no longer associated with particular assets. In the absence of maintaining separate accounts, tying particular assets to a particular contribution would create administrative problems for taxpayers, IRA providers and the IRS.

Proposed Effective Date

The regulations are proposed to be applicable for calculating income allocable to IRA contributions made on or after January 1, 2004. For purposes of determining net income applicable to IRA contributions made during 2002 and 2003, taxpayers may continue to apply the rules set forth in Notice 2000–39 or may rely on these proposed regulations. If, and to the extent, future guidance is more restrictive than these proposed regulations, the future guidance will be issued without retroactive effect.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because proposed § 1.408–11 and revised A–2(c) of § 1.408A–5 impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.408–4 also issued under 26 U.S.C. 408.

§ 1.408–11 also issued under 26 U.S.C. 408. * * *

2. Section 1.408–4 is amended by adding the following text before the first sentence of (c)(1):

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

* * * * *

(c) * * * (1) * * *

The rules in this paragraph (c) apply for purposes of determining net income attributable to IRA contributions made before January 1, 2004, and returned pursuant to section 408(d)(4). The rules in § 1.408–11 apply for purposes of determining net income attributable to IRA contributions made on or after January 1, 2004, and returned pursuant to section 408(d)(4).

* * * * *

3. Section 1.408–11 is added to read as follows:

§ 1.408–11 Net income calculation for returned or recharacterized IRA contributions.

(a) *Net income calculation for returned IRA contributions*—(1) *General rule.* For purposes of returned contributions under section 408(d)(4), the net income attributable to a contribution made to an IRA is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \text{Contribution} \times \frac{(\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

(2) *Special rule.* If an IRA is established with a contribution and no other contributions, distributions or transfers are made to or from that IRA, then the subsequent distribution of the entire account balance of the IRA pursuant to section 408(d)(4) will satisfy the requirement of that Code section that the return of a contribution be accompanied by the amount of net income attributable to the contribution.

(b) *Definitions.* For purposes of this section the following definitions apply—

(1) *Adjusted opening balance.* The term adjusted opening balance means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is distributed as a returned contribution pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made to the IRA during the computation period.

(2) *Adjusted closing balance.* The term adjusted closing balance means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(3) *Computation period.* The term computation period means the period beginning immediately prior to the time that the contribution being returned was made to the IRA and ending immediately prior to the removal of the contribution. If more than one contribution was made as a regular contribution and is being returned from the IRA, the computation period begins immediately prior to the time the first contribution being returned was contributed.

(4) *Regular contribution.* The term regular contribution means an IRA contribution made by the IRA owner that is neither a trustee-to-trustee transfer from another IRA nor a rollover from another IRA or retirement plan.

(c) *Additional rules*—(1) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this section, notwithstanding A–3 of § 1.408A–5, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(2) In the case of an IRA that has received more than one regular contribution for a particular taxable year, the last regular contribution made to the IRA for the year is deemed to be the contribution that is distributed as a returned contribution under section 408(d)(4), up to the amount of the contribution identified by the IRA owner as the amount distributed as a returned contribution.

(3) In the case of an individual who owns multiple IRAs, the net income calculation is performed only on the IRA containing the contribution being returned, and that IRA is the IRA that must distribute the contribution.

(d) *Examples.* The following examples illustrate the net income calculation under section 408(d)(4) and this section:

Example 1. (i) On May 1, 2004, when her IRA is worth $4,800, Taxpayer A makes a $1,600 regular contribution to her IRA. Taxpayer A requests that $400 of the May 1, 2004, contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on February 1, 2005, when the IRA is worth $7,600, the IRA trustee distributes to Taxpayer A the $400 plus attributable net income. During this time, no other contributions have been made to the IRA and no distributions have been made.

(ii) The adjusted opening balance is $6,400 [$4,800 + $1,600] and the adjusted closing balance is $7,600. Thus, the net income attributable to the $400 May 1, 2004, contribution is $75 [$400 × ($7,600—$6,400) ÷ $6,400]. Therefore, the total to be distributed on February 1, 2005, pursuant to § 408(d)(4) is $475.

Example 2. (i) Beginning in January 2004, Taxpayer B contributes $300 on the 15th of each month to an IRA for 2004, resulting in an excess regular contribution of $600 for that year. Taxpayer B requests that the $600 excess regular contribution be returned to her pursuant to section 408(d)(4). Pursuant to this request, on March 1, 2005, when the IRA is worth $16,000, the IRA trustee distributes to Taxpayer B the $600 plus attributable net income. The excess regular contributions to be returned are deemed to be the last two made in 2004: the $300 December 15 contribution and the $300 November 15 contribution. On November 15 the IRA was worth $11,000 immediately prior to the contribution. No distributions or transfers have been made from the IRA and no contributions or transfers, other than the monthly contributions (including $300 in January and February 2005), have been made.

(ii) As of the beginning of the computation period (November 15), the adjusted opening balance is $12,200 [$11,000 + $300 + $300 + $300 + $300] and the adjusted closing balance is $16,000. Thus, the net income attributable to the excess regular contributions is $187 [$600 x ($16,000—$12,200) ÷ $12,200]. Therefore, the total to be distributed as returned contributions on March 1, 2005, to correct the excess regular contribution is $787 [$600 + $187].

Par. 4. In § 1.408A–5, A–2(c) is revised to read as follows:

§ 1.408 A–5 Recharacterized contributions.

* * * * *

A–2 * * *

(c) (1) If paragraph (b) of this A–2 does not apply, then, for purposes of determining net income attributable to IRA contributions, the net income attributable to the amount of a contribution is determined by allocating to the contribution a pro-rata portion of the earnings on the assets in the IRA during the period the IRA held the contribution. This attributable net income is calculated by using the following formula:

$$\text{Net Income} = \frac{\text{Contribution} \times (\text{Adjusted Closing Balance} - \text{Adjusted Opening Balance})}{\text{Adjusted Opening Balance}}$$

(2) For purposes of this paragraph (c), the following definitions apply—

(i) The term adjusted opening balance means the fair market value of the IRA at the beginning of the computation period plus the amount of any contributions or transfers (including the contribution that is being recharacterized pursuant to section 408A(d)(6) and any other recharacterizations) made to the IRA during the computation period.

(ii) The term adjusted closing balance means the fair market value of the IRA at the end of the computation period plus the amount of any distributions or transfers (including contributions returned pursuant to section 408(d)(4) and recharacterizations of contributions pursuant to section 408A(d)(6)) made from the IRA during the computation period.

(iii) The term computation period means the period beginning immediately prior to the time the particular contribution being recharacterized is made to the IRA and ending immediately prior to the recharacterizing transfer of the contribution. If a series of regular contributions was made to the IRA, and consecutive contributions in that series are being recharacterized, the computation period begins immediately prior to the time the first of the regular contributions being recharacterized was made.

(3) When an IRA asset is not normally valued on a daily basis, the fair market value of the asset at the beginning of the computation period is deemed to be the most recent, regularly determined, fair market value of the asset, determined as of a date that coincides with or precedes the first day of the computation period. In addition, solely for purposes of this paragraph (c), notwithstanding A–3 of this section, recharacterized contributions are taken into account for the period they are actually held in a particular IRA.

(4) In the case of an individual with multiple IRAs, the net income calculation is performed only on the IRA containing the particular contribution to be recharacterized, and that IRA is the IRA from which the recharacterizing transfer must be made.

(5) In the case of multiple contributions made to an IRA for a particular year that are eligible for recharacterization, the IRA owner can choose (by date and by dollar amount, not by specific assets acquired with those dollars) which contribution, or portion thereof, is to be recharacterized.

(6) The following examples illustrate the net income calculation under section 408A(d)(6) and this paragraph:

Example 1. (i) On March 1, 2004, when her Roth IRA is worth $80,000, Taxpayer A makes a $160,000 conversion contribution to the Roth IRA. Subsequently, Taxpayer A discovers that she was ineligible to make a Roth conversion contribution in 2004 and so she requests that the $160,000 be recharacterized to a traditional IRA pursuant to section 408A(d)(6). Pursuant to this request, on March 1, 2005, when the IRA is worth $225,000, the Roth IRA trustee transfers to a traditional IRA the $160,000 plus allocable net income. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) The adjusted opening balance is $240,000 [$80,000 + $160,000] and the adjusted closing balance is $225,000. Thus the net income allocable to the $160,000 is −$10,000 [$160,000 × ($225,000 ÷ $240,000) ÷ $240,000]. Therefore, in order to recharacterize the March 1, 2004, $160,000 conversion contribution on March 1, 2005, the Roth IRA trustee must transfer from Taxpayer A's Roth IRA to her traditional IRA $150,000 [$160,000—$10,000].

Example 2. (i) On April 1, 2004, when her traditional IRA is worth $100,000, Taxpayer B converts the entire amount, consisting of 100 shares of stock in ABC Corp., and 100 shares of stock in XYZ Corp., by transferring the shares to a Roth IRA. At the time of the conversion, the 100 shares of stock in ABC Corp., are worth $50,000 and the 100 shares of stock in XYZ Corp., are also worth $50,000. Taxpayer B decides that she would like to recharacterize the ABC Corp., shares back to a traditional IRA. However, B may choose only by dollar amount the contribution or portion thereof that is to be recharacterized. On the date of transfer, November 1, 2004, the 100 shares of stock in ABC Corp., are worth $40,000 and the 100 shares of stock in XYZ Corp., are worth $70,000. No other contributions have been made to the Roth IRA and no distributions have been made.

(ii) If B requests that $50,000 (which was the value of the ABC Corp., shares at the time of conversion) be recharacterized, the net income allocable to the $50,000 is $5,000 [$50,000 × ($110,000 −$100,000) ÷ $100,000]. Therefore, in order to recharacterize $50,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of $55,000 [$50,000 + $5,000].

(iii) If, on the other hand, B requests that $40,000 (which was the value of the ABC Corp., shares on November 1) be recharacterized, the net income allocable to the $40,000 is $4,000 [$40,000 × ($110,000 −$100,000) ÷ $100,000]. Therefore, in order to recharacterize $40,000 of the April 1, 2004, conversion contribution on November 1, 2004, the Roth IRA trustee must transfer from Taxpayer B's Roth IRA to a traditional IRA assets with a value of $44,000 [$40,000 + $4,000].

(iv) Regardless of the amount of the contribution recharacterized, the determination of that amount (or of the net income allocable thereto) is not affected by whether the recharacterization is accomplished by the transfer of shares of ABC Corp., or of shares of XYZ Corp.

(7) This paragraph (c) applies for purposes of determining net income attributable to IRA contributions, made on or after January 1, 2004. For purposes of determining net income attributable to IRA contributions made before January 1, 2004, see paragraph (c) of this A–2 of § 1.408A–5 (as it appeared in the April 1, 2003, edition of 26 CFR part 1).

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 02–18452 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[REG–115781–01]

RIN 1545–A031

Definition of Guaranteed Annuity and Lead Unitrust Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations conforming the income, gift, and estate tax regulations to the Tax Court's decision in *Estate of Boeshore* v. *Commissioner,* 78 T.C. 523 (1982), *acq. in result*, 1987–2 C.B. 1, holding portions of § 20.2055–2(e)(2)(vi)(*e*) of the Estate Tax Regulations invalid.

DATES: Written or electronic comments and requests to speak at the public hearing scheduled for October 16, must be received by September 25, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–115781–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submission of comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–115781–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in Room 4718, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Susan Hurwitz (202) 622–3090; concerning submissions of comments, Sonya Cruse (202) 622–7180.

SUPPLEMENTARY INFORMATION

Background

In general, if interests in the same property are transferred for both charitable and noncharitable purposes, the charitable interest will qualify for the charitable deduction for federal income, gift, and estate tax purposes only if the interest is in one of certain prescribed forms. If the charitable interest is not a remainder interest, sections 170(f), 2522(c)(2), and 2055(e)(2) of the Internal Revenue Code (Code) require that the charitable interest be in the form of either a guaranteed annuity or a fixed percentage of the annual net fair market value of the property (unitrust interest).

A guaranteed annuity is defined in the regulations under sections 170, 2522, and 2055 as an arrangement pursuant to which a specified sum is paid not less often than annually, for a specified term of years or for the life or lives of certain named individuals. A unitrust interest is defined as a right to receive not less often than annually a fixed percentage of the net fair market value, determined annually, of the property funding the unitrust interest, payable for a specified term of years or for the life of certain named individuals. The income, estate, and gift tax regulations also provide that if guaranteed annuity or unitrust interests are payable for private and charitable purposes from a trust and the private interest is payable before the expiration of the charitable interest, then in order for the charitable guaranteed annuity interest or unitrust interest to be deductible, among other requirements, the charitable interest must begin either before, or at the same time as, the private interest. See, for example, § 20.2055–2(e)(2)(vii)(*e*) regarding the estate tax provision applicable to unitrust interests. See also, Rev. Rul. 76–225 (1976–1 C.B. 281).

In *Estate of Boeshore* v. *Commissioner*, the decedent devised the residue of her estate to a charitable remainder unitrust described in section 664 of the Code. Under the terms of the trust, a 6 percent unitrust amount was to be paid annually from the trust. During the life of the decedent's surviving spouse, 70 percent of the distribution was to be paid to the surviving spouse and the remaining 30 percent to the decedent's daughter and two grandchildren. Upon the surviving spouse's death, 58 percent of the unitrust amount was to be paid to the decedent's daughter and two grandchildren for their lives, and the remaining 42 percent was to be paid to a qualifying charity. Upon the death of the last to die of the four individual beneficiaries, the remainder interest was to be paid to charity. The decedent's estate claimed an estate tax charitable deduction for the present values of the charitable remainder interest and the charitable unitrust interest that was to begin upon the spouse's death.

Under the authority of § 20.2055–2(e)(2)(vi)(*e*) (currently § 20.2055–2(e)(2)(vii)(*e*)), the IRS disallowed the deduction for the present value of the charitable unitrust interest, because it was preceded by a noncharitable unitrust interest.

The court noted that the rules contained in section 2055(e)(2) ensure that the value of the charitable interest is not subject to manipulation through trustee investment practices and that the actual benefit charity receives bears a reasonable relationship to the deduction allowed for the value of the charitable interest. Since all the nonremainder interests in the *Boeshore* trust, both charitable and noncharitable, were in the form of unitrust interests, any incentives to manipulate the income interest were removed. *Estate of Boeshore* v. *Commissioner*, 78 T.C. at 529. Under these circumstances, the court was unable to find any congressional intent to preclude a charitable deduction for an otherwise qualified charitable unitrust interest. Accordingly, the court held § 20.2055–2(e)(2)(vi)(*e*) invalid insofar as the regulation disallowed a deduction for the charitable unitrust interest under the facts presented.

Explanation of Provisions

The proposed regulations amend the existing regulations under sections 170, 2055, and 2522 governing charitable guaranteed annuity interests and unitrust interests to eliminate the requirement that the charitable interest can not be preceded in point of time by a noncharitable interest that is in the form of a guaranteed annuity or unitrust interest. The regulations will continue to require that any amounts payable for a private purpose before the expiration of the charitable annuity or unitrust interest either must be in the form of a guaranteed annuity or unitrust interest or must be payable from a separate group of assets devoted exclusively to private purposes.

Effective Date

The regulations are applicable as of the date these regulations are published in the **Federal Register** as final regulations.

Effect on Other Documents

The following publication is revoked as of the date these regulations are published in the **Federal Register** as final regulations.

Rev. Rul. 76–225 (1976–1 C.B. 281)

Special Analysis

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 Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 5) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies, if written) or electronic comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 16, 2002, at 10 a.m., Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, 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 **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the

time to be devoted to each topic (preferably a signed original and eight (8) copies) by September 25, 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 receiving 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 Susan Hurwitz of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

2. Section 1.170A–6 is amended as follows:

1. Paragraph (c)(2)(i)(E) is revised and the example following paragraph (c)(2)(i)(E) is removed.

2. Paragraph (c)(2)(ii)(D) is revised.

The revision reads as follows:

§ 1.170A–6 Charitable contributions in trust.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(E) Where a charitable interest in the form of a guaranteed annuity interest is transferred after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(i)(E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust. * * *

(ii) * * *

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * * *

4. Section 20.2055–2 is amended as follows:

1. Paragraph (e)(2)(vi)(*f*) is revised.

2. Paragraph (e)(2)(vii)(*e*) is revised.

3. In paragraph (f)(2)(iv) *Example (4)* is removed.

The revisions read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(e) * * *

(2) * * *

(vi) * * *

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vi)(*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(vii) * * *

(*e*) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust

interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vii)(*e*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

5. The authority for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

6. Section 25.2522(c)–3 is amended as follows:

1. Paragraph (c)(2)(vi)(*f*) is revised.
2. Paragraph (c)(2)(vii)(*e*) is revised.
3. In paragraph (d)(2)(iv), *Example 4*, is removed.

The revisions read as follows:

§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, and the gift of such interest is made after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vi)(*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(vii) * * *

(*e*) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests.

There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vii)(*e*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation and Similar Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–18185 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[USCG–2001–10689]

RIN 2115–AG47

Temporary Requirements for Notification of Arrival in U.S. Ports

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; change of effective period of temporary rule.

SUMMARY: The Coast Guard proposes to extend to March 31, 2003, the effective period for the temporary rule on notification of arrival requirements. Extension of the effective period would ensure sufficient time to complete the rulemaking. Continuing the temporary rule in effect while the permanent rulemaking is in progress will help to ensure the security of our ports and the uninterrupted flow of maritime commerce during that period.

DATES: Comments and related material must reach the Docket Management Facility on or before August 22, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before August 22, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2001–10689), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By 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/.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

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, 400 Seventh Street SW., Washington, DC, 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: If you have questions on this rule, call LTJG Marcus A. Lines, U.S. Coast Guard (G–MMP), at 202–267–6854. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking. This proposed rule would extend the effective period of the temporary final rule entitled ''Temporary Requirements for Notification of Arrival in U.S. Ports'' that was published in the **Federal Register** on October 4, 2001 (66 FR 50565) and amended on November, 19, 2001 (66 FR 57877), on January 18, 2002 (67 FR 2571), and on May 30, 2002 (67 FR 3782). Comments and related materials addressing the extension of the effective period of the temporary rule should include your name and address, identify the docket number for this rulemaking (USCG–2001–10689), indicate the specific section of this document 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**; 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 81/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials 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. You may submit a request for one to the Docket Management Facility 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**.

Regulatory History

On October 4, 2001, we published a temporary final rule entitled ''Temporary Requirements for Notification of Arrival in U.S. Ports'' in the **Federal Register** (66 FR 50565). Subsequently, we published two corrections in the **Federal Register** [November 19, 2001 (66 FR 57877)] and [January 18, 2002 (67 FR 2571)]. On May 30, 2002, we extended the effective period of the temporary rule through September 30, 2002 (67 FR 37682).

Background and Purpose

We published a related notice of proposed rulemaking (NPRM) to make permanent changes to the notice of arrival requirements [''Notification of Arrival in U.S. Ports'' June 19, 2002 (67 FR 41659)]. We expected the extension of the temporary rule through September 30, 2002, would have provided us enough time to complete the permanent changes to the notice of arrival requirements. Now, however, we propose to further extend the effective period of the temporary rule until March 31, 2003, to ensure sufficient time to complete the changes. Continuing the temporary rule in effect while the permanent rulemaking is in progress will help to ensure the security of our ports and the uninterrupted flow of maritime commerce during that period.

Regulatory Evaluation

This proposal 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. It has not been reviewed by the Office of Management and Budget under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)[February 26, l979 (44 FR 11040)].

As discussed in the preamble, the Coast Guard has temporarily changed the notice of arrival (NOA) regulations and proposes to extend the effective period of those requirements until March 31, 2003. When assessing the impact of the temporary requirements, we estimated that providing the Coast Guard with the additional information about passengers, crew, and cargo will impose minimal burden on vessels already complying with the notification requirements of 33 CFR part 160, subpart C. As explained below, the total cost to extend the effective period of the temporary rule should not exceed $377,324:

Cost and Burden. Coast Guard data on Notification of Arrival information for 1998 and 1999 were used to estimate the maximum populations that would be affected by this proposal. Table 1 categorizes the affected vessel population into four sub-populations. They are:

- ''Non-AMVER/Non-Great Lakes Vessels''—vessels already required to comply with NOA regulations;
- ''AMVER''—vessels complying with the Automated Mutual Assistance Vessel Rescue system and that were exempt from NOA requirements prior to the temporary rule;
- ''Great Lakes Vessels''—vessels greater than 300 gross tons, on Great Lakes routes, that were exempt from NOA requirements prior to the temporary rule; and
- ''Vessels on Scheduled Routes''—vessels operating upon a route that is described in a schedule that is submitted to the Captain of the Port for each port or place of destination listed in the schedule. The table also sets out the number of vessels and their total number of U.S. port calls (arrivals) for each vessel sub-population.

TABLE 1.—NUMBER OF VESSELS AND U.S. PORT CALLS FOR 1998 AND 1999*

	1998	1999	Annual average	Monthly average
Non-AMVER/Non-Great Lakes Vessels	9,795	9,538	9,667	NA
U.S. Port Calls	63,090	63,482	63,286	5,274
AMVER Vessels	625	609	617	NA
U.S. Port Calls	4,027	4,052	4,040	337
Great Lakes Vessels	83	82	83	NA
U.S. Port Calls	840	786	813	68

TABLE 1.—NUMBER OF VESSELS AND U.S. PORT CALLS FOR 1998 AND 1999*—Continued

	1998	1999	Annual average	Monthly average
Totals Vessels	10,503	10,229	10,367	NA
U.S. Port Calls	67,957	68,320	68,139	5,679

* These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Vessels less than 300 gross tons making ports of call in the Seventh Coast Guard District have to file NOA reports with the COTP. This proposal would maintain the requirement, and the estimate of the vessels and port calls presented in Table 1 accounted for this special group.

Before the temporary final rule, vessels had to file multiple NOA reports if they were visiting multiple U.S. ports on the same voyage. Under the temporary rule, vessels making calls to multiple U.S. ports do not have to file multiple NOA reports; rather, the temporary rule allows a single report listing all destinations in the United States along with estimated arrival dates for each port. The Coast Guard did not collect or maintain information on the number of vessels that made multiple U.S. port calls under separate NOA reports to estimate the number of consolidated reports under the temporary rule. The totals above, therefore, represent a conservative estimate, a ''worst-case scenario,'' of the numbers of vessels and NOA reports that would be affected by this proposal.

Finally, vessels that make scheduled trips outside of their COTP zones would no longer be exempt from reporting requirements. We do not know how many of these vessels and port calls exist, though we know they are included in the population of non-AMVER/non-Great Lakes vessels. For the purposes of analysis, these vessels and port calls are included in the non-AMVER/non-Great Lakes population.

Cost of the Temporary Rule

Minimal burden would be imposed on vessels whose applicability to the NOA reporting requirements was upheld by the temporary rule. The cargo, crew, and passenger information these vessels provide to the Coast Guard is already collected on a form submitted to the Immigration and Naturalization Services (INS) (INS form I–418). We assumed 10 minutes (0.167 hours) would be spent retrieving and transmitting the cargo, crew, and passenger information. We assumed that there would be a $2 transmittal fee (fax, email, telephone, etc.) to provide this information to the Coast Guard. We assumed that clerical labor would complete these tasks at a cost of $31.00 per hour (loaded labor rate, 2001). Based on 1998 and 1999 data, we estimated 31,644 port calls would be made over this extension period (6 months-until March 31, 2003). The summary of unit costs and total rulemaking costs for non-AMVER/non-Great Lakes vessels is presented in Table 2.

TABLE 2.—TOTAL RULEMAKING COSTS FOR NON-AMVER/NON-GREAT LAKES VESSELS

[October 2002–March 2003]*

Port calls during temporary rule	Labor hours per port call	Labor hours during temporary rule	Cost per labor hour	Cost per information transmittal	Total rulemaking cost for these vessels
31,644	0.167	5,274	$31.00	$2.00	$226,782

Detail may not calculate to total due to independent rounding.

* These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Vessels that were exempt from NOA requirements before the original effective period of the temporary rule would, as a result of this proposal, continue to provide the Coast Guard with NOA reports in addition to providing the cargo, crew, and passenger information until March 31, 2003. These vessels (AMVER and vessels that transit only the Great Lakes) would incur cost by extending the effective period of the temporary rule that requires them to submit an NOA report. Based on the OMB-approved Collection of Information for NOA (OMB–2115–0557), we estimated that it would take 10 minutes (0.167 hours) to complete the report, plus an additional 5 minutes (0.083 hours) for the general description of the cargo. We assumed that clerical labor would complete the report at a cost of $31.00 per hour. Additionally, these vessels would need to develop and submit the cargo, crew, and passenger information. Based on information from the INS (OMB–1115–0083), it will require 60 minutes (1.000 hour) to complete both lists, for a total of 75 minutes (1.250 hours) for the entire submission (NOA report, cargo description, crew and passenger information). There would be a $2 transmittal fee to provide the information to the Coast Guard. Based on 1998 and 1999 data, we estimated that 2,427 port calls would be made over the time period of this rulemaking. The summary of unit costs and total rulemaking costs for AMVER/Great Lakes vessels is presented in Table 3.

TABLE 3.—TOTAL RULEMAKING COSTS FOR AMVER/GREAT LAKES VESSELS

[October 2002–March 2003]

Port calls during temporary rule	Labor hours per port call	Labor hours during temporary rule	Cost per labor hour	Cost per information transmittal	Total rulemaking cost for these vessels
2,427	1.250	3,033	$31.00	$2.00	$98,870

Detail may not calculate to total due to independent rounding.

Finally, all vessels affected would continue to communicate with the National Vessel Movement Center (NVMC) upon departure from a U.S. port when their next port of call is also a U.S. port. Vessels are to phone or fax the date of departure to the NVMC along with the name of the port just departed. The NVMC will transmit this information to the COTP in the next port of call. We assumed that reporting this would require 1 minute (0.017 hours) per departure and that clerical labor ($31.00 per hour) would make the call or send the fax. We assumed the transmittal fee would be $1.00 per call/fax. There will be an estimated 34,071 departures over the 6-month extension period of the temporary rule (until March 31, 2003). The cost and burden for notifying NVMC of the date of departure and last port of call is presented in Table 4.

TABLE 4.—TOTAL RULEMAKING COSTS FOR PROVIDING NVMC WITH DATE OF DEPARTURE AND LAST PORT OF CALL INFORMATION

[October 2002–March 2003]

Port departures during temporary rule	Labor hours per port call	Labor hours during temporary rule	Cost per labor hour	Cost per information transmittal	Total rulemaking cost for these vessels
34,071	0.017	568	$31.00	$1.00	$51,672

Detail may not calculate to total due to independent rounding.

The total cost and burden of the rule is presented in Table 5.

TABLE 5.—TOTAL RULEMAKING COST FOR ALL AFFECTED VESSELS

[October 2002–March 2003]*

	Arrivals/departures	Cost per arrival/departure	Burden per arrival/departure (hours)	Total rulemaking cost	Total rulemaking burden
Arr. Non-AMVER/Non-Great Lakes	31,644	$7.17	0.167	$226,782	5,274
Arr. AMVER/Great Lakes	2,427	40.75	1.250	98,870	3,033
Dep. all vessels	34,071	1.52	0.017	51,672	568
Totals	68,142	.....	.....	$377,324	8,875

Detail may not calculate to total due to independent rounding.

*These estimates include vessels on scheduled routes that will experience about the same costs as the other vessels in this population.

Need for the Temporary Rule

This proposal would ensure the timely receipt of advance information about vessels, cargo, and people entering U.S. ports and would help minimize disruption to commerce. The additional information required by this proposal would increase security and provide protection for the nation's ports and waterways. There would be some savings from the consolidated NOA submission for two or more consecutive arrivals at U.S. ports.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposal 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 proposal would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposal will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposal would economically affect it.

Assistance for Small Entities

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 proposal would extend the effective period of an existing collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who would be required to collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Advance Notice of Vessel Arrival and Departure.

OMB Control Number: 2115–0557.

Summary of the Collection of Information: The Coast Guard requires pre-arrival messages from any vessel entering a port or place in the United States. This proposal would extend the effective period of the temporary notice of arrival requirements to March 31, 2003.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard proposes to extend the effective period of the temporary notice of arrival requirements.

Proposed Use of Information: Extending the NOA information reported would enable the control of vessel traffic, the development of contingency plans, and the enforcement of regulations.

Description of the Respondents: The respondents are owners, agents, masters, operators, or persons in charge of vessels bound for or departing from U.S. ports.

Number of Respondents: The existing OMB-approved collection number of respondents is 10,367. Extending the temporary rule would not increase the total number of respondents.

Frequency of Response: The existing OMB-approved collection annual number of responses is 136,278. Extending the temporary rule would not increase the total number of responses.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.250 hours). Extending the temporary rule would not increase the burden.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 39,037 hours. Extending the temporary rule would not increase the total annual burden.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we submitted a copy of this proposal to the Office of Management and Budget (OMB) for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for ''emergency processing'' of our request. We received OMB approval for the collection of information on September 26, 2001. It is valid until September 30, 2002, and we are requesting it be extended until March 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES,** by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB.

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 proposed 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 proposed rule would not result in such an expenditure, the effects of this rule are discussed elsewhere in this preamble.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this 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.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This proposed rule would extend the effective period of the changes to the requirements established in the notification of arrival regulations. They are procedural in nature and therefore are categorically excluded. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 160 as follows:

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

Subpart C—Notifications of Arrival, Departures, Hazardous Conditions, and Certain Dangerous Cargoes

1. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1226, 1231; 49 CFR 1.46.

§ 160.201 [Amended]

2. In § 160.201, paragraphs (c) and (d), which were suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003; and paragraphs (e) and (f), added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, and paragraph (g), added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, are extended in effect through March 31, 2003.

§ 160.203 [Amended]

3. In § 160.203, the definition of ''certain dangerous cargo,'' which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003; and the definitions for ''certain dangerous cargo'', ''crewmember'', ''nationality'', and ''persons in addition to crewmembers'' which were added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, are extended in effect through March 31, 2003.

§ 160.T204 [Amended]

4. Section 160.T204, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

§ 160.207 [Amended]

5. Section 160.207, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003.

§ 160.T208 [Amended]

6. Section 160.T208, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, and amended by 66 FR 57877, November 19, 2001, and by 67 FR 2571, January 18, 2002, and extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

§ 160.211 [Amended]

7. Section 160.211, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003.

§ 160.T212 [Amended]

8. Section 160.T212, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, and extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

§ 160.213 [Amended]

9. Section 160.213, which was suspended at 66 FR 50565, October 4, 2001, from October 4, 2001, until June 15, 2002, and further suspended at 67 FR 37682, May 30, 2002, until September 30, 2002, will continue to be suspended through March 31, 2003.

§ 160.T214 [Amended]

10. Section 160.T214, which was added at 66 FR 50565, October 4, 2001, effective October 4, 2001, until June 15, 2002, amended by 66 FR 57877, November 19, 2001, and extended in effect at 67 FR 37682, May 30, 2002, until September 30, 2002, is extended in effect though March 31, 2003.

Dated: July 18, 2002.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety, Security, and Environmental Protection.

[FR Doc. 02–18596 Filed 7–18–02; 3:59 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK38

Enrollment—Provision of Hospital and Outpatient Care to Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: VA's medical regulations captioned ''Enrollment—Provision of Hospital and Outpatient Care to Veterans'' implement a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care. Veterans currently are eligible to be enrolled based on seven priority categories. We would add veterans awarded the Purple Heart to priority category 3 to implement new statutory requirements. We would delete the copayment provisions from priority category 4 to clarify statutory requirements. We propose to divide priority category 7 into two new priority categories (7 and 8) to implement new statutory requirements. We would use the current subpriorities for category 7 for these new categories. We propose to state principles for placing veterans in enrollment categories to help ensure clarity and fairness in making priority category determinations. Finally, we would change the VA officials who can make enrollment decisions and provide an additional address for sending a request for voluntary disenrollment.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AK38.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Amy Hertz, Office of Policy and Planning (105D), at (202) 273–8934 or Roscoe Butler, Chief Policy & Operations, Health Administration Service (10C3), at (202) 273–8302. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, and are located at 810 Vermont Avenue, NW, Washington, DC 20420.

SUPPLEMENTARY INFORMATION: Pursuant to the mandate of the Veterans' Health Care Eligibility Reform Act of 1996, VA established a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care (38 CFR 17.36). Starting October 1, 1998, most veterans were required to be enrolled in the VA health care system as a condition for receiving VA hospital and outpatient care, and the Secretary was required to make annual determinations as to which categories of veterans are eligible to enroll in the VA health care system.

Currently, VA's enrollment regulations at 38 CFR 17.36 provide that veterans are eligible to be enrolled based on the following categories of priority:

(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployability.

(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.

(3) Veterans who are former prisoners of war; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for hospital and outpatient care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability.

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined; except that a veteran who is catastrophically disabled and who must agree under 38 U.S.C. 1710 to pay to the United States a copayment as condition of receiving VA care, must agree to pay to the United States the applicable copayment to be enrolled in priority category 4.

(5) Veterans not covered by paragraphs (1) through (4) of this section who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e); and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

Priority Category 3—Purple Heart

The Veteran's Millennium Health Care and Benefits Act amended the priority categories to include veterans awarded the Purple Heart in priority category 3. Accordingly, we will change the regulations to implement this statutory change.

Priority Category 4—Catastrophically Disabled Veterans

As noted above, the regulations exclude from priority category 4 those catastrophically disabled veterans who were required under 38 U.S.C. 1710 to agree to pay to the United States a copayment as a condition of receiving care and who had not made such an agreement. The statutory provision establishing the enrollment priority (38 U.S.C. 1705) included catastrophically disabled veterans without regard to copayment requirements. Accordingly, we would delete the copayment provisions from priority category 4. However, as a condition of receiving care, the provisions of 38 U.S.C. 1710 require certain catastrophically disabled veterans to agree to make copayments. Accordingly, § 17.36(a)(2) would be clarified to reflect that to be eligible for the medical benefits package a veteran must agree to make copayments if required by law to do so.

Priority Categories 7 and 8

This document would replace priority category 7 with two new priority categories (7 and 8) and use the current subpriorities for category 7 for these new categories as follows:

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous calendar year constitutes ''low income'' under the geographical income limits published by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276; and 38 U.S.C. 1521. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable ''low-income'' income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable ''low-income'' income limit for the area in which the veteran resides, the veteran will be considered to have ''low income'' for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and

dependent children if the projected income is below the ''low income'' income limit referenced above.

This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 8 veterans.

The new priority category 7 is required to implement section 202(a) of Public Law 107–135 that establishes a new priority category 7 which reads: ''Veterans described in section 1710(a)(3) of this title who are eligible for treatment as a low-income family under section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)) for the area in which such veterans reside, regardless of whether such veterans are treated as single person families under paragraph (3)(A) of such section 3(b) or as families under paragraph (3)(B) of such section 3(b).'' We have interpreted this provision to require that VA just use the income limits established by the Department of Housing and Urban Development to determine whether veterans are in priority category 7. To interpret this provision to require VA or HUD to determine veterans' income under the HUD methodology would result in many veterans having two different incomes for purposes of enrollment in the VA healthcare system: One based on the HUD methodology and the other based on VA's methodology. This interpretation is not supported by the legislative history of this provision and would be unreasonable, unsound, and unworkable. Instead, we propose using the same methodology used to determine income as used in determining whether veterans are unable to defray the cost of necessary care under 38 U.S.C. 1722. This requires using prior year income unless VA determines that using projected current year income would avoid a hardship to the veteran.

The description of the new priority category 8 restates a provision in section 202(a) of Public Law 107–135. To be eligible for enrollment in priority category 8, veterans must agree to pay the applicable copayment, but they need not provide VA with income and asset information.

We propose to sub-prioritize new categories 7 and 8 in the same manner as the current category 7, *i.e.,* on the basis of whether the veterans have service-connected (noncompensable) disabilities. We continue to believe that veterans with a service-connected disability should have a higher priority than those without a service-connected disability.

Consistent with this expansion of priority categories, we propose to amend the enrollment application provisions of § 17.36(d)(1). Thus, applicants for placement in new priority category 8 would not be required to complete section II of VA Form 10–10EZ; however, applicants for new priority category 7 would be required to complete the entire form except for section IIE (*i.e.*, information concerning a veteran's net worth). In our opinion, this is necessary to be consistent with our methodology for determining income in the same manner as currently used for applicants for placement in priority category 5, except that information concerning a veteran's net worth is not needed for applicants for new priority category 7.

Principles for Placement in Enrollment Categories

We propose to establish the following principles for placement of veterans in priority categories:

- Veterans will be placed in priority categories whether or not the veterans in that category are eligible to be enrolled.
- A veteran will be placed in the highest priority category or categories for which the veteran qualifies.
- A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or 8 (if the veteran has previously agreed to pay the applicable copayment) for all matters not covered by priority category 6.
- A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in that priority category due to failure to submit to VA a current VA Form 10–10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8, as applicable, (or more than one of these categories if the previous principle applies), and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must submit to VA required financial information in a current VA Form 10–10EZ. To be current, after VA has sent a form 10–10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.
- Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

The first principle clarifies that VA will place veterans in the priority category in which they belong even if the Secretary has announced that VA will not enroll veterans in that category under § 17.36(c). This will permit veterans to dispute that placement and may facilitate veterans in this category obtaining VA care if the Secretary later decides to enroll veterans in that category. The second and fifth principles are consistent with 38 U.S.C. 1705(a) which requires VA to give priority to the categories in the order listed. The third principle is required by 38 U.S.C. 1710(a)(2)(F) and (e) which limits the eligibility for care given to certain veterans placed in priority category 6. We are proposing the fourth principle to facilitate the transfer of veterans from category 5 to category 6 or 8 without disenrollment. The current regulations state that to remain in priority category 5, veterans are required yearly to submit information to VA establishing financial eligibility for such priority category. The regulations contained provisions for disenrolling veterans who had been in priority category 5 but who had failed to submit information establishing that they should remain in priority category 5. Disenrollment of such veterans could, during periods when VA must limit enrollments and re-enrollments, result in the loss of eligibility for VA care altogether. This was never intended for veterans who had previously signed a form 10–10EZ and thus agreed to pay applicable copayments. Accordingly, this document proposes to change the rule to provide that a veteran no longer eligible for priority category 5 would be automatically changed to enrollment based on inclusion in priority category 6, or 8, and be deemed as continuously enrolled if the enrollment decision allows for such priority categories to remain enrolled.

Decisionmaking Officials

To reflect a title change, we would change ''Chief Network Officer'' to ''Deputy Under Secretary for Health for Operations and Management.'' Further, we would add ''Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center'' to the list of VA officials who can make decisions regarding the enrollment of individual veterans. In our opinion, this is necessary to give VA greater flexibility in administering the enrollment process. We would not change the regulation that provides that the Secretary will make the determination regarding which priority categories of veterans are eligible to be enrolled.

Miscellaneous

An address is proposed to be added for veterans to send a request for voluntary disenrollment. Finally, we would remove a nonsubstantive, unnecessary bracketed phrase from paragraph 17.36(f).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866. Executive Order 12866 provides that a proposed rule ''in most cases should include a comment period of not less than 60 days.'' This proposal provides for a 30-day comment period. This is necessary to allow for a final rule to be established in time to allow the VA Secretary to have as many options as possible concerning the provision of health care services to veterans in fiscal year 2003.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 15, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.36 is amended by:

A. Removing ''Chief Network Officer'' wherever it appears and adding, in its place, ''Deputy Under Secretary for Health for Operations and Management or Chief, Health Administration Service or equivalent official at a VA medical facility, or Director, Health Eligibility Center''.

B. Revising paragraphs (a)(2), (b)(4), and (b)(7).

C. In paragraph (b)(3), removing ''prisoners of war;'' and adding, in its place, ''prisoners of war; veterans awarded the Purple Heart;''

D. Adding a new paragraph (b)(8).

E. Revising paragraph (d)(1); and redesignating paragraphs (d)(3) through (d)(5) as paragraphs (d)(4) through (d)(6), respectively.

F. Adding a new paragraph (d)(3).

G. Revising newly redesignated paragraphs (d)(5) introductory text; and (d)(5)(i).

H. Removing ''Note to Paragraph (d)(1)''.

I. In newly redesignated paragraph (d)(5)(iii), removing ''priority category 5;'' and adding, in its place, ''priority category 5 or priority category 7;''.

J. In paragraph (f), removing ''[insert actual photocopy of VA Form 10–10EZ]''.

K. Revising the authority at the end of the section. The revisions and additions read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

(a) * * *

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section and who, if required by law to do so, has agreed to make any applicable copayment is eligible for VA hospital and outpatient care as provided in the ''medical benefits package'' set forth in § 17.38.

* * * * *

(b) * * *

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

* * * * *

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g) if their income for the previous year constitutes ''low income'' under the geographical income limits established by the U.S. Department of Housing and Urban Development for the fiscal year that ended on September 30 of the previous calendar year. For purposes of this paragraph, VA will determine the income of veterans (to include the income of their spouses and dependents) using the rules in §§ 3.271, 3.272, 3.273, and 3.276 of this chapter. After determining the veterans' income and the number of persons in the veterans' family (including only the spouse and dependent children), VA will compare their income with the current applicable ''low-income'' income limit for the public housing and section 8 programs in their area that the U.S. Department of Housing and Urban Development publishes pursuant to 42 U.S.C. 1437a(b)(2). If the veteran's income is below the applicable ''low-income'' income limits for the area in which the veteran resides, the veteran will be considered to have ''low

income'' for purposes of this paragraph. To avoid a hardship to a veteran, VA may use the projected income for the current year of the veteran, spouse, and dependent children if the projected income is below the ''low income'' income limit referenced above. This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 7 veterans.

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans; and

(ii) All other priority category 8 veterans.

* * * * *

(d) *Enrollment and disenrollment process*—(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 6, and 8 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because of their need for regular aid and attendance or by being permanently housebound need not complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 4 because they are catastrophically disabled need not complete section II, but must complete the rest of the form, if: They agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g); they are a veteran of the Mexican border period or of World War I or a veteran with a 0 percent service-connected disability who is nevertheless compensated; their catastrophic disability is a disorder associated with exposure to a toxic substance or radiation, or with service in the Southwest Asia theater of operations during the Gulf War as provided in 38 U.S.C. 1710(e); or their catastrophic disability is an illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided in 38 U.S.C. 1710(e). All other veterans applying based on inclusion in priority category 4 because they are catastrophically disabled must complete the entire form. Veterans applying based on inclusion in priority category 5 must complete the entire form. Veterans applying based on inclusion in priority category 7 must complete the entire form except for section IIE. VA form 10–10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

* * * * *

(3) *Placement in enrollment categories.* (i) Veterans will be placed in priority categories whether or not veterans in that category are eligible to be enrolled.

(ii) A veteran will be placed in the highest priority category or categories for which the veteran qualifies.

(iii) A veteran may be placed in only one priority category, except that a veteran placed in priority category 6 based on a specified disorder or illness will also be placed in priority category 7 or priority category 8, as applicable, if the veteran has previously agreed to pay the applicable copayment, for all matters not covered by priority category 6.

(iv) A veteran who had been enrolled based on inclusion in priority category 5 and became no longer eligible for inclusion in priority category 5 due to failure to submit to VA a current VA Form 10–10EZ will be changed automatically to enrollment based on inclusion in priority category 6 or 8 (or more than one of these categories if the previous principle applies), as applicable, and be considered continuously enrolled. To meet the criteria for priority category 5, a veteran must be eligible for priority category 5 based on the information submitted to VA in a current VA Form 10–10EZ. To be current, after VA has sent a form 10–10EZ to the veteran at the veteran's last known address, the veteran must return the completed form (including signature) to the address on the return envelope within 60 days from the date VA sent the form to the veteran.

(v) Veterans will be disenrolled, and reenrolled, in the order of the priority categories listed with veterans in priority category 1 being the last to be disenrolled and the first to be reenrolled. Similarly, within priority categories 7 and 8, veterans will be disenrolled, and reenrolled, in the order of the priority subcategories listed with veterans in subcategory (i) being the last to be disenrolled and first to be reenrolled.

* * * * *

(5) *Disenrollment.* A veteran enrolled in the VA health care system under paragraph (d)(2) or (d)(4) of this section will be disenrolled only if:

(i) The veteran submits to a VA medical center or the VA Health Eligibility Center, 1644 Tullie Circle, Atlanta, Georgia 30329, a signed document stating that the veteran no longer wishes to be enrolled; or

* * * * *

(Authority: 38 U.S.C 101, 501, 1521, 1701, 1705, 1710, 1721, 1722)

[FR Doc. 02–18573 Filed 7–22–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–047–7173b; A–1–FRL–7243–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; VOC RACT Order and Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire. These revisions establish requirements for sources of volatile organic compounds (VOC). The intended effect of this action is to approve a VOC regulation for the New Hampshire portion of the eastern Massachusetts serious ozone nonattainment area and to approve a VOC order for Anheuser-Busch into the New Hampshire SIP. EPA is taking this action in accordance with the Clean Air Act.

DATES: Written comments must be received on or before August 22, 2002.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA and Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no relevant adverse comments in response to this rule, we contemplate no further activity. If EPA receives relevant adverse comments, we will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: June 21, 2002.

Ira Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 02–18395 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7249–9]

Approval and Promulgation of Implementation Plans; Louisiana; Emission Reduction Credits Banking in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Louisiana State Implementation Plan (SIP). The revisions concern the establishment of a means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. The revisions remove the requirement that emission reduction credits (ERCs) in the bank be set aside as a contingency measure for the attainment demonstration.

The revisions also remove the requirement that NSR netting be conducted with surplus ERCs from the bank. The revisions clarify the requirement that ERCs be surplus to all requirements of the Clean Air Act (the Act) when used. The EPA proposes to approve these revisions to satisfy the provisions of the Act which relate to the permitting of new and modified sources which are located in nonattainment areas. The EPA does not propose to approve the revisions as an Economic Incentive Program (EIP), nor through this rule alone to allow the use of ERCs for inter-precursor trading purposes or for alternate Reasonably Available Control Technology (RACT) compliance purposes.

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Written comments should be addressed to David Neleigh, Chief, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

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

Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Merrit Nicewander of EPA Region 6 Air Permits Section at (214) 665–7519 at the address above.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background Information

Why Is This Action Necessary?

The Baton Rouge area consists of the following parishes: East Baton Rouge, West Baton Rouge, Ascension, Livingston, and Iberville. The Baton Rouge area (40 CFR 81.319) was classified as a serious ozone nonattainment area.

We received the Louisiana rule that we are considering in this proposed action on December 31, 2001, as a component of the Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the Baton Rouge area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the Baton Rouge area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised emission reduction credit banking regulation that has been enacted at Louisiana Administrative Code (LAC) 33:III Chapter 6. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

Does the currently EPA approved SIP contain an emission reduction credit banking regulation?

Yes, we proposed approval (63 FR 44192) on August 18, 1998 of revisions to the Louisiana State Implementation Plan (SIP) for the Baton Rouge ozone nonattainment area for revisions to the 1990 base year emission inventory, the Post-1996 Rate-of-Progress (ROP) Plan, its associated 1999 Motor Vehicle Emissions Budgets (MVEBs) for the area, Attainment Demonstration, the Contingency Measures Plan, and the State's point source emissions banking regulations. We promulgated final approval (64 FR 35930) of the SIP revisions, including the emission reduction credit (ERC) banking regulation on July 2, 1999. The Louisiana Department of Environmental Quality (LDEQ) ERC banking regulation is codified as Louisiana Administrative Code (LAC) 33:III Chapter 6.

EPA's July 2, 1999 approval of the LDEQ Chapter 6 rule is summarized below:

LDEQ CHAPTER 6.—REGULATIONS ON CONTROL OF EMISSIONS REDUCTION CREDITS BANKING

	Original LDEQ date of action	EPA date of action
Section 601 Background and Purpose	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 35930]

LDEQ CHAPTER 6.—REGULATIONS ON CONTROL OF EMISSIONS REDUCTION CREDITS BANKING—Continued

	Original LDEQ date of action	EPA date of action
Section 603 Applicability	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 35930]
Section 605 Definitions	Aug. 1994, LR20:874	[July 2, 1999, 64 FR 3590]
Section 607 Stationary Point Source Reductions.	Aug. 1994, LR20:877	[July 2, 1999, 64 FR 35930]
Section 613 ERC Bank Balance Sheet	Aug. 1994, LR20:877	[July 2, 1999, 64 FR 35930]
Section 615 Schedule for Submitting Applications.	Aug. 1994, LR 20:878	[July 2, 1999, 64 FR 35930] Approves original LDEQ rule (adopted 8/94) and subsequent revision (adopted 07/95)
Section 617 Review and Approval of ERC Bank Balance Sheets.	Aug. 1994, LR20:878	[July 2, 1999, 64 FR 35930]
Section 619 Registration of Emission Reduction Credit Certificates.	Aug. 1994, LR20:879	[July 2, 1999, 64 FR 35930]
Section 621 Protection of Banked ERCs	Aug. 1994, LR20:679	[July 2, 1999, 64 FR 35930]
Section 623 Withdrawal, Use, and Transfer of Emission Reduction Credits.	Aug. 1994, LR20:880	[July 2, 1999, 64 FR 35930]
Section 625 Application and Processing Fees	Aug. 1994, LR20:880	[July 2, 1999, 64 FR 35930]

We proposed approval of the LDEQ Chapter 6 emissions banking rule as meeting the requirements for SIP approval under Title I Part D and section 110 of the Act. We did not approve the banking regulations as an economic incentive program (EIP) pursuant to the EPA's Economic Incentives Program Rules (59 FR 16690) and section 182(g) of the Act. 64 FR 35936.

What Did Louisiana Submit as Contingency Measures in the Post-1996 ROP Plan/Attainment Demonstration SIP?

Louisiana identified, in both its 15% and Post-1996 ROP Plans submittals, the State's point source VOC/NO_X banking regulations (LAC 33:III sections 601, 603, 605, 607, 613, 615, 617, 619, 621, 623, and 625) 2 as a three percent contingency measure intended to meet the requirements of sections 172(c)(9) and 182(c)(9) of the Act. The banking regulations were initially submitted to the EPA for approval in the December 15, 1995, 15% ROP Plan submittal. The EPA deferred taking action on the regulations in the context of the 15% ROP Plan approval until its rulemaking action on the Post-1996 ROP Plan/Attainment Demonstration SIP. (The rationale for ''carving out'' the contingency measures was explained in detail in the TSD to the August 18, 1998, proposed rulemaking as well as the TSD to the 15% ROP Plan rulemaking.)

In the December 22, 1995, Post-1996 ROP Plan submittal, the State provided a table of the emissions reductions that had been banked by industry pursuant to the regulations. The State's contingency measure requirement was 5.7 tons/day of VOCs (three percent times the adjusted base year inventory of 191.2 tons/day). The VOC reductions ''on deposit,'' 13.0 tons/day, were well in excess of the three percent requirement.

We determined in the July 2, 1999 rulemaking that the State met the contingency measures requirements by having adopted and submitted the point source banking regulations, and demonstrated that the bank had sufficient VOC credits ''on deposit'' and available for confiscation in the event of a missed milestone/failure to attain. Furthermore, we determined that the banking rules provided for expeditious implementation of the contingency measures consistent with the time frames identified in the General Preamble.

What are contingency measures?

Under section 172(c)(9) of the Act, ozone nonattainment areas classified as moderate or above must submit contingency measures to be implemented if RFP is not achieved or if the standard is not attained by the applicable attainment date. The ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved in a timely manner and additional planning by the State is needed.

In the General Preamble, the EPA interpreted the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in their November 1993 submittals so that, upon implementation of such measures, additional emissions reductions of up to three percent of the emissions in the adjusted base year inventory (or a lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

Additional contingency provisions are included in section 182(c)(9) for serious ozone nonattainment areas. These latter provisions are similar to the section 172(c)(9) requirements except that the focus in section 182 (Ozone Areas) is on meeting emissions reductions milestones (section 182(g)).

On What Basis Did We Approve the LDEQ Chapter 6 Emission Reduction Credit Banking Regulation on July 2, 1999 (64 FR 35930)?

We took final action to approve the already-banked VOC emissions reductions credits (totaling 5.7 tons/day) toward meeting the three percent contingency measure requirement pursuant to sections 172(c)(9) and 182(c)(9) of the Act.

We determined that the point source VOC/NOX banking regulations were generally consistent with the Act, EPA policy/guidance and Federal regulations. Therefore, we took final action to approve the State's banking regulations as meeting the requirements for SIP approval under part D and section 110 of the Act.

What Is an Economic Incentive Program (EIP)?

An economic incentive program is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. A uniform emission reduction requirement, based for instance on installation of a required

emission control technology, does not take account of variations in processes, operations, and control costs across sources even of the same type, such as electric utilities, or petroleum refiners. By providing flexibility in how sources meet an emission reduction target, an EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances.

EIPs can be either mandatory (required by the CAA) or discretionary (a program chosen by a state or tribe).

What Is the Section 182 Requirement for an EIP?

Under section 182(g)(3), if a State fails to submit a milestone compliance demonstration for any serious or severe area as required by section 182(g)(2), the State must choose from three options: to bump up to the next higher classification, to implement additional measures (beyond those in the contingency plan which will already be triggered and implemented) to achieve the next milestone, or to adopt an economic incentive program (as described in section 182(g)(4)). Under section 182(g)(5), if a State fails to submit a compliance demonstration for any extreme area as required by section 182(g)(2), or if the area has not met an applicable milestone as required by section 182(g)(1), the State must submit a plan revision to implement an economic incentive program (as described in section 182(g)(4)) within 9 months of such failure.

A mandatory EIP was not, and still is not, required for the Baton Rouge serious ozone nonattainment area. We encourage the adoption of discretionary EIPs by States where appropriate, as allowed for in the Act (section 110(a)(2)(A)), as a means of stimulating the adoption of incentive-based, innovative programs that will assist States in meeting air quality management goals. As explained below (under ''What is the purpose of the revised State emissions banking rule?''), the revised LDEQ Chapter 6 emissions banking rule does not establish a discretionary EIP, although it contains some of the features of one.

What Are the EPA's Economic Incentive Program Rules, Promulgated at 59 FR 16690?

The regulations, promulgated at 59 FR 16690, appear at 40 CFR part 51, subpart U—Economic Incentive Programs §§ 51.490—51.494). The rules in Subpart U apply to any mandatory economic incentive program submitted to the EPA to comply with sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act. The LDEQ Post-1996 ROP Plan and Attainment Demonstration SIP revision submittal revisions did not include the ERC bank rules for EPA approval as a section 182 mandatory EIP.

Subpart U was also promulgated to serve as our policy guidance on discretionary EIPs submitted as implementation plan revisions. EPA has since developed additional guidance on discretionary EIPs (''Improving Air Quality With Economic Incentive Programs,'' EPA/452/R–01–001, January 2001) (the ''EIP Guidance'').

As further discussed below, the revised Louisiana ERC banking regulation does not establish either a mandatory or discretionary EIP, and therefore the above guidance does not directly apply.

What Are the Submitted Revisions to the Emission Reduction Credit Banking Rule?

EPA action is necessary because the banking rule has been revised in several ways, and the State of Louisiana is now requesting that EPA approve the revised rule as a component of the Baton Rouge SIP. A summary of the revisions to the banking rule follows.

First, the LDEQ removed Section 621 of the LDEQ ERC banking regulation that we approved into the SIP for contingency purposes on July 2, 1999. That section of the rule provided a process for the confiscation by the LDEQ of banked ERCs in the case of failure to meet rate of progress/attainment requirements. The submitted regulation has removed this. The State submitted a substitute contingency measures plan that we have proposed to approve, as published on May 20, 2002 at 67 FR 35468.

Second, the revisions to the banking rule contain provisions that require ''Surplus When Used'' ERCs in accordance with Section 173(c)(2) of the Act and in response to our Administrator's Order of December 22, 2000 (the ''Borden Order''). The order was in response to a petition from the Louisiana Environmental Action Network (LEAN) filed on August 24, 1999 requesting the Administrator to object to the issuance of a state operating permit issued to Borden Chemicals, Inc. (Borden) for a new formaldehyde facility in Geismar, Ascension parish, Louisiana.

The order emphasizes the Act's requirements that ERCs used from the emissions bank as offsets must be surplus of State and Federal requirements at the time they are used as well as when they are generated or banked. LDEQ has revised the rule to clarify that ERCs in the emissions bank must be ''Surplus When Used'' for NNSR offset purposes in accordance with section 173(c)(2) of the Act and as discussed in the Borden Order.

Third, the previous emissions banking rule required that ERCs from the bank be surplus when used for NNSR netting purposes. There is no federal requirement that netting reductions be surplus when used from an emissions bank. The rule was revised to delete this state-only requirement that netting reductions be surplus.

We approved the LDEQ Chapter 6 banking rule on July 2, 1999, as summarized on the table in Part I BACKGROUND INFORMATION. That SIP approval did not include section 611, Mobile Sources Emission Reductions, which the State had promulgated in August 1994, but did include sections 621, 623 and 625. Section 623 covered the withdrawal, use and transfer of emission reduction credits. Section 625 covered the application and processing fees. The revised Chapter 6 banking rule that is the subject of this action removed sections 611, 621, 623 and 625. It is therefore necessary for us to propose approval of the Chapter 6 banking rule as part of the SIP with sections 611, 621, 623 and 625 removed.

Finally, the program established by the revised Chapter 6 Rule may be used in conjunction with the revised Chapter 5 rule, concerning nonattainment new source review (NNSR), to facilitate stationary source communications and offset purchases before certification and use of an ERC in an NNSR permit application.

For these reasons, it is necessary for us to propose an action on the submitted emissions banking regulation at LAC 33:III Chapter 6.

II. Summary of State Submittal

What Revised State Regulations Did We Evaluate?

We evaluated the LAC 33:III Chapter 6 Emission Reduction Credit Banking regulation, as published in the Louisiana Register on February 20, 2002 and submitted by the Governor on March 4, 2002. The rule was revised to reflect the rescission of the contingency measures' enforceable process contained in section 621 of the rule, to incorporate the ''Surplus When Used'' provision in accordance with the Act and Borden Order and to remove the requirement that netting reductions for NNSR purposes meet the surplus requirement of the emissions bank.

The rule was also revised to remove section 611 which covered mobile

sources emission reductions, which we had not previously approved as part of the SIP. In addition, the revised rule removed section 623 which covered the withdrawal, use and transfer of emission reduction credits, and section 625, which covered the application and processing fees. Our proposed approval of the revised rule including the removal of these sections, does not constitute a relaxation of the SIP since any and all relevant portions of these sections have been incorporated into the revised rule.

The following sections of Chapter 6 were submitted by the State and are being acted upon by us in this proposed action.

State citation	Title/Subject	State approval date
Section 601	Purpose	Feb. 2002, LR 28:301
Section 603	Applicability	Feb. 2002, LR 28:301
Section 605	Definitions	Feb. 2002, LR 28:301
Section 607	Determination of Creditable Emission Reductions.	Feb. 2002, LR 28:302
Section 613	Bank Recordkeeping and Reporting Requirements.	Feb. 2002, LR 28:303
Section 615	Schedule for Submitting Applications	Feb. 2002, LR 28:304
Section 617	Procedures for Review and Approval of ERCs	Feb. 2002, LR 28:304
Section 619	Emission Reduction Credit Bank	Feb. 2002, LR 28:305

What Is the Purpose of the Revised State Emissions Banking Rule?

The purpose of the revised rule, as stated in section 601, is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review offsets. This purpose provides flexibility to stationary sources when they undergo nonattainment new source review, allowing sources in need of emissions offsets to identify another stationary source that may have surplus emission reductions available for purchase as NNSR offsets.

Although section 601 states that the purpose of the rule is to ''identify and preserve'' emission reductions for NNSR offsets, the revised rule does not itself provide a mechanism for ''preserving'' emission reductions until the permitting stage. That is, under LAC 33:III.617(C)(2), emission reductions can only be preserved after they are identified in the ERC certificate, and the State determines that they are ''Surplus When Used.''

Thus, in spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, it does not establish an ERC bank. Rather, the revised rule functions as merely a bulletin board to facilitate stationary source communications and offset purchases before certification and use of the ERC in an NNSR permit application. The program established by the revised Chapter 6 rule is not itself a market-based program for achieving air quality improvements (and is therefore not an EIP as defined by EPA). Instead, the program may be used to reduce the administrative burden experienced by stationary sources obtaining emission reductions as a part of New Source Review permitting.

An emissions banking rule that functions merely to facilitate communication between stationary sources is not required to meet the Economic Incentive Program guidance. The guidance was developed to assist states and tribes in establishing programs to achieve emission reductions as required to meet SIP attainment demonstrations or to be traded for inter-precursor offsets purposes, or to facilitate the compliance requirements for alternative RACT requirements. For these reasons, EPA is not reviewing the revised rule for compliance with EPA's EIP Guidance.

Will Offsets Identified and Preserved Under the Revised State Emissions Banking Rule Satisfy the ''Surplus When Used'' Requirement?

As required by section 173(c)(2) of the Act, the revised rule provides at section 607(B)(1) that emission reductions must be surplus, permanent, quantifiable, and enforceable. ''Surplus Emission Reductions'' are defined in LAC 33:III.605 as emission reductions voluntarily created for an emissions unit; not required by any local, state or federal law, regulation, order, or requirement, and in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards. LDEQ has revised the rule to clarify that ERCs in the emissions bank must be ''Surplus When Used'' for NNSR offset purposes in accordance with the Act and as discussed in the Borden Order. Section 617(C)(2) of the revised rule provides for the recalculation of ERCs at the time of permit issuance; therefore, given the surplus requirement of Section 607(b)(1), the revised rule is clear in requiring that ERCs be ''Surplus When Used.'' In addition to the ''surplus'' definitions discussed above, e.g., not required by any local law, etc., section 605 limits emission reductions as ''surplus'' to only emission reductions that have occurred ''at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.''

Under the Revised State Banking Regulation, How Will ''Surplus When Used'' ERCs Be Calculated?

Section 607(C) of the revised rule provides procedures for calculating the surplus emission reductions. To calculate surplus emissions reductions, it is necessary to establish a baseline from which reduced emission levels can be determined. Emissions reductions below these ''baseline emissions'' are considered surplus, and under the rule are calculated by subtracting future allowable emissions after the reductions from the baseline emissions the voluntary reduction.

Under the Revised State Banking Regulation, How Will ''Baseline Emissions'' Be Calculated?

The revised Chapter 6 procedure utilizes a ''universal growth'' concept in determining baseline emissions. This procedure is laid out in section 607(C)(4) of the revised rule. Under this procedure, the State must compare the current total point-source emissions inventory for the modeled parishes to the ''base case inventory'' (until November 15, 2005. After November 15, 2005, this comparison is to be made to the ''base line inventory''). (These inventories refer to the aggregate point-source emissions inventory for NO_X and VOC. The State prepares an annual inventory of actual point-source emissions. The base case and base line emission inventories are found in the most recent Attainment Demonstration. In essence the difference is that the base line inventory accounts for new attainment-related emission limitations, and hence will reflect lower emissions

due to the RACT limits established to support the attainment demonstration.)

If the current total point source emissions inventory is less than the base case (or, starting in November 15, 2005, the base line) inventory, then the universal growth of emissions in the nonattainment area is below that relied upon in the attainment demonstration modeling. Therefore, it is unnecessary for the determination of the actual emissions modeled in the attainment demonstration to be performed and used in determining baseline emissions, and baseline emissions will simply be the lower of (1) actual emissions or (2) adjusted allowable emissions. If, on the other hand, the current total point source emissions inventory exceeds the base case (or, starting in November 15, 2005, the base line) inventory, baseline emissions will be the lower of (1) actual emissions, (2) adjusted allowable emissions, or (3) the emissions attributed to the source in question in the base case or base line inventory. LAC 33:III.607(C)(4)(a).

Does the Revised State Banking Regulation Incorporate Interpollutant Trading?

No. There is no mention of interpollutant or inter-precursor trading in the revised banking rule. The revised banking rule only serves as a bulletin board for stationary sources to locate other stationary sources that may have offsets for sale. The rule is not an emissions banking or trading rule and is not an Economic Incentive Program. Using the revised rule itself for inter-precursor trading to meet nonattainment new source review offset requirements would be inappropriate. The inclusion of an inter-precursor emissions trading program in the revised bulletin board rule would subject the rule to review as an EIP.

Inter-precursor trading may, however, be conducted under the revised Chapter 5 rule concerning nonattainment New Source Review, using the Chapter 6 bulletin board to identify potentially available offsets. The revisions to Chapter 5 allow what EPA terms ''inter-precursor trading'' to offset an increase in emissions of VOCs with a decrease in emissions of NO_X. That rule states that all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. NO_X credits will be allowed to offset VOC increases, but not vice versa. All emission reductions claimed as offset credit for significant net VOC increases shall be from decreases of either NO_X or VOCs, or any combination. If NO_X decreases are used to offset VOC increases, the permit for which the offsets are required must have been issued on or before November 15, 2005.

III. Criteria for Evaluation

What Criteria Did We Use to Approve the Previous Emissions Banking Rule?

As stated above, the previous approval of Chapter 6 by us on July 2, 1999 was not as an Economic Incentive Program. The Chapter 6 regulation no longer provides an enforceable mechanism to confiscate the escrowed 5.7 tons/day of VOCs serving as the contingency measures in support of the attainment demonstration; nor does it provide any emission reductions in support of any attainment demonstration.

What Are the Applicable Criteria for Review of the Revised Emissions Banking Rule?

The revised State emissions banking rule is intended to facilitate communications among stationary sources seeking to identify possible nonattainment new source review emission offsets. Thus, it serves as a bulletin board among the regulated community. The revised State emissions banking rule must only be consistent with the Federal statutes and regulations governing the permitting of stationary sources in ozone nonattainment areas. The statutory requirements, as was the case in the July 2, 1999, EPA approval of the point source banking regulations as an acceptable SIP revision, appear at subchapter I, part A (section 110) and part D (sections 171–185B) of the Act.

What Are the Specific Statutory Requirements With Which the Revised Banking Rule Must Be Consistent?

Subchapter I, part D of the Act contains SIP requirements for nonattainment areas. Subpart I of part D contains the statutory requirements for nonattainment areas in general. Section 173 covers the permit requirements for the nonattainment areas. The Act allows new and modified stationary sources to be constructed in a nonattainment area if the State's SIP contains approved permitting program requirements by the time the source is to commence operation.

The Act requires that offsetting emissions reductions must be obtained, such that total allowable emissions from existing sources in the region (from new or modified minor sources and from the proposed source) will be sufficiently less than total emissions from existing sources before the permit application so that the reasonable further progress requirements are met.

In order to construct and operate in the nonattainment area, the proposed source is required to comply with the lowest achievable emission rate, and all other major stationary sources of the owner or operator in the State must be in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act.

Section 172 of the Act covers nonattainment SIP provisions in general. Section 172(c)(6) contains SIP measures (including plan items) required to be submitted to comply with the Act. These SIP provisions must include enforceable emission limitations and other control measures as necessary to attain the NAAQS. These measures may include other means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance. Given that the Act in section 172 provides that a technique such as a marketable permits program may be appropriate for inclusion in a SIP, a bulletin board such as the revised State rule is consistent with the Act.

Section 173(c)(1) of the Act states that the owner or operator of a new or modified major stationary source may comply with any offset requirement of the Act for increased emissions only by obtaining emission reductions from the same source or other sources in the same nonattainment area. The emission reduction offsets must, by the time a new or modified source commences operation, be in effect and enforceable. The reductions must assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

Section 173(c)(2) states that emission reductions otherwise required by the Act are not creditable as emissions reductions for any offset requirement. Incidental emission reductions not otherwise required by the Act are creditable as emission reductions for offset purposes if they meet the requirements of section 173(c)(1).

What Are the Specific Regulatory Requirements With Which the Revised Banking Rule Must Be Consistent?

Federal regulations at 40 CFR 51.160 (Subpart I—Review of New Sources and Modifications) state that the SIP must contain the legally enforceable procedures to be followed in air permitting in an nonattainment area.

These legally enforceable procedures enable the State to determine whether the construction or modification of a stationary source will result in a violation of applicable portions of the SIP approved control strategy or will interfere with attainment of the NAAQS.

Federal regulations at 40 CFR 51.161 contain the requirements for public availability of the permit information. This section requires that the legally enforceable procedures identified in 40 CFR 51.160 must include an opportunity for the public to comment on the information submitted in the permit application. The information available for public comment must contain the State's analysis of the effect of the permit on ambient air quality including the State's proposed approval or disapproval of the permit application.

Federal regulations at 40 CFR 51.163 require the SIP to contain administrative procedures to be followed in making the determination required in 40 CFR 51.160.

Federal regulations at 40 CFR 51.165 contain the minimum federal permit requirements for nonattainment areas. Each SIP must adopt a preconstruction permit review program to satisfy the requirements of sections 172(b)(6) and 173 of the Act for any area that has been designated nonattainment for any NAAQS. (Nonattainment areas for Louisiana are listed at 40 CFR 81.319.)

The permit program must apply to any new major stationary source or major modification that is major for the pollutant (or pollutant precursor) for which the area is designated nonattainment. For each SIP containing a preconstruction review program, the baseline for determining credit for emissions reductions must be the emissions limit under the applicable SIP in effect at the time the application to construct is filed.

Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977).

IV. Technical Review

What Was the Basis for the Technical Review of the State Emissions Banking Rule as Revised in Chapter 6?

The purpose of the revised rule as stated in section 601 was to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for New Source Review (NSR) offsets. The pollutants to which the rule applies are nitrogen oxides (NO_X) and volatile organic compounds (VOC). Since the rule does not by itself directly reduce emissions or improve air quality, and is instead intended solely to enable stationary sources to identify and acquire NO_X and VOC offsets for NNSR purposes, the rule was reviewed as a component of the SIP related to the NNSR offsets rule, not as an Economic Incentive Program.

Was the State's Revised Emissions Banking Rule Reviewed as an Inter-Precursor Trading Program?

No, the revised rule does not contain any reference to an inter-precursor trading program. The purpose of the rule does not include inter-precursor, or for that matter any, emissions trading.

In keeping with the Act, a determination of whether the ERCs are surplus ''at use'' must be conducted by the State when they are to be used. The Chapter 6 regulation merely provides for stationary sources to identify and acquire ERCs. The new source permitting regulation in Chapter 5, on the other hand, refers to what EPA considers inter-precursor trading. Under the revised Chapter 5 procedure, the State's verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). Accordingly, the State's determination that an inter-precursor trade consists of surplus emission reductions must be made at the time of the State's evaluation of the permit application relying upon a trade. Thus, inter-precursor trades are appropriately reviewed, evaluated and verified as surplus under the NSR program at the time of use, which is at the time of the State's review of the permit application. Appropriately, the inter-precursor trading program is not contained in Chapter 6 and was not reviewed under this action. We are reviewing the inter-precursor trading program separately as a part of our review of Louisiana's revisions to its Chapter 5 nonattainment new source review regulations.

Was the State's Revised Emissions Banking Rule Reviewed With Respect to Alternate RACT Compliance Trading Plans?

No, the revised rule does not contain any reference to an alternate RACT compliance trading program. The purpose of the rule does not include alternate RACT trading plans, or for that matter, any emissions trading.

SIP emission reduction credits must be surplus at the time of use. A determination of whether the ERCs are surplus must be conducted by the State when they are to be used. The Chapter 6 regulation merely provides for stationary sources to identify and acquire ERCs. The NO_X control regulation in Chapter 22, on the other hand, refers to trading associated with RACT compliance. Under the provisions of the revised Chapter 22, the verification that the ERCs are surplus must be conducted when they are to be used, not when they are acquired (or submitted for certification or purchased). The determination that an alternate RACT compliance trade consists of surplus emission reductions must be made at the time of the State and EPA's approval of the alternate RACT trading plan. Thus, through the State and EPA approval of a source-specific alternate RACT trading plan, the trade is appropriately reviewed, evaluated and verified as surplus at the time of use. Appropriately, the alternative RACT trading program is not contained in Chapter 6 and was not reviewed under this action. We are reviewing the alternate RACT trading plan program separately as a part of our review of Louisiana's revisions to its Chapter 22 NO_X regulations.

How Does the State's Revised Banking Regulation in Chapter 6 Interact With the NO_X Control Regulation in Chapter 22 and the NSR Regulation in Chapter 5?

The State has recently revised the NO_X control regulation in Chapter 22. This NO_X RACT rule requires stationary sources to comply with a more strict emission limitation during the five month ozone season. Typically a stationary source reduces emissions below the baseline to generate surplus emission reduction credits. Due to the revised NO_X rule, the allowable emission limitation for a stationary source could potentially have two values, one for the five month ozone season and another for the seven month non-ozone season.

Thus, the baseline emissions for the stationary source, which are used to determine surplus emission reduction

credits for offset permitting purposes, could have two different values. In order to accurately determine the surplus ERCs to be used in the NNSR permitting, the baseline emissions and surplus ERCs must be determined for the two time periods. Section 173 of the Act does not address the use of offsets for nonattainment permitting over periods of less than one year. Accordingly, the verification of NO_X ERCs to be used in all NNSR permitting under Chapter 5 must be determined by adding the ERCs from the five-month ozone season and the seven-month non-ozone season.

With respect to all offsets under Chapter 5 and all ERCs under Chapter 6, the total NO_X emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season NO_X increases may be met by either ozone or non-ozone NO_X ERCs. The annual NO_X increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not address the requirement to keep separate documentation for the certification, determination, and recordkeeping of NO_X ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits must be for both the ozone season and the non-ozone season time periods. The State has indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002, that the State would operate the emissions reduction bank in such a manner. EPA requests that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and detail the procedures for the determination of NO_X surplus emission reduction credits resulting from the split emission limitations for the NO_X RACT rule in Chapter 22.

The inter-precursor trading provisions contained in the Chapter 5 NNSR rules indicate that offsets of VOC emissions may be met by surplus NO_X emission reductions. The VOC emission offsets met by surplus NO_X ERCs must be for both the ozone season and non-ozone seasons. In other words, for inter-precursor trading the VOC emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season VOC increases may be offset by either ozone or non-ozone NO_X ERCs. The annual VOC increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

Does the Revised State Emissions Banking Rule Meet the Requirements of the Clean Air Act and 40 CFR Part 51 Regulations Pertaining to NSR Requirements?

We did not approve the previous LDEQ Chapter 6 emission reduction credit banking regulation as an EIP. The stated purpose of the revised rule in section 601 is to establish the means of enabling stationary sources to identify and preserve or acquire emission reductions for NSR offsets. The potential offsets are required by the revised rule to demonstrate that they are ''Surplus When Used'' as offsets in the NNSR permit application. In spite of the fact that the revised rule is named an Emission Reduction Credit Banking regulation, the revised rule does not function as an ERC bank. Rather, the revised rule functions as merely a bulletin board to facilitate stationary source communications and offset purchases before certification and use in an NNSR permit application. The ''bank'' established by the revised rule will not itself provide emission reduction credits that may be used for NNSR inter-precursor trading or alternate RACT compliance trading. Therefore, we are proposing action on the revised Chapter 6 rule after review for compliance with the Act with respect to NNSR purposes only, and not as an EIP.

We have concluded that having a bulletin board such as that established by the revised Chapter 6 rule is consistent with section 172 of the Act, which specifically indicates that economic incentive measures such as fees, marketable permits and auctions of emission rights may be used as SIP provisions. It is also consistent with the 40 CFR part 51 regulations pertaining to NSR permitting.

The operation of the bulletin board as revised in Chapter 6 is also consistent with section 173 of the Act, which provides that the owner or operator of a new or modified major stationary source may comply with any offset requirement of the Act for increased emissions only by obtaining emission reductions from the same source or other sources in the same nonattainment area. By determining the surplus ERCs according to the requirements of section 607 of the revised rule, the requirements of section 173 of the Act—namely, that emission reduction offsets must be, by the time a new or modified source commences operation, in effect and enforceable—will be satisfied.

The determination of surplus ERCs under section 607 is consistent with the Act. It is consistent with 40 CFR part 51 regulations pertaining to NSR requirements. All ERCs sought to be used for inter-precursor trading, including those identified and acquired through the Chapter 6 bank, must be accompanied by a section 607 surplus determination at the time of the permit application submission for the inter-precursor trade. The State will re-evaluate during the NSR process whether these ERCs are surplus at use.

We concluded that the section 607 ''universal growth'' approach to determining baseline emissions for the purpose of calculating surplus emission reductions is consistent with the Act and 40 CFR part 51 regulations pertaining to NSR requirements. This procedure is discussed above in part II, under the heading ''Under the revised State banking regulation, how will ''baseline emissions'' be calculated?'

In general, baseline emissions are set at the lower of allowable emissions or actual emissions at the source. See EIP Guidance at 39–42. (As noted previously, the EIP Guidance is not directly applicable to the revised Louisiana rule, but it represents EPA's final action on the Open-Market Trading Rule (OMTR) (proposed in August 3, 1995 at 60 FR 39668, and on August 25, 1995 at 60 FR 44290), and therefore its discussion of the baseline for determining surplus emission reductions is relevant here.) Under the revised Chapter 6 rule, ''baseline emissions'' are defined in section 605, and are calculated as described in section 607(C). As described previously, the revised Louisiana rule requires the comparison of two different inventories—the ''base line'' and ''base case'' inventories—in calculating the baseline emissions. The LDEQ has agreed in implementing this rule that it will interpret section 607(C)(1) to require use of the base line inventory beginning November 15, 2005. See letter from Dale Givens, Secretary of LDEQ, to Gregg Cooke, Regional Administrator, EPA Region 6 (May 3, 2002). Using the base case inventory until that date is appropriate as a transition measure during the implementation of the controls necessary for attainment. Accordingly, we have concluded that the use of a universal growth factor to evaluate the actual emissions relied upon in the most recent attainment demonstration is consistent with the Act and 40 CFR part 51 regulations pertaining to NSR permitting.

V. Proposed Action

For the reasons stated herein, we have determined that the SIP submittal for a revision to LAC 33:III Chapter 6 is consistent with Title I of the Act and federal regulations pertaining to NNSR permitting as found at 40 CFR part 51. Sections III and IV of this preamble and the Technical Support Document for this proposed action contain reviews of the State submittal and the basis for our proposal to approve of these Sections.

VI. Request for Public Comments

We are requesting comments on all aspects of the requested SIP revision and our proposed rulemaking action. Comments received by the date indicated above will be considered in the development of the EPA's final rule.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18575 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–61–3–7565; FRL–7250–4]

Approval of Revisions to the Louisiana Department of Environmental Quality Title 33 Environmental Quality Part III. Air Chapter 5. Permit Procedures, 504. Nonattainment New Source Review Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA is proposing to approve revisions to the State of Louisiana's State Implementation Plan (SIP). The revisions concern the nonattainment New Source Review (NSR) procedures for the five-parish Baton Rouge ozone nonattainment area (hereinafter referred to as the Baton Rouge area). The revisions include increases to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in nonattainment areas. The minimum offset ratios were increased for classifications of serious and severe ozone nonattainment. The revisions will also allow an increase in volatile organic compound (VOC) emissions to be offset by a decrease in emissions of nitrogen oxides (NO_X) if the net result is a decrease in ozone levels. The revisions require that if NO_X emissions decreases are used for VOC emissions increases, the permit for which the offsets are required must have been issued on or before November 15, 2005 and meet additional requirements to ensure a net air quality benefit.

Major stationary sources that plan to build or modify in a nonattainment area must obtain these emissions offsets as a condition of permit approval. Emissions offsets are reductions in actual emissions from existing sources in the vicinity of the proposed new source. The EPA proposes to approve the use of these revisions as a component of the Louisiana plan to bring the Baton Rouge nonattainment area into compliance with the Clean Air Act (CAA or the Act).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Written comments should be sent to:

David Neleigh, Chief, Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733; and the Louisiana Department of Environmental Quality, 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Stankosky, Air Permits Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7525.

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

I. What action is the EPA taking?
II. Why is this action necessary?
III. What does this action do?
IV. What is the Baton Rouge ozone nonattainment area?
V. Whom does this action affect?
VI. What is the history of the LDEQ nonattainment NSR program?
VII. Are the nonattainment NSR revisions approvable?
VIII. How does the State's NSR regulation In Chapter 5 interact with The NO_X control regulation in Chapter 22 and the revised banking regulation in Chapter 6?
IX. Administrative Requirements.

Background

I. What action Is the EPA Taking?

The EPA is proposing to approve changes to the State of Louisiana's nonattainment NSR procedures for the five-parish Baton Rouge ozone nonattainment area. These revisions to the nonattainment NSR procedures are part of the changes the state is making to the SIP to address the CAA pollution control requirements for ozone nonattainment areas. These changes revise Section 504, previously approved by the EPA on May 31, 2001 (66 FR 29491). NSR is a permitting program that regulates the construction of new major stationary sources of air pollution and major modifications to existing major sources. These sources are required by the CAA to obtain an air pollution permit before beginning construction.

The revisions include increases to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in nonattainment areas. The minimum offset ratios were increased for classifications of serious and severe ozone nonattainment. The revisions will also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X. The revisions require that if NO_X emissions decreases are used for VOC emissions increases, the permit for which the offsets are required must have been issued on or before November 15, 2005.

Major stationary sources that plan to build or modify in a nonattainment area must obtain these emissions offsets as a condition of permit approval. Emissions offsets are reductions in actual emissions from existing sources in the vicinity of the proposed new source.

II. Why Is This Action Necessary?

The Baton Rouge area was classified as a serious ozone nonattainment area (40 CFR 81.319). We received the Louisiana rule that we are considering in this proposed action on December 31, 2001, as a component of the an Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the Baton Rouge area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the Baton Rouge area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised nonattainment NSR rule that has been enacted at Louisiana Administrative Code (LAC) 33:III.504. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

III. What Does This Action Do?

In this action, we are proposing to approve revisions to the Louisiana SIP that have been enacted at Louisiana Administrative Code (LAC) 33:III.504, which contains the rules for nonattainment NSR procedures that will apply to the Baton Rouge area. The LAC revisions include increases to the minimum offset ratios for new major stationary sources and major modifications to major stationary sources in the Baton Rouge area. The revisions also add minimum offset ratios for NO_X. For a nonattainment area with a classification of serious for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.20 to 1 with Lowest Achievable Emission Rate (LAER) technology or 1.40 to 1 without LAER using internal offsets. For a nonattainment area classified severe for ozone, the new minimum offset ratio for VOCs and for NO_X is 1.30 to 1 with LAER technology or 1.50 to 1 without LAER using internal offsets. As defined by section 171 of the CAA, the term LAER refers to either the most stringent emission limit contained in the state plan of any state for the applicable category of sources, or the most stringent emission limitation achieved in practice within an industrial category.

The revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X. The EPA defines this type of ''offset,'' the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant, as inter-precursor trading. See ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–011(EPA Office of Air and Radiation, January 2001) (hereinafter, the EIP Guidance). Under the revised rule, all emission reductions claimed as offset credit for significant net NO_X increases shall be from decreases of NO_X. NO_X credits will be allowed to offset VOC increases, but not vice versa. All emission reductions claimed as offset credit for significant net VOC increases shall be from decreases of either NO_X or VOCs, or any combination of NO_X and VOC decreases. If NO_X decreases are used for VOC increases, the permit for which the offsets are required shall have been issued on or before November 15, 2005. The LDEQ has identified November 15, 2005, as a ''sunset date'' after which no permits will be issued or modified allowing NO_X credits to offset VOC increases. Revisions to the required offset credit ratio are listed in Table 1.

TABLE 1.—MINIMUM OFFSET RATIOS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES

Pollutant	Major stationary source threshold values (tons/year)	Major modification significant net increase (tons/year)	Offset ratio minimum
Major Stationary Source/ Major Modification Emission Threshold			
Ozone VOC/NO_X Marginal	100	40 (40)	1.10 to 1
Moderate	100	40 (40)	1.10 to 1
Serious	50	25 (5)	1.20 to 1 w/LAER or 1.4 to 1 internal w/out LAER

TABLE 1.—MINIMUM OFFSET RATIOS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES—Continued

Pollutant	Major stationary source threshold values (tons/year)	Major modification significant net increase (tons/year)	Offset ratio minimum
Severe	25	25 (5)	1.30 to 1 w/LAER or 1.5 to 1 internal w/out LAER

The Attainment Plan/Transport SIP includes an enforceable commitment to perform and submit a mid-course review by May 1, 2004. This mid-course review would include, among other things, a re-evaluation of the ratio of NO_X to VOC emissions reductions needed for attainment.

IV. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes (40 CFR 81.319).

V. Whom Does This Action Affect?

This action applies to the construction of any new major stationary source or to any major modification at a major stationary source within the Baton Rouge area. Section 182 of the CAA defines ''major source'' with respect to each category of ozone nonattainment classification area, as shown in Table 2. Any source that emits or has the potential to emit 50 tons or more of VOC or NO_X and is located in an area classified as serious is considered a major source. Any source that emits or has the potential to emit 25 tons or more of VOC or NO_X and is in an area classified as severe is considered a major source.

TABLE 2.—DEFINITIONS OF MAJOR STATIONARY SOURCES

Attainment status of area where source is located	Potential to emit (tons/year)	
	Nitrogen oxides (NO_X)	Volatile organic compounds (VOC)
Attainment areas	100	100
Nonattainment areas:		
Marginal	100	100
Moderate	100	100
Serious	50	50
Severe	25	25
Extreme	10	10

The requirements of the revised rule do not apply to NO_X increases for any applications deemed administratively complete before December 20, 2001. Additionally, under the revised rule the 1.40 to 1 VOC internal offset ratio (without LAER) for serious ozone nonattainment areas shall not apply to such applications. Instead, a 1.30 to 1 internal offset ratio shall apply to VOC if LAER is not utilized. (With LAER, the applicable ratio is 1.20 to 1, regardless of application date.) Further, sources exempt from nonattainment NSR requirements for NO_X increases will still be subject to the construction schedule and other provisions of the EPA's Transitional Guidance. See memoranda from John Seitz, dated March 11, 1991, ''New Source Review (NSR) Program Transitional Guidance,'' and September 3, 1992, ''New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements.''

VI. What Is the History of the LDEQ Nonattainment NSR Program?

The current provisions for nonattainment NSR for permitting new major stationary sources and major modifications at major stationary sources in the Baton Rouge area are found at LAC 33:III.504. The EPA approved the original regulations on May 31, 1972, (37 FR 10869) with the Louisiana SIP. A number of revisions to the regulations were approved between 1972 and the present. These revisions are outlined in 40 CFR part 52, subpart T, for Louisiana. Under sections 107(d)(1)(C) and 181(a) of the Act, the Baton Rouge area was designated nonattainment for the 1-hour ozone NAAQS and classified as ''serious'' based on its design value of 0.164 ppm in 1989. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the CAA from the reasonably available control technology (RACT) and nonattainment NSR requirements for major stationary sources of NO_X. In granting these exemptions we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emissions controls. We approved the Louisiana nonattainment NSR (LAC 33:III.504) procedures October 10, 1997 (62 FR 52951) and revisions to Section 504 on January 5, 1999 (64 FR 415) and May 31, 2001 (66 FR 29491).

On May 9, 2001, we proposed our finding that the Baton Rouge ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date (66 FR 23646). The LDEQ requested rescission of the NO_X waivers for the Baton Rouge area on September 24, 2001, based on revised

modeling that demonstrated that NO_X controls will contribute to attaining the ozone NAAQS, and on December 31, 2001, we received from the LDEQ, the Attainment Plan/Transport SIP for the Baton Rouge area which included these revisions to the minimum offset ratios for new major stationary sources and major modifications at major stationary sources in the Baton Rouge area. We proposed approval of the rescission of the NO_X exemptions on May 7, 2002 (67 FR 30638).

On December 20, 2001, Louisiana enacted the revisions to its rule for nonattainment NSR, LAC 33:III.504, that are the subject of this proposed rule.

VII. Are the Nonattainment NSR Revisions Approvable?

Yes, the nonattainment NSR revisions are approvable. The revisions to the LAC 33:III.504, rules for nonattainment NSR procedures for the Baton Rouge area, fulfill the requirements at Section 172(c)(5) of the CAA and at 40 CFR 51.165. The LAC revisions for changes to the minimum offset ratios fulfill offset requirements for both serious and severe ozone nonattainment areas as described in Sections 182(c)(6), (8), & (10) and 182(d)(2) of the CAA and are, in fact, more stringent than required by the Act.

The Attainment Plan/Transport SIP revisions also allow an increase in VOC emissions to be offset by a decrease in emissions of NO_X using the ratios set forth in Table 1. As previously noted, the EPA defines this type of ''offset,'' the trading of emission reductions of one pollutant's precursors for emission reductions of a different precursor for that pollutant, as inter-precursor trading (IPT). While the EPA does not have specific requirements for IPT that apply to all circumstances, we recognize that IPT can be allowed under limited circumstances. Our position on IPT can be found at Appendix 16.9 in the EIP Guidance. An EIP is a regulatory program that achieves an air quality objective by providing market-based incentives or information to emission sources. For example, a uniform emission reduction requirement, based for instance on installation of a required emission control technology, does not take account of variations in processes, operations, and control costs across sources even of the same type, such as electric utilities, or petroleum refiners. An EIP empowers sources to find the means that are most suitable and most cost-effective for their particular circumstances, by providing flexibility in how sources meet an emission reduction target. Because this revision to the nonattainment NSR rule is not itself a market-based program for achieving air quality improvements (and is therefore not an EIP as defined by the EPA), we did not evaluate LAC 33:III.504 with respect to Appendix 16.9 of the EIP Guidance. However, because the IPT guidance provided in the EIP document applies generally to NSR offsets, the EPA determined that the LDEQ rule is consistent with the IPT provisions in the EIP Guidance.

In the December 2001 SIP submission, the LDEQ conducted attainment demonstration modeling, which indicated that a reduction in NO_X emissions and a further reduction in VOC emissions are required in the Baton Rouge area to lower ozone levels. As is recognized in the CAA, VOCs and NO_X emissions combine in the atmosphere to create ozone, and accordingly a reduction in the levels of these pollutants can lower ozone levels. Furthermore, Section 182(c)(2)(C) of the CAA provides for states with ozone problems to substitute NO_X reductions for VOC reduction in their Attainment and Reasonable Further Progress (RFP) Plans.

In allowing substitution of NO_X emission reductions for VOC emission reductions, Section 182(c)(2)(C) of the CAA states that the resulting reductions ''in ozone concentrations'' must be ''at least equivalent'' to that which would result from 3% VOC reductions required as a demonstration of RFP under Section 182(c)(2)(B). Our NO_X Substitution Guidance (EPA, December 1993) provides that the RFP reductions should be consistent with those needed for attainment and that the Attainment and RFP Plans show that reduction of NO_X consistent with those needed for attainment can be accepted as equivalent to what would be required for a VOC-only attainment. The LDEQ's current nonattainment NSR procedures also require that emission reduction claimed as offset credit shall be sufficient to ensure RFP toward attainment.

The pollutants being offset must impact the environment in a similar manner and increases in emission of VOCs cannot be replaced with another VOC of lesser reactivity (40 CFR 51.165(a)(3)(ii)(D)). Additionally, 40 CFR 51.100(s) defines VOCs; this regulation and LAC 33:III.2117 also define ''non-VOCs'' or carbon-containing compounds which do not participate in atmospheric photochemical reactions which may produce ozone. These ''non-VOCs'' would not be eligible for the proposed emission offsets.

An increase in VOC emissions offset by a decrease in emissions of NO_X should be analyzed for the extent of impact from each pollutant involved. The LDEQ has agreed in implementing this provision to evaluate such trades on a case-by-case basis. See letter from Dale Givens, Secretary of LDEQ, to Gregg Cooke, Regional Administrator, U.S. EPA, Region 6 (May 3, 2002). Additionally, in response to a comment sent by us on the proposed SIP revisions, LDEQ confirmed that further Urban Airshed Modeling would be required on a case-by-case basis if new data or evidence comes to light that indicates a NO_X for VOC trade will not be beneficial to the environment.

IPT has received limited proposed approval from the EPA in the State of New Hampshire (66 FR 9278). It has also received limited approval in several air quality districts in California (Bay Area, 65 FR 56284; El Dorado, 65 FR 4887; Sacramento Metropolitan area; San Diego County, 64 FR 42892; San Joaquin Valley, 65 FR 58252), and is being considered for two more (the South Coast area and the Mojave Desert area).

The Attainment Plan/Transport SIP revisions change only specific portions of the LDEQ regulations. The current regulations found at LAC 33:III.504 continue to require that emission offsets provide a net air quality benefit, and are federally enforceable before commencement of construction of the proposed new source or major modification. The emission offsets must meet all applicable state requirements, any applicable new source performance standard in 40 CFR part 60, and any national emission standard for hazardous air pollutants in 40 CFR part 61 or part 63. Also the current state regulations state that issuance of a permit by LDEQ does not relieve any owner or operator of the responsibility to comply with the provisions of local, state, or federal law.

The Technical Support Document for this action provides a more detailed discussion of our proposed approval.

VIII. How Does the State's NSR Regulation in Chapter 5 Interact With the NO_X Control Regulation in Chapter 22 and the Revised Banking Regulation in Chapter 6?

The State has recently revised the NO_X control regulation in Chapter 22. This NO_X Reasonably Available Control Technology (RACT) rule requires stationary sources to comply with a more strict emission limitation during the State's five month ozone season. Typically a stationary source reduces emissions below the baseline to generate surplus emission reduction credits. Due to the revised NO_X rule, the allowable

emission limitation for a stationary source could potentially have two values, one for the five month ozone season and another for the seven month non-ozone season. For a fuller explanation of the area's ozone seasons, see LAC III:33 Chapter 22, and the separate EPA rule-making to be issued regarding that chapter.

Thus, the baseline emissions for the stationary source, which are used to determine surplus emission reduction credits for offset permitting purposes, could have two different values. In order to accurately determine the surplus emission reduction credits (ERCs) to be used in the nonattainment NSR permitting, the baseline emissions and surplus ERCs must be determined for the two time periods. The NO_X ERCs for any annual time period will consist of the ERCs for the five month ozone season and the ERCs from the seven month non-ozone season. Offset requirements for new sources derive from Section 173(a)(1)(A) of the Act, which concerns ''total'' emissions and does not address the use of emission offsets for nonattainment permitting over periods of less than one year. Therefore, the NO_X ERCs to be used in all nonattainment NSR permitting under Chapter 5 must be determined by adding the ERCs from the ozone season and the non-ozone season.

With respect to all offsets under Chapter 5 and all ERCs under Chapter 6, the total NO_X emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season NO_X increases may be met by either ozone or non-ozone NO_X ERCs. The annual NO_X increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

The stated purpose of the revised emissions banking rule in Chapter 6 is to enable stationary sources to identify and acquire emission reductions for NSR purposes. The Chapter 6 rule does not address the requirement to keep separate certifying, determining and recording procedures for NO_X ERCs during the ozone and non-ozone seasons. The identification, certification, acquisition, recordkeeping and determination of ''Surplus When Used'' emission reduction credits must be for the ozone season and the non-ozone season time periods. The State has indicated by letter from Mr. Dale Givens to EPA dated May 3, 2002 that the State would implement the rule by operating the emissions reduction bank in such a manner. EPA requests that in response to comments on EPA's proposed approval of the Chapter 5 and Chapter 6 rules, the State affirm and detail the procedures for the determination of NO_X surplus emission reduction credits resulting from the split emission limitations for the NO_X RACT rule in Chapter 22.

The emission offset provisions contained in the Chapter 5 nonattainment NSR rules indicate that offsets of VOC emissions may be met by surplus NO_X emission reductions. The VOC emission offsets met by surplus NO_X ERCs must be for both the ozone season and non-ozone seasons. In other words, VOC emission increases during the ozone season must be offset by NO_X ERCs from the ozone season. Non-ozone season VOC increases may be met by either ozone or non-ozone NO_X ERCs. The annual VOC increase must be offset by the total combination of ozone and non-ozone season surplus NO_X emission reduction credits.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Volatile organic compounds, Reporting and recordkeeping requirements.

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

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18580 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–62–1–7561; FRL–7249–6]

Approval and Promulgation of Implementation Plans; Louisiana; Control of Emissions of Nitrogen Oxides in the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of rules into the Louisiana State Implementation Plan (SIP). In this rulemaking we are proposing to approve revisions to the Louisiana Nitrogen Oxides (NO_X) rules in the Baton Rouge (BR) 1-hour ozone nonattainment area (BR area) and its Region of Influence as submitted to us by the State on February 27, 2002 (the February 27, 2002, SIP revision). The revisions concern Reasonably Available Control Technology (RACT) for point sources of NO_X in the BR area and its Region of Influence. *See* section 1 of this document for additional information. These new emissions limits for point sources of NO_X will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) in the BR area.

The EPA is proposing approval of SIP revisions to regulate emissions of NO_X as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Your comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana, 70810.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214)665–6691, and *Shar.Alan@epa.gov.*

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Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

1. What actions are we taking in this document?

On February 27, 2002, the Governor of Louisiana, submitted rule revisions to LAC 33:III, Chapter 22, ''Control of Emissions of Nitrogen Oxides,'' (AQ215), as a revision to the Louisiana SIP for point sources of NO_X in the BR area and its Region of Influence.

The BR area constitutes the 5 ozone nonattainment parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The Region of Influence constitutes the 4 ozone attainment parishes of East Feliciana, Pointe Coupe, St. Helena, and West Feliciana. *See* section 2201(A)(1) of Louisiana's rule revisions. This SIP revision concerns RACT for point sources of NO_X in all these 9 parishes. The State of Louisiana submitted this revision to us as a part of the NO_X reductions needed for the BR area to attain the 1-hour ozone standard. These NO_X reductions will assist the BR area to attain the 1-hour ozone standard.

We received the Louisiana rule that we are considering in this proposed action on February 27, 2002, as a component of the an Attainment Plan and Transport Demonstration (hereinafter, the Attainment Plan/Transport SIP) for the BR area submitted by the LDEQ. This revision to the Attainment Plan/Transport SIP specifies emission reduction strategies designed to bring the BR area into compliance with the ozone NAAQS. One component of the Attainment Plan/Transport SIP is the revised NO_X RACT rule that has been enacted at Louisiana Administrative Code (LAC) 33:III, Chapter 22. This action is necessary to determine whether that revised rule is an approvable component of the Attainment Plan/Transport SIP.

In this document we are proposing to approve the February 27, 2002, rule revision to LAC 33:III, Chapter 22, of the Louisiana SIP. Sections 8 through 11 and section 15 of this document contain more information about LAC 33:III, Chapter 22. By this approval, we are also agreeing that the State of Louisiana will be implementing RACT for point sources of NO_X in the BR area and its Region of Influence. *See* the NO_X point source categories listed in Table III, section 10 of this document for more information.

Table I contains a summary list of the sections of LAC 33:III, Chapter 22, as submitted to us on February 27, 2002, for sources of NO_X in these 9 parishes.

TALBLE I.—SECTION NUMBERS AND SECTION DESCRIPTIONS OF LAC 33:III, CHAPTER 22 SUBMITTED ON FEBRUARY 27, 2002, SIP REVISION

Section	Description
A	Applicability
B	Definitions
C	Exemptions
D	Emission Factors
E	Alternative Plans
F	Permits
G	Initial Demonstration of Compliance
H	Continuous Demonstration of Compliance
I	Notification, Recordkeeping, and Reporting Requirements
J	Effective Dates

2. What Action Are We Not Taking in This Document?

We are not acting on the BR area attainment plan in this particular action or on any other area attainment plan.

3. What Are NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. The NO_X are produced from burning fuels, including natural gas, gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog, and are also major components of acid rain.

4. What Is RACT?

RACT is defined as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. Sections 182(b)(2) and 182(f) of the Act establish this requirement. These sections, taken together, establish the requirements for Louisiana to submit a NO_X RACT regulation for all major stationary sources of NO_X in ozone nonattainment areas classified as moderate and above. A State may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source.

5. What Are the Clean Air Act's RACT Requirements for NO_X Emissions?

The BR area was classified as a serious ozone nonattainment area (40 CFR 81.319). You can find the requirements for serious ozone nonattainment areas such as BR in section 182(c) of the Act. Section 182(c)(2)(C) addresses the NO_X Control requirements for serious areas. Section 182(b)(2) requires States, with areas classified as moderate and above ozone nonattainment, to implement RACT with respect to all major sources of VOCs. Section 182(f) states that, ''The plan provisions required under this subpart for major stationary sources of VOCs shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen.'' This NO_X RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications.

On November 25, 1992 (57 FR 55620), we published a document of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement). The NO_X Supplement describes and provides preliminary guidance on the requirements of section 182(f) of the Act. You should refer to the NO_X supplement for further information on the NO_X requirements. Other EPA guidance memoranda, such as those included in the ''NO_X Policy Document for the Clean Air Act of 1990,'' (EPA–452/R96–005, March 1996), could provide you with more information about NO_X requirements. In addition, states can use information in EPA's guidance documents known as the Alternative Control Techniques (ACTs) to develop their RACT regulations. The following table contains list of ACT documents for various source categories of NO_X with their corresponding EPA publication numbers.

TABLE II.—ACT DOCUMENTS FOR SOURCE CATEGORIES OF NO_X AND THEIR EPA PUBLICATION NUMBERS

Source category	EPA publication No.
Gas turbines	EPA–453/R–93–007
Process heaters ...	EPA–453/R–93–034
Internal combustion engines.	EPA–453/R–93–032
Non-utility boilers	EPA–453/R–94–022
Utility boilers	EPA–453/R–94–023

6. What Is Definition of a Major Source for NO_X?

As stated in section 5 of this document, the BR area is currently a serious ozone nonattainment area. According to section 182(c) of the Act, a major source in a serious nonattainment area is a source that emits, when uncontrolled, 50 tpy or more of NO_X. Therefore, the major source size for NO_X within these 9 parishes is 50 tpy or more, when uncontrolled.

7. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time.

See section 1 of this document for a listing of the Louisiana parishes that are nonattainment for ozone.

8. What Is History of NO_X RACT Rule for Point Sources in the BR Area?

Prior to this proposed rulemaking the Louisiana's approved SIP did not a contain NO_X RACT rule for point sources operating in these 9 parishes. On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the Act from the RACT requirements for major stationary sources of NO_X operating in the BR ozone nonattainment area. We based our approval of the exemption on modeling which showed that NO_X controls would not contribute to attainment of the NAAQS for ozone. In granting the exemption, EPA reserved the right to reverse the approval of the exemption, if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical grid modeling recently conducted for the BR area SIP indicates that control of NO_X sources will help the area attain the NAAQS for ozone. The State of Louisiana has requested that EPA rescind the NO_X exemption based on this new modeling. Accordingly, on May 7, 2002 (67 FR 30638), we published our proposal to rescind, among other things, the 182(f) NO_X exemption. When finalized, the State will need to implement RACT requirements for major stationary sources of NO_X operating in these 9 parishes.

We believe that rescission of the 182(f) NO_X exemption, and implementation of RACT rules for major stationary sources of NO_X operating in these 9 parishes will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

9. What Does the February 27, 2002, SIP Revision for point sources of NO_X in the BR Area Say?

The State's rulemaking will reduce/control NO_X emissions from point sources in these 9 parishes. *See* section 1 of this document for a listing of these 9 parishes. The rulemaking affects point sources that emit, when uncontrolled, 50 tpy or more of NO_X. The revised State rule offers facility-wide averaging incentive and operational flexibility to a source to operate at RACT or more stringent levels beyond the designated ozone season (May 1 through September 30). The May 1 through September 30 time frame is consistent with the time frame adopted for the ozone transport assessment group rules. *See* 62 FR 60344 published on November 7, 1997. The NO_X emission control methods may vary from one source to another. Due to the fact that NO_X emission control methods differ from one source to another, some sources will need to operate their NO_X control device beyond the above-mentioned ozone season. The State provided us with more information about the seasonality of the NO_X control in Chapter 22, in a letter dated May 3, 2002. The seasonality of Louisiana's NO_X controls will also impact Louisiana's ERC accounting procedures. The ERC generated from implementation of this rule will have to be permanent, actual, surplus, quantifiable, and federally enforceable at the time of use. Section D(3) of the rule contains the equation used for calculating the appropriate NO_X cap for a source or multiple sources under common control. *See* page 4 of our TSD for additional information. Furthermore, the State will

need to base and conduct its ERC accounting on a two-balance (during ozone season and outside ozone season) system for NO_X ERC. The NO_X ERC generated outside the ozone season can only be made available for use outside the ozone season. The NO_X ERC generated during the ozone season can be made available for use in both the ozone season and outside the ozone season. We will be proposing action on Louisiana's ERC accounting in a separate **Federal Register** document. For additional information you can refer to our TSD that contains a copy of the State's May 3, 2002, letter.

We believe that the proposed rulemaking will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

10. What Are the NO_X Emissions Factors in the February 27, 2002, SIP Revision for Point Sources of NO_X in the BR Area?

Table III of this document contains a summary of the affected NO_X point source categories, maximum rated capacities, and their relevant emission factors based on the February 27, 2002, SIP submittal. *See* LAC 33:III:2201, section D(1).

TABLE III.—AFFECTED CATEGORIES OF NO_X, MAXIMUM RATED CAPACITIES, AND EMISSION FACTORS IN THE BR AREA

Category	Maximum rated capacity	NO_X emission factor
Electric Power Generating System Boilers:		
Coal-fired	≥80 MMBtu/hour	0.21 lb/MMBtu
Number 6 Fuel Oil-fired	≥80 MMBtu/hour	0.18 lb/MMBtu
All others (gaseous or liquid)	≥80 MMBtu/hour	0.10 lb/MMBtu
Industrial Boilers	≥80 MMBtu/hour	0.10 lb/MMBtu
Process heater/furnaces:		
Ammonia Reformers	≥80 MMBtu/hour	0.23 lb/MMBtu
All others	≥80 MMBtu/hour	0.08 lb/MMBtu
Stationary gas turbines	≥10 MW	0.16 lb/MMBtu or 42 ppm @ 15 percent O2, dry basis)
Stationary internal combustion engines:		
Lean burn	≥1500 Hp	4 g/Hp-hour
Rich burn	≥300 Hp	2 g/Hp-hour

We believe that the proposed NO_X emission factors for point sources of NO_X in the BR area will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP. By this approval we are agreeing that the State of Louisiana will be implementing RACT for point source categories listed in Table III, section 10 of this document.

Additionally, we will be proposing approval of a revision to Louisiana's lean burn engine requirements for NO_X, through our ''parallel processing'' procedures explained at 40 CFR part 51, appendix V, in a separate **Federal Register** document.

11. What Is the Compliance Schedule in the February 27, 2002, SIP revision for Point Sources of NO_X in the BR Area?

The proposed compliance date for point sources of NO_X in the BR area is as expeditiously as possible, but no later than May 1, 2005. *See* LAC 33:III:2201, sections J(1) and (2). We believe that the proposed compliance schedule for point sources of NO_X in the BR area will assist to bring the BR area into attainment with the federal 1-hour ozone standard, and will strengthen the existing Louisiana SIP.

12. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

13. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the CFR at Title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual State regulations that we approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that we have approved a given State regulation with a specific effective date.

14. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

15. What Areas in Louisiana Will the Proposed February 27, 2002, SIP Revision for Point Sources of NO_X Affect?

The following table contains a list of Parishes affected by the proposed SIP

revision that we are proposing to approve, today.

TABLE IV.—RULE NUMBER AND AFFECTED PARISHES OF LOUISIANA

Rule No.	Affected parishes
LAC 33:III:2201 (AQ215) provisions	Ascension, East Baton Rouge, East Felicia, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge, and West Felicia.

If you are in one of these Louisiana parishes, you should refer to the Louisiana NO_X rules to determine if and how today's action will affect you.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The proposed rule does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings.'' This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 15, 2002.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 02–18576 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MN 67–01–7292(b); FRL–7249–1]

Approval of Section 112(l) Program of Delegation; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document the EPA is proposing to approve a request from Minnesota for a partial delegation of the Federal air toxics program pursuant to section 112(l) of the Clean Air Act (Act). The State's mechanism of delegation involves the straight delegation of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except standards addressed specifically in this action, will occur through a Memorandum of Agreement (MOA) between the Minnesota Pollution Control Agency (MPCA) and EPA. This request for approval of a mechanism of delegation encompasses only those sources subject to a section 112 standard and a requirement to obtain a part 70 operating permit.

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment. Should the Agency receive such comment, it will publish a document informing the public that the direct final rule will not take effect and such public comment(s) received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second

comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 22, 2002.

ADDRESSES: Written comments should be sent to: Robert Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Bryan Holtrop at (312) 886–6204, *holtrop.bryan@epa.gov* or Rachel Rineheart at (312) 886–7017, *rineheart.rachel@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone Robert Miller at (312) 353–0396 before visiting the Region 5 Office.)

List of Subjects in 40 CFR Part 63

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

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

Dated: June 27, 2002.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 02–18399 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 412

[FRL–7250–2]

Notice of Data Availability; National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On January 12, 2001 (66 FR 2959), EPA published a proposal to revise two regulations that address manure, wastewater, and other process waters generated by concentrated animal feeding operations (CAFOs). These two regulations are: The National Pollutant Discharge Elimination System (NPDES) provisions that define which operations are CAFOs and establish permit requirements; and the Effluent Limitations Guidelines, or effluent guidelines, for feedlots (beef, dairy, swine and poultry subcategories), which establish the technology-based effluent discharge standards for CAFOs.

In the proposal, and in a subsequent notice of data availability published on November 21, 2001 (66 FR 58556), EPA solicited comment on various aspects of the proposed revisions and data used to analyze the proposed revisions. Due to additional data and comments received, EPA is considering changes to certain aspects of the proposed rulemaking. Specifically, today's notice presents information on the following: Establishing alternative regulatory thresholds for chicken operations using dry litter management practices; the potential creation of alternative performance standards to encourage CAFOs to implement new technologies; and financial data and changes EPA is considering to refine its economic analysis models. Today, EPA is making these data and potential changes available for public review and comment.

DATES: You must submit comments by August 22, 2002.

ADDRESSES: You are encouraged to submit your comments electronically to *CAFOS.comments@epa.gov.* Electronic comments should specify docket number W–00–27 and must be submitted as an ASCII, Microsoft Word, or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments on this action may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

You also may submit comments by mail to: Concentrated Animal Feeding Operation Proposed Rule, Office of Water, Engineering and Analysis Division (4303T), USEPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Hand deliveries (including overnight mail) should be submitted to the Concentrated Animal Feeding Operation Proposed Rule, USEPA, EPA West Building, Room 6231, 1301 Constitution Avenue, NW, Washington, DC 20004. Please submit an original and three copies of your written comments and enclosures, as well as any references cited in your comments.

The public record for this action and the proposed rulemaking has been established under docket number W–00–27 and is located at 1200 Pennsylvania Avenue NW, Washington, DC. The record is available for inspection from 8 a.m. to noon, Monday through Thursday, excluding legal holidays. For access to the docket materials, call (202) 566–1000 for the room number and to schedule an appointment. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Renee Selinsky Johnson at (202) 566–1077 or at the following e-mail address: *johnson.renee@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Purpose of This Notice

There are three main components to today's notice: (1) Discussion of potential new regulatory thresholds for chicken operations with dry litter management practices; (2) the potential creation of alternative performance standards to encourage CAFOs to implement new wastewater treatment technologies and/or practices; and (3) discussion of new financial data and changes EPA is considering to refine the economic analysis models used to evaluate economic effects that potential regulatory options may have on CAFOs.

For chicken operations with dry litter management, EPA is considering alternative approaches for determining the number of broilers or laying hens that would be considered equivalent to 1,000 animal units (AU). In the proposed rule, EPA presented a scenario where 100,000 chickens would be considered equivalent to 1,000 AU. In today's notice, EPA presents two possible alternative approaches for setting this metric for chicken operations.

EPA's long-term environmental vision for CAFOs includes continuing research and progress toward environmental improvement. The Agency believes that individual CAFOs can be encouraged to voluntarily develop and install new technologies and management practices equal to or better than those required by baseline best available technology economically achievable (BAT) and new source performance standards (NSPS) effluent guidelines regulations. Further, EPA recognizes that some CAFOs, as well as land grant universities, state

agencies, equipment vendors, and agricultural organizations, are working to develop new technologies that achieve reductions in nutrient and pathogen losses to surface water, ammonia and other air emissions, and groundwater contamination. The development of new technologies offers the potential to match or surpass the pollutant reduction that would be achieved by compliance with limits and standards promulgated in the final CAFO rule.

Today's notice includes EPA's preliminary approach for developing a voluntary program intended to facilitate the development of new technologies and management practices that perform as well as or better than BAT (and NSPS) and may also help address the multimedia environmental issues confronting CAFOs. A key tenet of these programs is that CAFOs would voluntarily choose an alternative BAT/NSPS performance standard as the basis for their technology-based NPDES permit limits (e.g., inclusion of effluent limitations in their NPDES permits that are different from those based on the baseline effluent guideline).

Data that EPA is considering to use in the economic analysis models include both farm level and enterprise level financial data, as well as data and information pertaining to various modeling assumptions used by EPA. The financial data include data from the U.S. Department of Agriculture (USDA), the Food and Agricultural Policy Research Institute (FAPRI) at the University of Missouri, and the National Cattlemen's Beef Association (NCBA). Other enterprise level data for some sectors were collected by EPA from various land grant universities. In today's notice, EPA describes the set of financial data that EPA is considering using to depict baseline financial conditions at regulated CAFOs. This notice also discusses methodological changes EPA is considering, based on comments received on the proposed rule and the previous notice of data availability (the ''2001 Notice''), to the analytical framework used to evaluate economic effects that potential regulatory options may have on CAFOs. Among the changes being considered are the inclusion of enterprise level financial data, inclusion of additional measures of profitability to evaluate post-regulatory effects at the enterprise level, and a few ancillary assumptions. These data and analytical changes are in addition to those already presented by EPA in the 2001 Notice.

EPA is seeking further public comment on the specific data and issues identified in this notice. However, EPA is seeking public comment only on these specific data and issues. Nothing in today's notice is intended to reopen any other issues discussed in the CAFO proposal or the 2001 Notice, or to reopen the proposal in general for additional public comments. EPA is continuing to review the comments already submitted on the proposed rule and the 2001 Notice and will address those comments, along with comments submitted on the data and issues identified in today's notice, in the final rulemaking.

II. Background

A. Proposed Rule

On January 12, 2001 (66 FR 2959), EPA published proposed revisions to the existing effluent guidelines for CAFOs (40 CFR Part 412) and to certain provisions of the NPDES regulations applicable to CAFOs. Effluent guidelines and standards for CAFOs establish the technology-based effluent discharge and performance standards for both existing and new sources for each of the beef, dairy, swine and poultry subcategories. The NPDES permit program for CAFOs defines which animal feeding operations (AFOs) are CAFOs and need to obtain a NPDES permit, and establishes the specific requirements that must be complied with under a permit. These two existing interrelated regulations affecting CAFOs were originally promulgated in the 1970s.

1. Effluent Limitations Guidelines and Standards

Under the current effluent guidelines regulations, CAFOs are prohibited from discharging process wastewater, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour rainfall event.

EPA proposed requiring all existing and new CAFOs spreading manure on cropland to limit the application rate to the nitrogen needs of the crops and, for those fields where additional constraints are considered necessary, to also ensure that the manure application rate would not exceed the phosphorus needs of the crops.

EPA also proposed to require all existing beef and dairy operations to implement controls (*e.g.,* retrofitting lagoons and ponds with impervious liners) to minimize leaching to ground water if the ground water beneath the production area has a direct hydrologic connection to surface water. EPA proposed requiring all existing swine, veal, and poultry CAFOs to eliminate all discharges from the animal production area (i.e., for these sectors, eliminating the effluent guidelines provision that allows for certain overflows due to chronic or catastrophic rainfall).

EPA proposed that newly constructed CAFOs should meet the same requirements as were proposed for existing CAFOs, except that new swine, veal and poultry operations also would need to implement ground water controls where there is a direct hydrologic connection to surface water.

For more information on the proposed technology options, see section VIII of the proposed rule (66 FR 3050–3070). Section VIII of the proposed rule also describes certain other technology options that were considered by EPA at proposal, such as prohibiting manure application on frozen, snow-covered, or saturated ground; mandatory use of anaerobic digester systems; composting; and surface water monitoring requirements.

2. NPDES Regulations

Under the current NPDES regulations for CAFOs, a ''three-tier'' structure is used to determine which animal feeding operations (AFOs) also meet the criteria under which they are considered concentrated animal feeding operations (CAFOs). Under this current NPDES structure, (1) all AFOs with more than 1,000 AU are automatically defined as CAFOs; (2) AFOs with 301 to 1,000 AU are defined as a CAFO only if they meet certain conditions; and (3) AFOs with 301 to 1,000 AU that do not meet these conditions, and all AFOs with 300 or less AU, become CAFOs only if they are designated as such by the permitting authority. (*See* 40 CFR 122.23 and Part 122, Appendix B).

EPA proposed several alternatives for revising the existing CAFO definition. Under one scenario, the current ''three-tier'' structure would be retained, but there would be certain changes to the conditions that define an operation as a CAFO in the middle tier (i.e., 300–1,000 AU). EPA also proposed an alternative regulatory approach that would replace the existing ''three-tier'' structure with a ''two-tier'' scenario for defining operations as CAFOs. Under the ''two-tier'' scenario, all animal feeding operations with more than a specified number of animals would be defined as a CAFO. EPA considered several potential thresholds that could be set under the two-tier scenario.

EPA also proposed to revise the definition of a CAFO to expressly include chicken operations using dry litter management techniques, swine nurseries, and heifer operations. EPA proposed to explicitly address manure

application on land under the control of the CAFO, and considered alternatives for collecting information regarding manure transferred to off-site locations. The proposed rule also considered certain changes that affect which entities would be required to obtain NPDES permits, and proposed to add provisions requiring CAFOs that cease operation to retain their NPDES permits until all wastes that were generated by the operation no longer have the potential to reach waters of the United States.

For more information on the proposed changes to the NPDES regulations, see section VII of the proposed rule (66 FR 2993–3050).

B. Notice of Data Availability

On November 21, 2001 (66 FR 58556), EPA published a notice of data availability presenting a summary of new data and information submitted to EPA during the public comment period on the proposed CAFO regulations, including data received from USDA. The 2001 Notice also discussed new data and changes being considered to refine the cost and economic analysis models, and to improve estimates of pollutant reductions and monetized benefits that would result from changes to the CAFO regulations. EPA presented information on potential changes that would enhance flexibility for using State NPDES and non-NPDES CAFO programs, discussed options intended to encourage broader implementation of environmental management systems, and described certain refinements to the CAFO definition that were under consideration.

III. Thresholds for Chicken Operations Using Dry Litter Management

EPA's existing effluent guidelines for CAFOs apply to chicken operations with 30,000 laying hens or broilers when the facility has a liquid manure handling system, and to chicken operations with 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems. (*See* 40 CFR Part 412.10). Under the proposed rule, the CAFO regulations would be revised to remove language referring to the type of manure handling or watering system employed at laying hen and broiler operations and would, as a result, expand the scope of the rule to also address chicken operations with ''dry'' litter management systems. (The term ''dry'' does not mean that there are no wastewaters associated with these types of operations. For example, poultry waste includes manure, poultry mortalities, litter, spilled water, waste feed, water associated with cleaning houses, runoff from litter stockpiles, and runoff from land where manure has been applied.) As proposed, the revised CAFO regulations would establish 100,000 chickens as equal to 1,000 AU. (*See* 66 FR 3010–3012).

At proposal, EPA presented two alternative ways to structure the NPDES regulations and define which animal feeding operations are CAFOs. Under EPA's proposed ''two-tier'' structure, all AFOs with more than a certain AU threshold level would be defined as CAFOs, and those with fewer than the threshold would become CAFOs only if they were designated as such by the permittting authority. Under this alternative, with a threshold of 500 AU, for example, all chicken operations with more than 50,000 chickens would be defined as a CAFO. Under this two-tier structure with the threshold set at 500 AU, EPA estimates 9,300 broiler operations and 1,000 laying hen operations would be automatically defined as CAFOs.

In the second alternative discussed at proposal, EPA proposed to retain the current ''three-tier'' structure. Under this three-tier scenario, operations with more than 100,000 chickens would be automatically defined as a CAFO, and operations with 30,000 to 100,000 chickens would be defined as a CAFO only if they met certain conditions. Under the three-tier structure, EPA estimates 2,950 broiler operations and 550 laying hen operations would have more than 1,000 AU and would automatically be defined as CAFOs. EPA also estimates an additional 600 broiler operations and 50 laying hen operations would be defined as middle-tier CAFOs (i.e., those with 301–1,000 AU) using EPA's current middle-tier criteria. *See* 66 FR 2996–3004 for additional discussion of the two-tier and three-tier regulatory structures.

In developing the proposed rule, EPA evaluated several methods for equating poultry operations with dry litter management to the existing definition of an animal unit (*See* 66 FR 3010–3012). One factor considered is that the existing CAFO regulations already apply to chicken operations with 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems. Another factor considered relates to the manure generated by chickens in comparison to the manure generated by beef cattle. The average daily manure generation from 100,000 broilers and laying hens (EPA's proposed metric for the number of chickens being equal to 1,000 AU) is comparable to the average daily manure generation from 1,000 beef cattle (1,000 AU). Using manure waste characterization data from USDA's Agricultural Waste Management Field Handbook, EPA's analysis indicated a range of 82,000 laying hens to 111,000 broilers—or approximately 100,000 chickens—as being equivalent to 1,000 AU. EPA's methodology for calculating these values is presented in the record. This analysis suggested a similar threshold for chickens whether basing the comparison of manure on the amount of nitrogen, phosphorus, or biochemical oxygen demand (BOD_5) in the manure.

EPA is considering other thresholds both higher and lower than the 100,000-chicken threshold presented in the proposed rule.

Several comments were received on EPA's proposed thresholds for chicken operations, asserting EPA should maintain a distinction between laying hens and broilers. Other comments asserted that EPA should determine the value (i.e., number of birds) equating to 1,000 AU by evaluating phosphorus content in the manure on an annual basis as opposed to a daily basis. For example, these comments further assert that estimates of the annual phosphorus production should reflect that five to six flocks of broilers are produced per year, and should not assume phosphorus production continues during the periods of the year (i.e., cleanout time between flocks when no broilers are present) when no manure is generated. Using an approach for setting the threshold that compares the phosphorus produced by chickens annually to the phosphorus produced by beef cattle, based on manure waste characterization data from USDA's Agricultural Waste Management Field Handbook, EPA would estimate the 1,000 AU equivalent as 125,000 broilers (in contrast to the 111,000 value estimated using the daily manure generation rates). EPA's methodology for calculating these values (e.g., average bird live weight; typical number of flocks produced per year; average time between bird placements) is presented in the record. Using an alternative threshold of 125,000 broilers, EPA estimates 1,800 broiler operations would have greater than 1,000 animal units. Because laying hens typically are kept at CAFOs for approximately 94 weeks of production, they continue to produce manure throughout the year and EPA's previous estimate of 82,000 laying hens as being equivalent to 1,000 AU remains unchanged.

Additional information regarding the nutrient and BOD_5 content of beef and chicken manure can be found in section 17 of the public record for the CAFO rulemaking. The USDA data used by

EPA to estimate the number of broiler and laying hen operations that would have more than 1,000 AU under the alternative thresholds discussed in this notice are included in section 19.1 of the record. Detailed information on EPA's analyses and assumptions appears in section 19.5 of the record. Section 21 of the record contains public comments received on the proposed rule and 2001 Notice regarding the threshold for chicken operations. See the **ADDRESSES** section of this notice for information on how to obtain access to the public record for the CAFO rulemaking.

EPA is considering whether the 1,000 AU equivalent for broilers should remain as proposed at 100,000 broilers, or whether it should be changed to either 125,000 broilers. EPA is also considering whether the 1,000 AU equivalent for laying hens should remain as proposed at 100,000 laying hens, or whether it should be changed to 82,000 laying hens. EPA notes that the thresholds codified in the current regulations for operations with liquid manure handling systems or unlimited continuous flow watering systems may remain unchanged in the final rule. EPA solicits comment on these alternative thresholds for broiler and laying hen operations with dry litter management systems, the assumptions and data used to derive the thresholds (e.g., average bird liveweight; typical number of flocks produced per year; average time between bird placements), and if other alternative thresholds (and their technical basis) exist that may be appropriate for these operations.

IV. Voluntary Alternative Performance Standards for Innovative Technologies

EPA's long-term environmental vision for CAFOs includes continuing research and progress toward environmental improvement. The Agency believes that individual CAFOs should be encouraged to voluntarily develop and install technologies and management practices that achieve pollutant reductions equivalent to or better than those required by the baseline effluent guidelines regulations.

Further, EPA recognizes that some CAFOs, as well as USDA, land grant universities, equipment vendors and agricultural organizations, are working to develop new technologies that achieve reductions in nutrient and pathogen losses to surface water, ammonia and other air emissions, and ground water contamination. The development of new technologies offers the potential to match or surpass the pollutant reductions that would be achieved by compliance with limits and standards in the final CAFO rule.

EPA received suggestions from a number of stakeholders on the merits of creating a framework for alternative performance standards. Several stakeholders believe that the current and proposed effluent guidelines discourage the use of innovative treatment and pollution prevention technologies and that EPA should include incentives to encourage CAFOs to use improved technologies that would protect all environmental media (particularly surface water, but also air and ground water). A number of commenters expressed support for the inclusion of voluntary alternative technologies which are equivalent to or better than BAT effluent guidelines (or NSPS requirements for new CAFOs), and specifically requested a provision that would allow CAFOs to discharge treated process wastewater generated from the production area of the CAFO.

A number of stakeholders commented that EPA should include controls for pathogens or antibiotics, as well as atmospheric emissions of ammonia, methane, or hydrogen sulfide. Other commenters suggested that adding flexibility in the rule to allow for the discharge of treated process wastewater could lead to better approaches for addressing environmental concerns in all environmental media, including air, ground water, and surface water.

In view of these suggestions, today's notice presents two approaches, described below, to encourage the development of new technologies and management practices that achieve pollutant reductions equivalent to or better than those that would be achieved by the baseline BAT (and NSPS) that will be promulgated in the final rule, and possibly also help address multimedia issues related to air emissions and ground water. Under a Production Area Approach, alternative performance standards would focus on the manure and wastewater discharges from the CAFO production area and CAFOs would be allowed to discharge process wastes that have been treated by technologies that result in equivalent or better pollutant removals than would be achieved under the baseline BAT standard. Under the Whole Farm Approach, CAFOs would conduct a site-specific ''whole farm'' multimedia review to target optimal pollutant load reduction and pollution prevention opportunities for the production and land application areas. The Whole Farm Approach could include an allowance for wastewater discharge from the production area as described for the Production Area Approach, but most importantly, would require the CAFO to evaluate and implement whole farm improvements through the use of an audit process as a condition for obtaining alternate effluent limits.

A key tenet of these approaches is that CAFOs would voluntarily choose to comply with an alternative BAT/NSPS performance standard as the basis for their technology-based NPDES permit limits (*e.g.,* inclusion of effluent limitations in their NPDES permits that are different from those based on the baseline effluent guideline, to be established by the NPDES permitting authority on the basis of best professional judgement). CAFOs would not be required to enter the alternative standards program. A CAFO choosing not to participate in the alternative standards program would instead be subject to the baseline BAT limitations (discussed below in section IV.A). EPA previously used a similar approach in the effluent guidelines for the pulp and paper industry. See 63 FR 18504, 18593–18611 (April 15, 1998).

EPA solicits comment on the concepts presented in this notice for creating alternative performance standards to encourage CAFOs to implement new technologies. In sections IV.B, IV.C, and IV.D below, EPA also solicits comment specifically on certain aspects related to the Production Area and Whole Farm Approaches for creating alternative performance standards, and on the potential incentives that may be made available to CAFOs participating in an alternative performance standards program.

A. Baseline BAT

Under the current effluent guidelines regulations, CAFOs are prohibited from discharging process wastewater, except when rainfall events cause an overflow from a facility designed, constructed, and operated to contain all process-generated wastewater plus the runoff from a 25-year, 24-hour rainfall event. The limits included in the effluent guidelines are based on the use of storage ponds and lagoons to contain the process wastes and runoff, but they do not prevent CAFOs from using alternative technologies, as long as those technologies also meet zero discharge or the containment requirement. These limitations were established on the basis of factors specified in Clean Water Act sections 304(b) and 306(b), including the cost of achieving the effluent reductions and any non-water quality environmental impacts. EPA continues to assess the large number of comments and data received on the proposed rule regarding the appropriate technology basis for the BAT/NSPS requirements

that will be promulgated in December 2002 (referred to in this notice as the ''baseline BAT'').

B. Production Area Approach

The Production Area Approach focuses on manure and wastewater discharges from the CAFO production area. Under this approach, CAFOs would be allowed to discharge process wastewater that has been treated by technologies that the CAFO demonstrates will result in equivalent or better pollutant removals than would be achieved by the baseline BAT standard. The requirements applying to wastewater discharges could also be coupled with either a regulatory provision or non-regulatory guidance for participating CAFOs to develop a plan for achieving improvement in multiple environmental media.

As discussed above, the baseline BAT standard, though nominally zero discharge, allows for untreated overflow discharges if the system is designed, constructed and operated to contain process wastewater plus the runoff from a 25-year, 24-hour rainfall. Thus, to demonstrate that the alternative technology would achieve equivalent or better pollutant reductions than baseline BAT requirements, the CAFO would be required to submit a technical analysis, which would include calculating the mass-based pollutant reductions based on the *site-specific modeled performance* of the baseline BAT system (currently, defined as a 25-year/24-hour storage lagoon). Under this approach, a computer simulation model could be used to evaluate site-specific or region-specific climate data, along with wastewater characterization data, to determine the mass-based pollutant discharge that would be projected for a system designed, constructed and operated to achieve compliance with the baseline BAT standard. The model would evaluate the daily inputs to the storage system, including all process wastes, direct precipitation, and runoff. It would also evaluate the daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of wastewater for use on cropland at the CAFO or transport off site. The model would be used to predict the overflow from the BAT system that would occur over a 25-year period, and these overflow predictions would be used to determine the median annual predicted overflow over the 25 years evaluated by the model. Site-specific or other appropriate pollutant characterization data for the wastewater from the waste storage system (i.e., the overflow) would then be coupled with the overflow volume output from the model described above to predict the mass pollutant discharge that would occur from a baseline BAT system. CAFOs would be required to meet NPDES permit conditions that result in equivalent or improved pollutant reductions, as compared to the predicted mass discharge from overflow of the baseline BAT system, for example, on an annual basis or over the lifetime of the permit. If a CAFO elected to use this approach it would be meeting the same limitations as a CAFO under the baseline BAT, but expressed in a different fashion (*e.g.,* numeric limits on a continuous discharge versus a limit of zero discharge with an allowance for discontinuous overflows). To illustrate this type of analysis, EPA has prepared an example evaluation using model farm characteristics. This example is available in section 19.6.2 of the rulemaking record. Land application activities would be required to correspond to an approved nutrient management plan.

A variation of this approach could be based on a more holistic approach that considers other environmental media besides discharges to surface water. Under this approach, CAFOs would be authorized to comply with alternative BAT/NSPS performance standards if they implement technologies and management practices that result in equivalent or improved pollutant reductions, including all media. CAFOs that achieve significant reductions in air emissions or ground water discharges for a pollutant would qualify for less stringent limits on discharges to surface water to be established on the basis of best professional judgement. In essence, EPA would be using the authority of Clean Water Act section 304(b) to establish alternative BAT requirements that address the non-water quality environmental impacts from controls of discharges to other media, as well as the costs of those controls. One challenge with this approach is how to determine ''equivalence'' across environmental media.

This approach would essentially divide up CAFOs within a subcategory into different segments. Those CAFOs which have undertaken or will voluntarily undertake actions to control air emissions or ground water discharges can be distinguished from facilities which have not under Clean Water Act sections 304(b) and 306(b), because they face different economic achievability concerns related to the costs of compliance with the effluent guidelines, or because their activities will have fewer non-water quality environmental impacts. EPA adopted a similar set of alternate requirements for the pesticide chemicals formulating, packaging and repackaging industry when EPA found that facilities using an alternative pollution prevention approach would reduce air emissions. *See* 61 FR 57518, 57525–26 (November 6, 1996).

EPA solicits comment on the following: (1) The criteria and process that would be used under the Production Area Approach to demonstrate performance equivalent to or better than the baseline BAT technology; (2) the appropriate methodology for translating annual mass discharge estimates into an NPDES permit limitation; (3) approaches for comparing the intermittent overflow discharge that would occur under the baseline BAT requirement to the continuous treated discharge that may be allowed under an alternative performance standard; and (4) whether a holistic approach that considers pollutant reductions across all environmental media would be appropriate, how equivalence across media could be determined operationally and embodied in NPDES permit limits, on what statutory basis could EPA distinguish CAFOs that employ the holistic approach, and whether the NPDES permit could and should mandate compliance with the pollutant reductions achieved across media.

C. Whole Farm Approach

The Whole Farm Approach is based on conducting a site-specific multimedia review to target optimal pollutant load reduction and pollution prevention opportunities for both the production and land application areas. This approach could include an allowance for wastewater discharge from the production area as described for the Production Area Approach, but most importantly, would require the CAFO to evaluate and implement whole-farm environmental improvements through the use of a site-specific audit process as a condition for qualifying for alternative BAT limits. At a minimum, as part of the audit, the CAFO would be required to use a mass-balance approach to address site-specific concerns (e.g., karst geology, flood plains) and to quantify their existing releases; identify the potential to reduce losses from the production area, land application area, and transfer of manure off site; and identify specific opportunities to reduce the largest releases (to surface water, ground water, air, or land). In general, EPA would expect the CAFO to evaluate releases that occur at the point of generation first to minimize or eliminate waste

production and air emissions, followed by an evaluation of the waste handling and management systems, and ending with an evaluation of land application and off-site transfer operations.

CAFOs would need to develop and implement a plan for the operation that generates improvement across multiple environmental media. The plan would identify the specific technologies or practices that will be installed or implemented to achieve the estimated pollutant reductions, and provide criteria that demonstrate effective performance of these technologies or practices that could be used to determine compliance. The specific approaches used would be expected to vary somewhat among operations and would be selected by the CAFO as being effective for the particular operation. Potential approaches could include:

- Implementation of feeding strategies (to reduce or eliminate nutrients, hormones, and/or antibiotics);
- Installation of new and innovative waste management technologies;
- Changes to animal housing;
- Changes to the type and frequency of cleaning operations;
- Controls for the existing waste management system (e.g., storage liners, covers);
- Energy recovery systems;
- Centralized waste treatment or processing;
- Stabilization and production of value-added products;
- Changes to land application methods (e.g., erosion control measures, incorporation/injection);
- Controls for air emissions (e.g., ammonia, particulate matter, methane, hydrogen sulfide);
- Implementation of methods to ensure off-site land application follows nutrient management plan approach; and
- Implementation of a mortality disposal plan.

The implementation plan would need to present data to demonstrate that the plan results in whole-farm reductions in pollutant releases to surface waters equivalent to or better than would be achieved by the baseline BAT requirements. As discussed under the Production Area Approach, this would result in equivalent BAT effluent limitations, but expressed in a different fashion.

Alternatively, the Whole Farm Approach could also be based on a more holistic measure of pollutant reduction and allow trade-offs among reductions in discharges to different media, as long as the plan resulted in equivalent or improved pollutant reduction overall. As discussed above in section IV.B, such an approach would need to determine how to compare reductions across environmental media. As discussed under the Production Are Approach, EPA would utilize its statutory authority to distinguish between facilities that voluntarily achieve reductions to other media and those that do not, on the basis of cost, non-water quality environmental impacts, or other factors.

To illustrate the Whole Farm Approach, EPA has prepared a hypothetical example process evaluation using model farm characteristics. This example is available in section 19.6.2 of the record.

The whole farm approach offers many benefits to the CAFO and to the environment. By targeting reductions of pollutant releases to all media, the CAFO may find ways tailored to the individual site to more cost-effectively minimize environmental impacts. The approach offers flexibility in choosing an environmental system that is most effective and affordable for the specific site, and encourages CAFOs to go beyond the minimum regulatory requirements. This type of program also offers opportunities for state and local partnerships to evaluate location-specific issues and develop targeted approaches.

A potential obstacle to implementing new technologies is the tension between a requirement that CAFOs comply immediately with BAT at the time of permit issuance, and the time that may be required to develop and implement a new technology. While immediate compliance may promote, in the short term, prompt implementation of BAT technologies, EPA is concerned that such a requirement can also discourage CAFOs from fully investigating and implementing alternative technologies that may be better than the baseline BAT technology. EPA is considering, as part of the Whole Farm Approach only, providing CAFOs who choose to implement whole-farm multimedia approaches under the alternative standards program additional time to implement and meet the alternative performance standards. In this way, EPA hopes to provide an incentive for CAFOs to implement whole-farm reductions in pollutant releases. EPA used a similar approach in the effluent guidelines for the pulp, paper, and paperboard industry. Facilities were required to meet BAT reflecting existing practice in the short-term in order to implement a more aggressive BAT (not economically achievable in the short-term) at a later date.

While EPA public recognition programs already exist, the Agency believes that it may also be appropriate to develop and implement a program unique to this industry as an incentive to invest in new technologies and whole-farm approaches to reducing pollutant releases. As part of a public recognition program, EPA could establish criteria under which CAFOs would qualify to receive public recognition on an annual basis. In addition to commitments leading to and achievement of the limits specified or additional reductions associated with a whole farm approach, such criteria would likely include some form of periodic compliance audit and could be structured to give CAFOs flexibility to implement an environmental management system approach. EPA would then recognize the qualifying CAFOs each year through a public event.

EPA solicits comment on the following: (1) The criteria and process that would be used under the Whole Farm Approach to demonstrate pollutant reductions equivalent to or better than the baseline BAT technology; (2) the appropriate methodology for translating the actions identified in the plan for the Whole Farm Approach into an NPDES permit limitation; (3) approaches for comparing the intermittent overflow discharge that would occur under the baseline BAT requirement to the whole-farm actions CAFOs propose to undertake; (4) the length of time CAFOs should be afforded to implement whole-farm pollutant reduction actions; and (5) the possible incentives described in this section for CAFOs implementing the Whole Farm Approach, the applicable criteria used to qualify for the incentives, the type of public recognition that would be afforded, and the frequency for recurring public recognition.

D. Process and Incentives for Participating in Alternative Standards

CAFOs interested in pursuing either alternative standards approach should have a good compliance history. The facility would also be expected to conduct an analysis of their operation (as described above in sections V.B. and V.C.) and prepare a proposed alternative program plan including the results of the analysis, the proposed method for implementing new technologies and practices, and the results demonstrating that these technologies and practices perform equivalent to or better than baseline BAT. This plan would be included with their permit application or renewal, and would be incorporated into the permit. EPA solicits comment on: (1) The process and criteria that

should be used by CAFOs to apply and qualify for participation in the alternative performance standards program; (2) whether CAFOs that have a deadline for ''future BAT'' under an alternative performance standards program should have interim milestones incorporated in their permits towards meeting the ultimate BAT standard; (3) how the program should address CAFOs that volunteer to participate in the alternative standards program, yet later back out of the alternative standards program without implementing the changes outlined in their plan; (4) on the length of time that CAFOs should be afforded for development and implementation of the plan; and (5) what should the BAT basis be for requirements during the period of development of the alternative standards program (e.g., ''existing effluent quality,'' as EPA used for the pulp and paper effluent guidelines, or some other basis).

CAFOs potentially may derive substantial benefits from participation in the alternative standards approach, through greater flexibility in operation, increased good will of neighbors, reduced odor emissions, and potentially lower costs. EPA is also exploring opportunities for other possible incentives to encourage participation in this program. EPA solicits comment on the possible incentives discussed in this notice, and invites suggestions for other incentives that should be made available.

V. Changes to the Economic Analysis

This section presents changes that EPA is considering to the methodology and underlying financial data that it uses to assess the economic effects of the final regulations to CAFOs. Many of these changes reflect comments and new data that EPA has obtained since proposal, which were broadly described in the 2001 Notice. Today, EPA presents additional information on the approach and data that would be used for an economic analysis of the final rule. Section V.A of this notice describes the modeling framework and changes being considered to assess financial effects to regulated CAFOs. Section V.B of this notice describes the financial data that EPA is considering using to depict baseline conditions at model CAFO facilities. Section V.C discusses preliminary results of analyses using these alternative data and approaches.

A. Changes to Model Framework and Assumptions

EPA expects the economic analysis for the final rule will retain the general modeling framework that the Agency used to assess economic effects for the proposed rule (see 66 FR 3079–3103), with the modifications discussed in the 2001 Notice (see 66 FR 58577–58591). The 2001 Notice describes a range of methodological changes and financial data EPA was considering using to improve its analysis. Today's notice provides further information on the specific changes being considered for the modeling framework and financial data EPA will use to analyze the regulatory options for the final rule.

1. Farm Level Analysis

The farm level analysis that supports the final rulemaking is expected to retain the same general framework used for the proposed rule. Specifically, financial impacts are assessed using a sales test, discounted cash flow analysis, and a debt-asset test. This evaluation is conducted using farm level financial data that are described in Section V.B of this notice and are available in EPA's record. These farm level data reflect income and cost information spanning an operation's primary livestock production, as well as secondary livestock and crop production, government payments, and other farm-related income. As conducted for the proposed rule, EPA would divide the resultant regulatory impacts into defined categories. Operations with estimated financial effects that are ''affordable'' or ''moderate'' would not be considered to be vulnerable to closure post-compliance and would, therefore, be considered to indicate economic achievability. Operations with estimated financial ''stress'' would be considered to be vulnerable to closure and may not be considered to indicate economic achievability, subject to other considerations.

To address public comments submitted to EPA on the overall analysis, EPA is considering making three general changes to its analytical framework at the farm level.

First, for the final analysis, EPA proposes to use a sales test that would use pre-tax incremental cost, as opposed to costs that take into account potential tax savings (post-tax), which was assumed at proposal. These pre-tax costs would be compared to total farm level revenues and that ratio would be used as an initial screener to determine the need for additional analysis using EPA's discounted cash and debt-asset tests.

Second, EPA is considering using alternate baseline debt and asset information for several livestock sectors (beef, heifer, veal, dairy, and hog) that EPA has obtained since proposal and is considering a change to the debt-asset threshold values that would indicate financial stress for these sectors. Consideration of alternative debt and asset data for these sectors is consistent with recommendations by National Cattlemen's Beef Association (NCBA), the National Milk Producers Federation (NMPF), and the National Pork Producers Council (NPPC) and other industry commenters. Data submitted to EPA by NCBA and the Food and Agricultural Policy Research Institute (FAPRI) during the comment period indicate that larger, more intensive, or expanding cattle feeding operations tend to carry more debt than that assumed by EPA for the proposal. (Average USDA-reported data cover a broader range of farm types and sizes, including small farms and non-confinement operations that are not covered by the regulations.) Financial data submitted by NCBA and FAPRI indicate that confinement operations with more than 1,000 AU have baseline debt-asset levels greater than the USDA-recommended 40 percent, ranging from 60 percent to more than 70 percent in the beef, dairy and hog sectors. Since USDA's recommended 40 percent benchmark value may not be suitable for assessing the larger confined cattle, dairy, and hog operations affected by EPA's regulations, EPA is considering using an alternate threshold value for its debt-asset test for these sectors. Based on recommendations by NCBA submitted to EPA since the proposal, EPA is considering an 80 percent threshold value to indicate financial stress (see information submitted by NCBA at DCN 375047 in the record). EPA requests comment on the use of an alternative benchmark, such as 80 percent, for these sectors, if alternative data are used. EPA also requests comment on the use of alternative debt and asset data for the cattle, dairy, and hog sectors. These data are available in the rulemaking record (see: DCN 175044 and DCN 175038). (Due to limited data, EPA will continue to use USDA-reported average debt and asset information for the poultry sectors (broiler, egg, and turkey) and will continue to assess changes in the debt-asset test for these sectors assuming a 40 percent benchmark, as was done in the analysis for the proposed rule.)

A third change being considered for the final analysis involves the use of time series data to project available financial data onto a 10-year time horizon for EPA's discounted cash flow analysis. For the proposed rule, EPA used data projections by USDA. As discussed in the 2001 Notice, many

commenters disagree with the use of this data series as the basis for EPA's projections. To address these comments for the final analysis, EPA is considering using alternative timeline data from FAPRI (hog and poultry sectors), USDA (dairy sector), and NCBA (cattle sector) to project future earnings from the 1997 baseline data. A summary of these data and EPA's projected values based on these data is available for review at DCN 375084. The method that EPA uses to project the baseline data follows the approach used for the proposal analysis, as discussed in the Economic Analysis for the proposed rule.

2. Enterprise Level Analysis

For the final rule, EPA is considering expanding upon the analysis developed for the proposed rule by including an assessment of the financial effects on the enterprise level (e.g., an operation's livestock or poultry enterprise). This modeling change would address comments expressed by many commenters, including FAPRI, other land grant university researchers, and industry, as well as USDA, as discussed in the 2001 Notice (66 FR 58580–58582). These comments are supported by alternate enterprise level data that were submitted to EPA since proposal and presented in the 2001 Notice. An enterprise level analysis would recognize that a farm may be unwilling to cross-subsidize a continually failing livestock operation. Also, this approach would recognize that a failing enterprise with continuous cash flow problems would have limited access to financing for capital replacement and/or expansion, despite the health of the overall business. EPA is considering addressing this concern by including, as part of its final analysis, an assessment of changes in enterprise level profitability, in addition to the results of the farm level analysis. This analysis would be conducted using the enterprise level financial data described in Section V.B of this notice. A summary of these data are available at DCN 375084 in the rulemaking record.

Since the publication of the 2001 Notice, EPA has evaluated ways to incorporate an enterprise level analysis as part of its assessment. To evaluate enterprise level effects, EPA is considering using enterprise level net cash income to develop a discounted cash flow (DCF) estimate for each model enterprise over the 10-year time frame of the analysis. The net present value of cash flow is compared to the net present value of the total cost of the regulatory options. If the farm level analysis shows that the regulations impose ''affordable'' or ''moderate'' effects on the operation, the enterprise level analysis would be conducted to determine whether the enterprise's cash flow is able to cover the cost of regulations. Over the analysis period, if an operation's livestock or poultry enterprise maintains a cash flow stream that both exceeds the cash costs of the BAT option (operating and maintenance costs plus interest) and also covers the net present value of the principal payments on the capital, EPA would assume that the enterprise will likely not close due to the CAFO regulations. EPA is also considering whether to add some measure of capital replacement costs to both its farm and enterprise level cash flow analysis. This analysis would be conducted on a pass/fail basis. If the net present value of cash flow minus the net present value of the BAT costs is greater than zero, the enterprise passes the test and the enterprise is assumed to continue to operate. If the net present value of cash flow is not sufficient to cover the net present value of the cost of the regulations, EPA would assume that the CAFO operator would consider shutting down its livestock or poultry enterprise.

The enterprise level analysis would build on the farm level analysis, evaluating effects at a farm's livestock or poultry enterprise. If the operation shows farm level impacts that are ''affordable'' or ''moderate,'' then an enterprise level analysis is conducted to determine whether the operation's livestock or poultry enterprise remains viable. If enterprise level profitability remains positive over the period of the analysis, then the requirements would be determined to be economically achievable to the entire operation, as well as the livestock or poultry enterprise at the business. Enterprise level results would be presented in addition to estimated farm level effects (i.e., estimated farm impacts would comprise a subset of reported enterprise impacts) and both the farm and enterprise level results could be considered in determining economic achievability. Results indicating ''affordable'' or ''moderate'' farm level effects, but where enterprise level profitability is negative (i.e., the farm remains in business but the livestock or poultry enterprise at that business is discontinued) would be subject to further analysis before a final assessment is made. Operations that are determined to experience financial ''stress'' at the farm level would not be further evaluated because it is assumed that these facilities would go out of business. Additional information about this analysis is provided in the rulemaking record (DCN 375084).

3. Other Model Framework Changes

A summary of other changes being considered for the economic models is as follows. First, EPA is considering expanding the range of cost estimates per representative farm to account for variability across operations based on expected capital and management improvements needed, using data from USDA. These data were discussed in the 2001 Notice (see 66 FR 58572–58573). This change, along with other changes to expand EPA's costing approach, would effectively increase the number of cost models in EPA's analysis from about 200 to approximately 1,600 representative models. Second, for reasons outlined in the 2001 Notice, EPA may not include a debt feasibility test as part of its analysis of the final rule because a down payment assumption is not necessary given EPA's joint analysis of debt-to-asset ratios and cash flow (see 66 FR 58583–58584).

EPA continues to review options to consider additional potential cost offsets as part of its final analysis, including available cost-sharing and technical assistance to farmers under various Federal, State and local conservation programs. In particular, at the Federal level, new farm bill legislation passed this spring by Congress may significantly raise government expenditures for USDA conservation programs. For example, total Environmental Quality Incentives Program (EQIP) authorization for FY 2002–2007 is $5.8 billion, ranging from $400 million to $1.3 billion per year over the period. This compares to current authorized levels of about $200 million per year. The new legislation targets 60 percent of available EQIP funds to livestock and poultry producers, including confinement and grass-based systems (the latter accounting for about 70 percent of total livestock and poultry operations). The new legislation also removed the previous eligibility requirements under EQIP that restricted funding for certain structural practices to operations with fewer than 1,000 animal units (as measured by USDA), replacing this with an overall payment limitation of $450,000 per producer over the authorized life of the 2002 Farm Bill. Under EQIP, cost sharing may cover up to 75 percent of the costs of certain conservation practices. The debate surrounding these increased funding levels included a focus on assisting producers to comply with environmental regulations.

EPA believes that this increased funding in EQIP and other USDA conservation programs may benefit

farmers and offset compliance costs incurred by some facilities under the CAFO regulations by increasing farm access to government cost-share dollars and increased technical assistance. EPA is considering two approaches that would incorporate cost share assumptions as part of EPA's CAFO level analysis. One approach would assume that cost sharing would cover up to 75 percent of the estimated capital compliance costs, spread out over the 10 year period of the analysis. A second approach would be similar to that adopted for a previous USDA and EPA impact analysis of confined animal operations and would assume average per-farm cost share information, as reported by USDA, as an offset to estimated capital costs. EPA solicits comment on these possible approaches and requests additional information to incorporate cost share assumptions as part of EPA's CAFO level analysis. Specifically, EPA requests information on how to account for uncertainty about actual program funding levels and uncertainty about which producers would obtain these funds and in what amount.

EPA will also continue to evaluate expected broader market level changes and adjustments. EPA is considering adjustments to the approach used for the proposal analysis by instead utilizing predicted price and quantity changes from EPA's market model analysis. The market model output information would be used to adjust the baseline financial data that are assumed for EPA's CAFO level analysis. Such an approach is more consistent with previous regulatory analyses conducted by EPA's effluent guideline program (*e.g.*: 65 FR 49686). EPA solicits comment on this modification to the approach used for proposal.

B. Changes to the Baseline Financial Data

This section provides information specific to each animal sectors and describes the data that EPA is considering using, given the availability of financial data from a variety of sources. More detailed citations and the actual farm and enterprise level input data that EPA is proposing to use for its analyses are included in the rulemaking record, with a summary of these data available at DCN 375084.

1. Overview

EPA received many comments on the financial data used to estimate CAFO level effects for the proposed rule. For proposal, EPA incorporated only farm level financial data into its analysis. For the final regulations, EPA is considering using these farm level data for some animal sectors, substituting the 1997 USDA with other data received by EPA in conjunction with financial data specified at the enterprise level. This change in the approach and underlying data for the analysis is discussed in the 2001 Notice (see 66 FR 58585–58590). This section discusses the data that EPA is considering using for its final analysis.

For most sectors, EPA will continue to use available 1997 data from USDA reflecting financial conditions at the farm level, which EPA used for proposal. For two sectors—the cattle feeding and hog sectors—EPA is replacing the 1997 USDA data used for proposal with other data presented in the 2001 Notice. For cattle, EPA uses financial data provided by NCBA and FAPRI; for hogs, EPA uses farm level data from USDA. For the dairy and poultry sectors, EPA will continue to employ the 1997 USDA financial data used for proposal.

To address comments that criticize EPA's use of a single year of financial data to reflect baseline conditions, EPA is considering adjusting the financial data for the cattle, hog, and dairy sectors based on other available published data from USDA, FAPRI, and the land grant universities to average out conditions over multiple years. This approach involves incorporating other available data into the analysis to obtain average conditions over a multiple year time frame, as discussed in the 2001 Notice (see 66 FR 58590–58591). Due to lack of multiple years of financial data for the poultry sectors, EPA is not able to use this approach for those types of operations and is instead continuing to use a single year of data.

2. Cattle Sector

As discussed in the 2001 Notice, EPA is considering not using the farm level data used for the cattle feeding sector used in the proposed rule analysis because of USDA concerns that these data are reflective of cow-calf operations and are not suitable for evaluating impacts to cattle feeding operations (see 66 FR 58585–58587). Instead, for its final analysis of impacts to the cattle feeding sector, EPA is considering using financial data submitted by NCBA and FAPRI (see: DCN 175044 and DCN 175038).

For operations with more than 1,000 AU, EPA would use data provided by NCBA for operations with an average of 52,000 head. For operations with between 300 and 1,000 AU, EPA would use data submitted by FAPRI for a 500-head feedlot enterprise. For the purposes of EPA's analysis, and because of lack of additional available data, EPA assumes these data reflect baseline financial conditions for operations with fed cattle, veal, and heifers. Both the NCBA and FAPRI data represent enterprise level conditions. Farm level data are not available; therefore, EPA's analysis will assume that farm and enterprise conditions are the same. Information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

To address recommendations that EPA average out baseline conditions to better account for year-to-year variability and pricing cycles (see 66 FR 58590), EPA uses the three years of survey data (1997–1999) provided by NCBA to calculate an average gross revenue value for its analysis using the sales test. Using the FAPRI data, which provides a 2000 base year along with several years of projected data (2000–2011), EPA uses the first 3-years of reported revenue (2000 to 2002) to obtain an average total revenue value. EPA uses average values to address recommendations expressed during the public comment period that EPA consider ways to depict financial conditions over multiple years, despite the availability of a single year of available data only in some cases (see 66 FR 58590).

Accounting for variability and changing conditions over multiple years is already incorporated into EPA's DCF analysis, which spans a 10-year time frame (1997–2006) and utilizes time series projections. This approach is consistent with that used for the 2001 proposal. For this analysis, EPA obtains net cash income estimates at both the farm and enterprise level for the base year (1997) from the available data. EPA uses NCBA data for 1997 for cattle operations with more than 1,000 AU; EPA derives a base year estimate from available FAPRI data for 2000, back-calculated to 1997 using the NCBA time series data.

EPA projects out the 1997 baseline data using NCBA-reported data on costs and returns to feedlot enterprises, expressed as dollars per marketed head to obtain a cash flow stream over the analysis period (1997 to 2006). NCBA's projection covers the 10-year analysis period, relying on historical data and pricing trends in the cattle cycle that correspond to the three years of data in their survey. EPA uses projected returns made by NCBA that were submitted to EPA, along with comments and alternate financial data on the proposed rule because both FAPRI and USDA baseline projections report net returns to cow-calf operations only, which do not

correspond to cattle feeding operations that are affected by the regulations; other cattle sector projections provided by FAPRI do not cover the 1997–2006 time period for EPA's analysis. The method that EPA uses to project the baseline data follows the approach used for the proposal analysis, as discussed in the Economic Analysis supporting the 2001 proposal. From this projected cash stream, EPA estimates the net present value estimates for use in its DCF analysis. Additional information is available in the rulemaking record (DCN 375084).

For the debt-asset test, EPA is considering using FAPRI data on total assets and total liabilities for similar size operations in this sector, replacing USDA asset and liability data (used for proposal) with alternative FAPRI data. Use of these alternative data address concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs and the data on debt and assets assumed for the proposed rulemaking, as discussed in the 2001 Notice (66 FR 58582–58583).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

3. Dairy Sector

For dairy operations, EPA is continuing to use the 1997 USDA farm level data that were used for the proposal analysis. However, USDA recently submitted alternative farm level data for dairy operations from a 2000 USDA survey of this sector that EPA is considering using. These data include farm and enterprise level data and are available for review at DCN 375085. For the enterprise level analysis, EPA is considering using financial data obtained during the comment period from FAPRI (DCN 175038), as presented in the 2001 Notice (66 FR 58588–58589). Information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

To address recommendations that EPA average out baseline conditions to better account for year-to-year variability and pricing cycles (see 66 FR 58590), EPA would adjust the available 1997 gross income data prior to evaluating these data as part of EPA's sales test using published USDA cost and returns data for U.S. dairy operations, spanning 1993 to 2000. These national level data are used to create an index of 8 years of farm level financial data from which to project out 1997 gross sales data, producing an average 8-year revenue value.

Accounting for variability and changing conditions over multiple years is already incorporated into EPA's DCF analysis, which spans a 10-year time frame (1997–2006). This approach is consistent with that used for the 2001 proposal. For this analysis, EPA obtains net cash income estimates at both at the farm and enterprise level for the base year (1997) from the available data. At the farm level, EPA projects out the 1997 baseline data using USDA-reported net returns for the dairy sector to obtain a cash flow stream over the analysis period (1997 to 2006). At the enterprise level, EPA is considering using the 2000 net cash income for representative dairy operations submitted by FAPRI. The 2000 data are back calculated to 1997 and projected from 2000 to 2006 using the same USDA-reported net returns for the dairy sector used for farms. EPA continues to use USDA's projections because other available projections do not regularly report net returns per milk cow or cover the 1997–2006 time period for EPA's analysis. The method that EPA uses to project the baseline data follows the approach used for the proposal analysis. From this projected cash stream, EPA estimates the net present value estimates for use in its DCF analysis. Additional information is available in the rulemaking record (DCN 375084).

For the debt-asset test, EPA is considering using FAPRI data on total assets and total liabilities for similar size operations in this sector, replacing USDA asset and liability data (used for proposal) with alternative FAPRI data. Use of these alternative data address concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs and the data on debt and assets assumed for the proposed rulemaking, as discussed in the 2001 Notice (66 FR 58582–58583).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

4. Hog Sector

As discussed in the 2001 Notice, EPA is substituting the 1997 USDA data for hog operations used for proposal with other data obtained by EPA since proposal (see 66 FR 58587–58588). For the hog sector, EPA is not using the financial data that it used for the proposal analysis because of concerns expressed by USDA that 1997 data are not representative, because they reflect conditions where hog prices were unusually high. For the final analysis, EPA proposes to use alternate farm level and enterprise level data from USDA. These cover a broader range of hog production types, including both farm and enterprise level conditions across three types of operations: Independent owner-operator farrow-finish and farrowing operations, contract grow-finish operations, and independent grow-finish operations. Information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

As anticipated by EPA in its 2001 Notice, initial data obtained by EPA from USDA were not readily analyzable by EPA and since the publication of the Notice, EPA has been working with USDA to resolve these issues and obtain additional data. Since the publication of the 2001 Notice, EPA has obtained data from USDA that report farm income excluding non-cash items that were included by USDA in the original submittal of these data. USDA's new submittal also includes corresponding farm level data. These data are available in the rulemaking record (DCN 375064).

To average the available baseline financial data over multiple years, EPA adjusts the 1998 data using published USDA cost and returns data for both farrow-finish and grow-finish operations. These data cover 1995 to 1999. For this analysis, EPA uses national level data to create an index to develop 5-years of farm level financial data from which to extrapolate the 1998 farm data. The 1998 data are extrapolated over the time frame by apportioning costs and revenues on the basis of changes in costs, revenues, and returns reported for 1995 through 1999. This type of adjustment is discussed in the 2001 Notice (66 FR 58590–58591) and addresses comments received on the proposal analysis by averaging out baseline conditions to better account for year-to-year variability and pricing cycles. Using this approach and USDA data, EPA obtains the average farm level revenue values that EPA uses for its sales test.

EPA's DCF analysis already incorporates changes over multiple years, spanning a 10-year time frame (1997–2006). This approach is consistent with that used for the 2001 proposal. However, net cash income reported by USDA for hog enterprises in 1998 continues to be negative in some cases. When these 1998 values were extrapolated to the 1995–1999 time period, as is done for the farm level data, cash flow on average over this 5-year period continues to be negative for some representative facilities. The primary reason for these negative income values is that 1998 was a year where hog prices dropped dramatically. At the farm level, USDA-reported net

cash income is positive, although likely low when compared to other years.

Because of persistently negative net cash income due to 1998 market conditions in the hog sector, EPA is unable to readily analyze these data for its analysis and is considering additional modifications to the data obtained by USDA. The principal modification to these data by EPA would be the adjustment of these data to reflect expected price rather than actual price for 1998 and 1999. The approach that EPA proposes to use is based on an approach recommended by USDA Economic Research Service (ERS) personnel. This recommended approach uses price projections from USDA's World Agricultural Supply and Demand Estimates (WASDE) published in 1997 as an indicator of expected 1998 price level in the hog sector. Applying this approach provides an expected price of about $47 per hundredweight (cwt.) across all hog operations for that year, compared to the actual price of under $35 per cwt. reported in 1998. Adjustment of the original USDA data is necessary to avoid the need for EPA to regard these operations as baseline closures and remove them from the analysis.

EPA is considering using the resultant expected price for 1998 to adjust the enterprise level data provided to EPA by USDA. (EPA would not adjust USDA-reported farm level data since these data may be analyzed by EPA without adjustment.) Once the 1998 enterprise level data are adjusted, EPA would derive a base year estimate by back-calculating to 1997 using a 5-year index that EPA created based on the same USDA national level cost and returns data for farrow-finish and grow-finish operations from 1995 to 1999, as is used to extrapolate farm level revenues. EPA is proposing to replace the USDA reported data for 1998 and 1999 with EPA adjusted values based on the expected market prices during this period. EPA solicits comment on this approach. EPA has presented the results of these adjustments of the original data to USDA ERS personnel, who are reviewing the approach and resultant adjustments to these data. EPA would project out the 1997 baseline data using FAPRI timeline data of net returns for the hog sector to obtain a cash flow stream over the analysis period (1997 to 2006). From these data, EPA would estimate the net present value of expected cash flow for use in its DCF analysis. Additional information on EPA's adjustment of these data is available in the rulemaking record (DCN 375083).

For the debt-asset test, EPA is considering using FAPRI data on total assets and total liabilities for similar size operations in this sector, replacing USDA asset and liability data (used for proposal) with alternative FAPRI data. Use of these alternative data address concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs and the data on debt and assets assumed for the proposed rulemaking, as discussed in the 2001 Notice (66 FR 58582–58583).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

5. Poultry Sector

For EPA's farm level analysis, EPA is continuing to use the 1997 USDA farm level data for broiler, egg layer, and turkey operations used by EPA for its proposal analysis. Since proposal, additional farm level data for these sectors have not been made available. EPA also continues to use USDA data on total assets and total liabilities for the debt-asset test, which EPA used for proposal. Despite concerns expressed during the public comment period about EPA's assumptions of baseline debt and equity conditions at CAFOs, EPA was not able to obtain alternate debt-asset information.

For the enterprise level analysis, EPA is considering using enterprise budget data collected by EPA from Oklahoma State University (contract broiler operations), North Carolina State University (contract turkey hen and turkey tom operation), and Iowa State University (independent-owner egg operation). These data are available in the rulemaking record (see: DCN 175024, DCN 375036, DCN 375048, and DCN 375049). Despite an extensive search of available data, EPA is unable to locate financial data that capture each of the possible types of poultry operations, including whether an operation is independently owned and operated or whether the operation raises animals under contract. Additional information on EPA's rationale for selecting these data for its analysis is provided in the rulemaking record (DCN 375084).

Because limited data are available that characterize conditions at farms that raise chickens and turkeys, EPA is not able to locate multiple years of financial data in order to average available data over a multiple year time frame. Therefore, EPA's analysis of the financial effects on broiler, egg, and turkey operations would be based on a single year of input data. Using available data, EPA obtains net cash income estimates at both the farm and enterprise level. EPA would project out the 1997 baseline data using FAPRI timeline data of net returns for the broiler, egg, and turkey sectors to obtain a cash flow stream over the analysis period (1997 to 2006). From these data, EPA would estimate the net present value of expected cash flow for use in its DCF analysis. Additional information is available in the rulemaking record (DCN 375084).

A summary of the baseline financial data that EPA is considering using for its final analysis of this sector is available for review at DCN 375084.

C. Preliminary Analysis Results

EPA's rulemaking record presents a summary of estimated total compliance costs by sector and technology option (pre-tax, 2001 dollars), which are relatively consistent compared to EPA's estimates for the proposed rule across the various technology options. EPA's rulemaking record also provides a comparison of the results at proposal with preliminary results using the data and methodological changes presented in today's notice. As anticipated by EPA in its 2001 Notice, the cumulative effect of each of the methodological changes and uses of alternative financial data for some sectors results in changes to EPA's estimate of the number of operations that may be vulnerable to closure post-regulation (66 FR 58580–58583).

EPA's preliminary results show that the inclusion of an enterprise level financial analysis does not significantly alter the results of EPA's overall analysis (*i.e.*, the enterprise level results do not always differ substantially from the farm level results across all sectors). The use of alternative financial data in the beef and hog sectors, however, does result in changes in EPA's analysis compared to that conducted for the proposed rule, with more beef operations but fewer hog operations expected to experience financial stress from estimated compliance costs. These preliminary results, however, are not driven solely by changes to EPA's financial models but are also driven by underlying changes to EPA's engineering cost models. As discussed in the 2001 Notice, EPA is considering expanding the range of cost estimates per representative farm to account for variability across operations based on expected capital and management improvements needed (see 66 FR 58572–58573).

Overall, EPA's preliminary analysis results show that combined changes to EPA's cost and financial models and input data to address public comments

do not result in significant changes to EPA's regulatory analysis compared to that conducted for proposal. More detailed information on the results of this analysis is provided in the rulemaking record (DCN 375084). These results are preliminary and subject to change, depending on ongoing refinements and corrections made to both EPA's cost and financial models and input data. In addition, these results do not yet consider potential longer-term market adjustment and structural adjustment by regulated facilities. These results also do not take into account potential cost offsets due to available cost share assistance, given increases in government expenditures and changes to program eligibility requirements under the new farm bill legislation.

Dated: July 16, 2002.

G. Tracy Mehan, III,

Assistant Administrator for Water.

[FR Doc. 02–18579 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–P–7611]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Bayou Petit Anse-Deblanc Coulee-Segura Branch Canal			Unincorporated Areas of Iberia Parish.
Approximately 6,100 feet downstream of U.S. Route 90	None	*9	
Approximately 75 feet upstream of U.S. Route 90	None	*10	
Bayou Teche			Unincorporated Areas of Iberia Parish, City of Jeanerette, City of New Iberia, Village of Loreauville.
Approximately 2,200 feet downstream of Lewis Street	None	*8	
Approximately 5,000 feet upstream of State Highway 86 (Daspit Road).	None	*15	
Commercial Canal			Unincorporated Areas of Iberia Parish, City of New Iberia.
Approximately 400 feet downstream of Briarwood Drive	None	*9	
Approximately 450 feet upstream of East Admiral Doyle Drive	None	*10	

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Duboin Canal			Unincorporated Areas of Iberia Parish, City of New Iberia.
Approximately 2,900 feet downstream of East Admiral Doyle Drive.	None	*11	
Approximately 3,250 feet upstream of East Admiral Doyle Drive	None	*16	
Jacks Coulee			Unincorporated Areas of Iberia Parish.
Approximately 2,350 feet downstream of U.S. Route 90	None	*9	
Approximately 150 feet upstream of U.S. Route 90	None	*10	
Little Valley Bayou			Unincorporated Areas of Iberia Parish.
Approximately 750 feet downstream Hardin Street	None	*9	
Approximately 575 feet upstream of Smith Road	None	*11	
Peebles Coulee			Unincorporated Areas of Iberia Parish, City of New Iberia.
Approximately 3,225 feet Downstream of Sidney LeBlanc Road	None	*9	
Approximately 3,100 feet upsteam of James Romero Drive	*13	*12	
Rodere Canal			Unincorporated Areas of Iberia Parish, City of New Iberia
Just upstream of Curtis Lane	*10	*9	
Approximately 1,450 feet upstream of Center Street	*11	*13	
Tete Bayou			Unincorporated Areas Iberia Parish
Approximately 375 feet downstream of Emile Verret Road	None	*13	
Approximately 4,450 feet upstream of Emile Verret Road	None	*15	
Gulf of Mexico			City of Jeanerette.
On Landry Street approximately 1,250 feet southwest of the intersection of Landry Street and Patricia Ann Lane.	None	*9	

*National Geodetic Vertical Datum

Maps are available for inspection at the Iberia Parish Courthouse, 300 Iberia Street, New Iberia, Louisiana.

Send comments to The Honorable Will Langlinais, Iberia Parish President, Parish Courthouse, 300 Iberia Street, Suite 400, New Iberia, Louisiana 70560.

Maps are available for inspection at City Hall, 1010 East Main Street, Jeanerette, Louisiana.

Send comments to The Honorable Arthur L. Verret, Mayor, City of Jeanerette, City Hall, 1010 East Main Street, Jeanerette, Louisiana 70544.

Maps are available for inspection at the Town Hall, 103 South Main Street, Loreauville, Louisiana.

Send comments to the Honorable Forbus Mestayer, Mayor, Village of Loreauville, Town Hall, 103 South Main Street, Loreauville, Louisiana 70552.

Maps are available for inspection at City Hall, 457 East Main Street, New Iberia, Louisiana.

Send comments to The Honorable Ruth Fontenot, Mayor, City of New Iberia, City Hall, 457 East Main Street, Suite 300, New Iberia, Louisiana 70560.

East Marley Creek			Village of Mokena, Will County.
Approximately 800 feet downstream of Wolf Road	*680	*679	
Just downstream of 104th Street	*687	*686	

Maps are available for inspection at the Village Hall, 11004 Carpenter Street, Mokena, Illinois.

Send comments to Mr. Paul Pearson, Mokena Village Engineer, 11004 Carpenter Street, Mokena, Illinois 60448.

Maps are available for inspection at the Land Use Department, Subdivision Engineering Division, 58 E. Clinton Street, Joliet, Illinois.

Send comments to The Honorable Joseph L. Mikan, Will County Executive, 302 N. Chicago Street, Joliet, Illinois 60432.

Elkhorn River			Madison County, City of Tilden, Village of Meadow.
Approximately 4,800 feet	None	*1498	

*National Geodetic Vertical Datum

Elkhorn River			Grove, City of Norfolk, Village of Battle Creek.
Downstream of 558th Avenue			
Approximately 300 feet upstream of Center Street/534th Avenue.	None	*1657	
Union Creek			Madison County
Approximately 1.9 miles upstream of 3rd Street	None	*1589	
Approximately 1.7 miles upstream of 3rd Street	None	*1588	

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
*National Geodetic Vertical Datum			
Maps are available for inspection at Zoning Administration, 1112 Bonita Drive, Norfolk, Nebraska.			
Send comments to Mr. Jerry McCallum, Chairman, Madison County Commissioner, Madison County Courthouse, PO Box 110, Madison, Nebraska 68748.			
Maps are available for inspection at the City Clerk's Office, 202 South Center, Tilden, Nebraska.			
Send comments to The Honorable Steve Rutjens, Mayor, City of Tilden, PO Box 37, Tilden, Nebraska 68781.			
Maps are available for inspection at 102 South Second Street, Battle Creek, Nebraska.			
Send comments to The Honorable Bob Buckendahl, Mayor, City of Battle Creek, PO Box 280, Battle Creek, Nebraska 68715.			
Maps are available for inspection at 208 Main Street, Meadow Grove, Nebraska.			
Send comments to Rita Sparr, Chairperson, Village of Meadow Grove, PO Box 166, Meadow Grove, Nebraska 68752.			
Maps are available for inspection at 701 Koeningstein Avenue, Norfolk, Nebraska.			
Send comments to The Honorable Gordon Adams, Mayor, City of Norfolk, PO Box 110, Norfolk, Nebraska 68701.			
Scioto River			Unincorporated Areas of Ross County, City of Chillicothe.
Approximately 0.1 mile upstream of Main Street	*618	*619	
Approximately 3.2 miles upstream of U.S. Highway 35	*632	*631	
*National Geodetic Vertical Datum			
Maps are available for inspection at the Ross County Engineering Building, 755 Fairgrounds Road, Chillicothe, Ohio.			
Send comments to Mr. James M. Caldwell, Ross County President of Commissioners, Ross County Courthouse, 2 North Paint Street, Suite H, Chillicothe, Ohio 45601.			
Maps are available for inspection at City Office, 118 East Main Street, Bainbridge, Ohio.			
Send comments to The Honorable Bryan Bobb, Mayor, Village of Bainbridge, 118 East Main Street, Bainbridge, Ohio 45612.			
Maps are available for inspection at the Administration Building, 35 South Paint Street, Chillicothe, Ohio.			
Send comments to The Honorable Margaret Planton, Mayor, City of Chillicothe, 35 South Paint Street, Chillicothe, Ohio 45601.			
Elm Creek			City of Grove, Delaware County.
Approximately 700 feet downstream of South Main Street	None	*756	
Approximately 2,700 feet upstream of N4640 Road	None	*837	
Flint Creek			Delaware County.
Approximately 6,850 feet downstream of U.S. 59	None	*858	
Approximately 1,100 feet upstream of D 579 Road (Beckwith Bridge).	None	*889	
Grand Lake of the Cherokees			City of Grove, Town of Bernice, Delaware County.
Entire shoreline	None	*756	
Illinois River			Delaware County.
Approximately 7,150 feet downstream of the confluence of Flint Creek.	None	*851	
Approximately 5,850 feet upstream of the confluence of Flint Creek.	None	*863	
North Tributary to Spring Branch			Delaware County.
Approximately 350 feet upstream of North Cherokee Street	None	*753	
			Delaware County.
Approximately 1,100 feet downstream of North Cherokee Street.	None	*756	
*National Geodetic Vertial Datum			
Maps are available for inspection at the Floodplain Administrator's Office, Delaware County Courthouse, Jay, Oklahoma.			
Send comments to Ms. Pat Lynam, Floodplain Administrator, Delaware County Court House, PO Box 550, Jay, Oklahoma 74346.			
Maps are available for inspection at the City Manager's Office, City of Grove, 104 West 3rd Street, Grove, Oklahoma.			
Send comments to Mr. Richard Ball, City Manager, City of Grove, Court House, PO Box 1268, Grove, Oklahoma 74345.			
Maps are available for inspection at the Mayor's Office, Town of Bernice, 400 East Main, Bernice, Oklahoma.			
Send comments to The Honorable Bill Raven, Mayor, Town of Bernice, 400 East Main, Bernice, Oklahoma 74331.			
Alsuma Creek			City of Tulsa.
Approximately 200 feet upstream of Missouri Kansas Texas Railroad.	*666	*668	
Approximately 150 feet upstream of East 55th Street	None	*680	
Audubon Creek			City of Tulsa.
At the mouth	*638	*637	
Approximately 1,600 feet upstream of East 31st Street South	*674	*673	
Bell Creek			City of Tulsa.
At the mouth	*645	*644	
Approximately 1,200 feet upstream of East 41st Street South	None	*671	
Bell Creek Tributary			City of Tulsa.
At the mouth	*656	*652	

Source of Flooding and Location of Referenced Elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Just downstream of 50th Street South	*680	*682	
Brookhollow Creek			City of Tulsa.
Approximately 150 feet downstream of Mingo Road	*641	*640	
Approximately 150 feet downstream of South 129th East Avenue.	*693	*692	
Catfish Creek			City of Tulsa.
Approximately 50 feet upstream of Railroad Bridge	*669	*668	
Just downstream of East 61st Street	*681	*678	
Cooley Creek			City of Tulsa.
At the mouth	*618	*615	
At the county boundary	*695	*699	
Douglas Creek			City of Tulsa, Tulsa County.
At the mouth	*611	*609	
Just downstream of State Highway 11	None	*630	
Eagle Creek			City of Tulsa.
At the mouth	*607	*608	
Approximately 2,600 feet upstream of East Pine Street	*654	*655	
Ford Creek			City of Tulsa.
At the mouth	*663	*661	
Just down of East 51st Street South	*720	*719	
Fulton Creek			City of Tulsa.
At the mouth	*648	*647	
Approximately 200 feet downstream of 39th Street	*667	*666	
Jones Creek			City of Tulsa.
At the mouth	*631	*629	
Approximately 200 feet upstream of 69th East Avenue	*687	*686	
Little Creek			City of Tulsa.
Approximately 1,200 feet downstream of Mingo Valley Expressway (highway 169).	*601	*602	
Just downstream of 129th East Avenue	*650	*649	
Mill Creek			City of Tulsa.
At the mouth	*623	*622	
Just downstream of East 15th Street	*729	*727	
Mingo Creek			City of Tulsa, Tulsa County.
Approximately 600 feet upstream of East 56th Street North	*590	*589	
Approximately 500 feet downstream of South Memorial Drive	*723	*724	
Quarry Creek			City of Tulsa.
Approximately 350 feet upstream of the mouth	*605	*604	
Just downstream of North 145th East Avenue	*681	*680	
Southpark Creek			City of Tulsa.
At the mouth	*653	*652	
Approximately 6,150 feet upstream of Garnett Road	None	*688	
Sugar Creek			City of Tulsa.
At the mouth	*648	*647	
Just downstream of South 129th	*694	*692	
Tupelo Creek			City of Tulsa.
Approximately 200 feet upstream of Mingo Road	*622	*621	
Approximately 700 feet upstream of East 16th Street	*662	*661	
Tupelo Creek Tributary A			City of Tulsa.
At the mouth	*648	*647	
Just downstream of South 129th East Avenue	None	*696	
Tupelo Creek Tributary C			City of Tulsa.
Approximately 200 feet downstream of South Garnett Road	*642	*643	
Just downstream of South 129th East Avenue	None	*697	

*National Geodetic Vertical Datum

Maps are available for inspection at 200 Civic Center, Tulsa, Oklahoma.

Send comments to The Honorable Jack Page, Floodplain Administrator, City of Tulsa, 111 South Greenwood, Suite 300, Tulsa, Oklahoma 74120.

Maps are available for inspection at the Tulsa County Annex Building, 633 West 3rd, Room 140, Tulsa, Oklahoma.

Send comments to The Honorable Robert Dick, Chairperson, Tulsa County Board of Commissioners, Tulsa County, 500 South Denver, Tulsa, Oklahoma 74103.

For further information please, contact the Map Assistance Center toll free at 1–877-FEMA-Map (1–877–336–2627).

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 15, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18529 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR part 67

[Docket No. FEMA–P–7609]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3461 or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Acting Administrator for Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) ◆(NAVD)	
				Existing	Modified
Arkansas	Saline County (Unincorporated Areas).	Clear Creek	Approximately 4,800 feet downstream of U.S. Route 167.	None	252
			Approximately 350 feet upstream of U.S. Route 167.	None	270
		Duck Creek	Approximately 6,000 feet downstream of S. Springlake Road.	None	253
			Approximately 300 feet downstream U.S. Route 167.	None	275
		Hopt Branch	Approximately 1,500 feet downstream of Honeysuckle Drive.	None	268
			Approximately 4,250 feet upstream of Honeysuckle Drive.	None	285

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) ◆(NAVD)	
				Existing	Modified
		Maple Creek	Approximately 6,200 feet downstream of U.S. Route 65.	None	237
			Just upstream of Springlake Road	None	287
		Maple Creek Tributary	Approximately 4,500 feet downstream of U.S. Route 167.	None	247
			Approximately 100 feet upstream of U.S. Route 167.	None	255
		McCright Branch	Approximately 2,000 feet downstream of Pear Orchard Drive.	None	285
			Approximately 150 feet upstream of Dena Drive.	None	310
		Owen Creek	Approximately 5,000 feet downstream of Midland Road.	None	323
			Approximately 2,000 feet upstream of Hilldale Road.	None	413
Maps are available for inspection at the Saline County Assessor's Office, Real Estate Department 215, Maine Suite 5, Benton, Arkansas. Send comments to The Honorable Lanny Fite, Judge, Saline County, 200 North Main Street, Benton, Arkansas 72015.					
Kansas	Wamego, City of (Pottawatomie County).	East Unnamed Creek	Approximately 1000 feet upstream of Pizza Hut Road.	None	1019
			Approximately 900 feet upstream of Missile Base Road.	None	1041
		East Unnamed Creek Tributary.	Approximately 700 feet upstream of the mouth.	None	1003
			Approximately 850 feet upstream of Graves Road.	None	1012
		North Unnamed Tributary	Just upstream of U.S. Highway 24	None	987
			Approximately 100 feet upstream of Spencer Road.	None	991
Maps are available for inspection at the City of Wamego, 430 Lincoln Avenue, Wamego, Kansas. Send comments to The Honorable David Vanderbilt, Mayor, City of Wamego, P.O. Box 86, Wamego, Kansas 66547.					
Louisiana	Delcambre, Town of (Iberia and Vermilion Parish).	Gulf of Mexico	Intersection of South Railroad Street and East Charity Street.	*11	*10
			Intersection of North Railroad Street and Kirk Street.	*11	*9
Maps are available for inspection at the Office of the Mayor, Town of Delcambre, 107 N. Railroad Road, Delcambre Louisiana. Send comments to The Honorable Carol Broussard, Mayor, Town of Delcambre, 107 N. Railroad Road, Delcambre, Louisiana 70528.					
Minnesota	Northfield, City of (Dakota and Rice Counties).	Cannon River	At downstream corporate limits	899	890
			Approximately 1,200 feet upstream of the corporate limits (Limit of flooding affecting acommunity).	918	913
Maps are available for inspection at 801 Washington Street, Northfield, Minnesota. Send comments to The Honorable Keith Covey, Mayor, City of Northfield, 801 Washington Street, Northfield, Minnesota 55057.					
Minnesota	St. Paul, City of (Ramsey County).	Mississippi River	Approximately 120 feet upstream of the corporate limits.	704	705
			Just downstream of Lock and Dam No. 1	717	716
Maps are available for inspection at the St. Paul Planning & Economic Development, 1300 City Hall Annex, 25 West 4th Street, St. Paul, Minnesota. Send comments to The Honorable Randy Kelly, Mayor, City of St. Paul, 15 West Kellogg Boulevard, St. Paul, Minnesota 55102.					
Missouri	Albany, City of (Gentry County).	East Fork Grand River	.....	None	*849
		Town Branch	.....	None	*846–868
		Town Branch Tributary	.....	None	*850–870
Maps are available for inspection at City Hall, 106 East Clay Street, Albany, Missouri. Send comments to The Honorable John Ricks, Mayor, City of Albany, 106 East Clay Street, Albany, Missouri 64402.					
Missouri	Dalton, Village of (Chariton County).	Missouri River	.....	None	*642–643

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) ◆(NAVD)	
				Existing	Modified
Maps are available for inspection at the Chairman's Home, 109 N. Sycamore Street, Dalton, Missouri.					
Send comments to The Honorable Donald Hughes, Chairman, Village of Dalton, 109 N. Sycamore Street, Dalton, Missouri 65246.					
Missouri	Dunklin County (Unincorporated Areas).	Shallow flooding	Area north of State Route 84 and south of railroad.	*258	*259
Maps are available for inspection at the Courthouse, Court Square, Kennett, Missouri.					
Send comments to Mr. Don Collins, Presiding Commissioner, Dunklin County, P.O. Box 188, Kennett, Missouri 63857.					
Missouri	Pemiscot County (Unincorporated Areas).	Shallow flooding	Area along Route A about 2,000 feet north of State Route 84.	*258	*259
			Area south of City of Bragg City, west of Main Street.	*257	*259
			Area south of City of Bragg City, east of Main Street.	*258	*259
Maps are available for inspection at the Courthouse, 610 Ward Avenue, Caruthersville, Missouri.					
Send comments to Mr. Charles Moss, Presiding Commissioner, Pemiscot County, 610 Ward Avenue, Caruthersville, MO 63830.					
Nebraska	Pilger, Village of (Stanton County).	Elkhorn River		None	*1406–1411
Maps are available for inspection at 220 North Main Street, Pilger, Nebraska.					
Send comments to The Honorable Andy Anderson, Chairman, Village of Pilger, 220 North Main Street, Pilger, Nebraska 68768.					
Nebraska	Stanton, City of (Stanton County).	Elkhorn River		None	*1444–1462
Maps are available for inspection at 800 Eleventh Street, Stanton Nebraska.					
Send comments to The Honorable Tim Kabes, Mayor, City of Stanton, 800 Eleventh Street, Stanton, Nebraska 68779.					
Texas	Galveston County (Unincorporated Areas).	Gulf of Mexico	North of FM 3005, from approximately 1,000 feet west of its intersection with Pirates Beach Circle to approximately 300 feet east of 12 Mile Road.	*13	◆17
			At shoreline, near the Southern terminus of San Domingo Drive, about 100 feet west of the City of Galveston corporate limit, to the corporate limit.	*19	◆20
Maps are available for inspection at 123 Rosenberg Street, Suite 4157, Galveston, Texas.					
Send comments to The Honorable Jim Yarborough, Galveston County Judge, 722 Moody Street, Suite 200, Galveston, Texas 77550.					
Texas	Galveston, City of (Galveston County).	Gulf of Mexico	At the northern terminus of 9 Mile Road	*13	◆18
			Along the shoreline extending from approximately 1,500 feet east of the southern terminus of 11 Mile Road to Pabst Road.	*19	◆20
Maps are available for inspection at City Hall, 823 Rosenberg Street, Galveston, Texas.					
Send comments to The Honorable Roger Quiroga, Mayor, City of Galveston, 823 Rosenberg Street, Galveston, Texas 77550.					
Texas	Jamaica Beach, Village of (Galveston County).	Gulf of Mexico	From the canal northwest of Bahama Way to West Bay.	*12	◆14
			Along the shoreline extending from the western corporate limit to the southern terminus of Buccaneer Drive.	*18	◆20
Maps are available for inspection at 16628 San Luis Pass Road, Jamaica Beach, Texas.					
Send comments to the Honorable Victor Pierson, Mayor, Village of Jamaica Beach, 16628 San Luis Pass Road, Jamaica Beach, Texas 77554.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 15, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–18530 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–02–12845]

RIN: 2127–AH71

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise the Federal motor vehicle safety standard for accelerator control systems. The standard seeks to reduce deaths and injuries resulting from engine overspeed caused by malfunctions in these systems. When the standard was originally drafted and issued, most systems were mechanical. Now, increasing numbers of systems are electronic, electric or hybrid. The revised standard would explicitly apply to these systems, and contain provisions addressing the distinctive failure modes of each type of system.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 23, 2002.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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Proposed Regulatory Text

I. Background—History of Standard No. 124

The purpose of Standard No. 124, Accelerator Control Systems, 49 CFR 571.124, is to reduce deaths and injuries resulting from failures of a vehicle's accelerator control system. Since 1972, Standard No. 124 has specified requirements for ensuring the return of a vehicle's throttle to the idle position under each of the following circumstances: (1) When the driver removes the actuating force (usually the driver's foot) from the accelerator control (usually the accelerator pedal), and (2) when there is a severance or disconnection in the accelerator control system (''fail-safe'' operation). Standard No. 124 applies to passenger cars, multipurpose passenger vehicles, trucks, and buses.

Standard No. 124 at S5.1 requires that each vehicle have ''at least two sources of energy,'' each independently capable of returning the throttle to the idle position, within the time specified in paragraph S5.3, from any accelerator position or speed whenever the driver removes the actuating force. The Standard defines the throttle as ''the component of the fuel metering device that connects to the driver-operated accelerator control system and that by input from the driver-operated accelerator control system controls engine speed.''

Paragraph S5.2 requires that the throttle return to idle ''whenever any one component of the accelerator control system is disconnected or severed at a single point.'' This requirement must be met within the time specified in paragraph S5.3.

Paragraph S5.3 requires the throttle to return to idle within one second for vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less and within two seconds for vehicles with GVWRs greater than 10,000 pounds. The return-to-idle time is increased to three seconds for any vehicle that is exposed to ambient air at 0 degrees to −40 degrees Fahrenheit during the test or for any portion of a 12-hour conditioning period.

II. Standard No. 124 and Electronic Accelerator Control Systems

When originally promulgated, the definitions and requirements of Standard No. 124 were easy to apply because they were based on the then-universal mechanical control systems. The ''throttle'' of a gasoline engine was the carburetor shaft that opened and closed the air intake passages. The ''throttle'' of a diesel engine was the control rod or rack that controlled fuel flow to the high pressure injectors. The two energy sources were simply two return springs acting on the linkage between the accelerator pedal and the throttle. If at least one of those springs

were connected directly to the carburetor or to the diesel fuel injection rack, it would cause the throttle to return to idle in the event of a disconnection of the pedal linkage. If the disconnection occurred at one of the springs, the other would permit continued driver control.

Since Standard No. 124 was issued, electronic engine controls using computer systems have become commonplace. Electronic accelerator linkages have become so common on large trucks that a mechanical accelerator linkage controlling a fuel injection rack is now rare on those vehicles. Already the norm for large trucks, fully electronic accelerator controls, or ''throttle-by-wire'' systems, have recently been introduced on light trucks and passenger cars. In these systems, the driver's pressure on the accelerator pedal is sensed electronically and is transmitted to the device on the engine which controls engine power.

The introduction of electronic systems led to questions about whether and how they were regulated by Standard No. 124. Isuzu Motors America, Inc. (Isuzu) wrote first, asking a variety of questions concerning electronic systems. Isuzu suggested that some of the language in the standard seemed more appropriate for mechanical accelerator systems than for electronic ones. Its central question was whether the standard applies to electronic systems. Among other questions, Isuzu asked whether a severance in electric wires in its electronic accelerator control system is a severance within the meaning of S5.2 of the standard. Isuzu expressed its belief that, because the electric wires were not a ''moving part,'' the answer should be no.

In an August 8, 1988 interpretation letter to Isuzu, NHTSA disagreed with Isuzu's position. NHTSA stated that the standard, which refers generally to accelerator control systems, instead of specifically to ''mechanical'' systems, applies to electronic accelerator control systems. The agency interpreted Standard No. 124's requirement that the throttle must return to idle ''whenever any one component of the accelerator control system is disconnected or severed at a single point,'' to include all severances or disconnections of any component of the accelerator control system as it is defined in the standard, not just disconnections of moving parts. NHTSA subsequently reiterated its position that Standard No. 124 applies to electronic accelerator controls in letters of November 9, 1988 to Caterpillar, Inc.; September 23, 1992 to Bendix Heavy Vehicle Systems; and August 7, 1996 to Philips Research Lab Aachen.

Although the agency has applied Standard No. 124 to electronic accelerator control systems on several occasions, manufacturers continue to question whether the Standard applies to these systems. One correspondent assumed, incorrectly, that since electronic accelerator control systems do not include springs and linkages beyond the pedal assembly as described in Standard No. 124, the electronic components of such systems were not regulated. Similarly, other correspondents have believed Standard No. 124 to mean simply that two return springs should be placed on the accelerator pedal assembly.

In response, the agency has recited in its interpretation letters the requirement that the sources of energy must be capable of returning the throttle to idle in the event of any single severance or disconnection. NHTSA noted that although the use of two springs on the pedal assembly may represent good pedal design, it does not intrinsically overcome a disconnection anywhere within an electronic accelerator control system. Good pedal design by itself does not provide an electronic accelerator control system with the same degree of fail-safe operation provided in a mechanical system by having a return spring directly on the throttle or fuel injection rack. The springs on the throttle or fuel injection rack in a traditional mechanical system could overcome an accelerator control disconnection and return the throttle to idle regardless of where in the system the disconnection occurred. In an electronic accelerator control system, disconnection or severance of the wiring between the pedal position sensor and the engine control processor, between the engine control processor and the throttle on the engine, and in the power and ground connections to the engine control processor are failures analogous to the disconnections of mechanical linkages. Those failures cannot be addressed by focusing solely on the pedal.

Some parties have recognized the analogy between wire severance or disconnection and mechanical linkage severance or disconnection but, because of the standard's lack of specificity, still found it necessary to ask whether the standard applies to short circuits of connecting wires as well as open disconnections.

III. Why We Propose to Amend Standard No. 124

The need for interpretation letters drawing analogies between traditional mechanical components and new electronic systems results from the present regulatory language that reflects the design of mechanical systems. Now that electronic accelerator controls are becoming increasingly commonplace, there is a growing need to revise Standard 124 to address electronic control systems explicitly. As an example, although the term ''throttle'' is not ambiguous for mechanical systems, it loses its clarity when applied to a diesel engine with electronically controlled fuel injectors because the functional throttle position is the product of the combined duty cycle of the engine's injectors and thus cannot be measured by observing the position of any single component. Regulatory language that specifically addresses ''throttle'' in the context of electronic controls systems would help make it explicit not only that Standard No. 124 applies to electronic control systems, but also how it applies to them.

We are also concerned that regulating electronic systems by drawing analogies to mechanical systems has the undesirable effect of limiting the permissible responses to failures in electronic systems to only the fail-safe modes that are possible with mechanical systems. The only response that the present standard recognizes for fail-safe performance is the return of the throttle exactly to the idle position. However, the real issue is the return of engine power to a benign idle state as a fail-safe response to a disconnection in the accelerator control system. Electronic engine controls can reduce the engine power through control of fuel pressure, spark timing, and other factors independent of throttle position. It is neither necessary nor desirable to limit the ways in which fail-safe performance can be achieved by electronic accelerator controls systems.

IV. 1995 Request for Comments

In a Request for Comments published in the **Federal Register** on December 4, 1995 (60 FR 62061), NHTSA introduced the subject of revising Standard No. 124 to add specific provisions for electronic accelerator controls. The notice asked for explanations of the principles of operation and fail-safe provisions of systems in use. It also presented for discussion the idea of identifying each potential failure mode of an electronic accelerator control system and a corresponding fail-safe requirement practicable for each failure mode, as

well as the alternative idea of a redundant engine controller active only at the idle position of the accelerator pedal.

In general, the comments of vehicle and engine manufacturers did not address the specific questions in the notice. Instead, they voiced a preference for rescinding the standard altogether, suggesting that market forces and litigation pressure are sufficient to assure fail-safe performance without a Federal motor vehicle safety standard. However, they also commented that, should the agency disagree about rescission, a standard specifying fail-safe performance in the least design-specific terms would be preferable to the requirements suggested in the Request for Comments.

V. 1997 Public Technical Workshop

On May 20, 1997, NHTSA held a public technical workshop on electronic accelerator controls, with the participation of the Truck Manufacturers Association (TMA) and the organization then known as the American Automobile Manufacturers Association (AAMA). Both organizations made brief presentations about the general operating principles of electronic accelerator controls and emphasized that there had been no safety-related developments concerning electronic accelerator controls to justify applying Standard No. 124 to such systems, which they would consider an increase in the scope of the standard.

AAMA identified the following problems in defining the safety performance of electronic accelerator controls: How to define ''idle''; how to define ''severance'' and ''disconnection''; how to handle ''limp home'' strategies; how to specify a test procedure; and how to specify where in the engine management system disconnections and severances should be considered failures of the accelerator control system. TMA stressed that the idle speed is dependent on environmental and operating conditions and is somewhat variable by necessity; therefore, ''return to idle'' must refer to a range of operation identified by the manufacturer as appropriate for conditions and not simply as a throttle position.

During the meeting, we responded to these comments by stating that we were seeking neither to increase nor decrease the scope of Standard No. 124, but to have a standard that was clear and adequate in its application to electronic accelerator controls and that was as performance-oriented as possible. We agreed that existing electronic accelerator control systems appeared to be safe and that present regulation by analogy was inadequate only in its lack of clarity regarding its applicability and its exclusion of new fail-safe strategies. We invited the attendees, and especially the industry associations, to provide specific recommendations for regulatory text that would address the difficulties in updating Standard No. 124.

TMA and AAMA each submitted suggested regulatory text amending the Standard to accommodate electronic accelerator controls. Their comments, including their suggestions about text, may be viewed in the docket for the present notice. As discussed in the next section, our proposed revision of Standard No. 124 draws on their suggestions, but differs in several important ways.

VI. Notice of Proposed Rulemaking

A. Scope of the Proposed Revision of Standard No. 124

In response to the industry's concerns, we seek to ensure that the scope of the proposed standard remains the same as that of the present standard. Nothing in this proposed rule intentionally changes the scope of Standard No. 124. For example, where the present standard applies only to single-point severances or disconnections such as the disconnection of one end of a throttle cable, the proposed standard also is limited to single-point severances and disconnections such as unhooking one electrical connector or cutting a conductor at one location. The proposal does not attempt to make the requirements more stringent by requiring fail-safe performance when multiple severances or disconnections occur simultaneously.

Electronic accelerator controls are more complex than mechanical accelerator controls. The revised standard in this proposal appears correspondingly more complex than the present standard, but the added regulatory text is for the purpose of greater specificity. Lack of specificity in the present standard has led some parties to believe that electronic accelerator controls are regulated less comprehensively than mechanical accelerator controls. This amendment also enhances design freedom and avoids greater burden on manufacturers by addressing types of accelerator controls other than mechanical air throttles and by allowing fail-safe strategies other than return of the air throttle to a mechanical stop.

The agency's view of the scope of the Standard differs from the suggestions made in 1997 by TMA and AAMA with regard to whether an electronic accelerator control system is comprised only of the pedal position sensor and its wiring to the input of the engine control module (ECM), or whether it extends beyond the ECM to include connections to the actual throttling device on the engine.

AAMA argued that the ECM itself should be considered the throttle. We do not agree with this position. We believe that the throttle is the air intake valve, or throttle plate (which is housed in the ''throttle body''), for a conventional gasoline engine. In versions of this engine with mechanical accelerator controls, a cable or linkage that is clearly part of the accelerator control system operates the air intake valve. If the cable or linkage is disconnected at the air intake valve, the present standard requires the air intake valve to close by means of a spring or other source of energy. Versions of this engine with electronic accelerator controls have a similar throttle to which is added an electric actuator to open and close the air intake valve. If the electrical connection between the ECM and the electric actuator of the air intake valve were disconnected, no corresponding fail-safe action would be required in AAMA's view of the scope of the standard. This view is contrary to the analogies between mechanical and electronic systems that form the basis of the legal interpretations of the present standard.

B. Components of an Accelerator Control System

The present standard refers to the accelerator control system in general terms, defining it in S4.1 as ''all vehicle components, except the fuel metering device, that regulate engine speed in direct response to the movement of the driver-operated control and that return the throttle to the idle position upon release of the actuating force.''

In this proposed rule, we treat an accelerator control system (ACS), whether electronic or mechanical, as a series of linked components extending from the driver-operated control to the fuel metering device on the engine or motor. A severance at any one point in the system should not result in losing control of engine power. Electronic systems with wires, relays, control modules, and electric actuators joining the accelerator pedal to the throttle or injectors on the engine are analogous to mechanical systems in which levers, linkages, pivots, cables, and springs serve the same purpose. This definition also applies to an ACS that mixes mechanical and electronic components.

In a mechanical control system, it is reasonably clear which vehicle components comprise the ACS, and it is therefore not difficult to apply the definition used in the present standard. Electronic ACSs are less easily defined than mechanical ones because a variety of components can influence engine speed without being in the direct line of action between the accelerator pedal and the throttling device on the engine.

One possible approach to defining an electronic ACS would be to list in the standard exactly which components, connections, modules, etc., make up an ACS and are subject to the fail-safe requirements. This explicit approach would provide for a high degree of clarity, but would tend to produce a standard lacking flexibility. There is the possibility that any connective component omitted from specific mention in the standard would be excluded from regulation, whether intentionally or not.

The alternative regulatory approach, and the one that we have chosen to employ in the proposed standard, is to specify in general terms the connective components that are regulated. This general approach lends a high degree of flexibility to the standard by leaving open the possibility that the regulatory language can be adapted to new technology.

We agree with TMA and AAMA that there is no evidence of a new safety problem requiring an increase in the scope of Standard No. 124. Since the scope of the fail-safe requirements is still limited to the ''connective components'' of accelerator control systems, we believe the proposed standard adheres to the scope of the existing standard.

Nevertheless, this notice lists some common components of an ACS to illustrate the intent of the proposed standard and to make it clear that these components are considered part of the ACS. The following paragraphs list some of the connective components of electronic accelerator control systems subject to the fail-safe requirements of Standard No. 124, as well as elements of mechanical accelerator control systems always understood to be covered by Standard No. 124.

1. Connective Components of an Air or Fuel-Throttled Engine's ACS—For an air-or fuel-throttled engine, the critical connective components of the accelerator control system are: (1) The springs or other sources of energy that return the driver-operated control and the throttle to the idle position; (2) the linkages, rods, cables or equivalent components which are actuated by the driver-operated control; (3) the linkages, rods, cables or equivalent components which actuate the throttle; (4) the hoses which connect hydraulic or pneumatic systems within an accelerator control system; (5) the connectors and individual conductors in the electrical wiring which connect the driver-operated control to the engine control processor; (6) the connectors and individual conductors in the electrical wiring which connect the engine control module (ECM) to the throttle or other fuel-metering device; and (7) the connectors and individual conductors in the electrical wiring which connect the ECM to the electrical power source and electrical ground.

With regard to the ECM itself, the agency believes that an electronic accelerator control system necessarily includes the ECM as one component. However, we view the fail-safe requirements of the Standard as pertaining to the connective elements rather than the internal elements of the ECM. We agree with TMA and AAMA that internal elements of the ECM are analogous in function to the internal elements of a carburetor or fuel injection distributor, which have never been included in the fail-safe requirements of the Standard. The wiring and connectors between the pedal position sensor and the ECM, the wiring and connectors between the ECM and the physical fuel-metering device on the engine, and the power and ground connections to the ECM are all connective rather than internal elements.

2. Connective Components of an Electric Propulsion Motor—For an electric motor, the critical connective components of an accelerator control system are: (1) The springs or other sources of energy that return the driver-operated control and the motor speed controller to the idle position; (2) the linkages, rods, cables or equivalent components which are actuated by the driver-operated control; (3) the linkages, rods, cables or equivalent components which actuate the motor speed controller; (4) the hoses which connect hydraulic or pneumatic systems within an accelerator control system; (5) the connectors and individual conductors in the electrical wiring which connect the driver-operated control to the motor speed controller or motor control processor; (6) the connectors and individual conductors in the electrical wiring which connect the motor control processor to the motor speed controller; (7) the connectors and individual conductors in the electrical wiring which connect the motor control processor to the electrical power and electrical ground; and (8) the connectors and individual conductors in the electrical wiring from the motor speed controller to the electric traction motor.

C. Inadequacy of Present Performance Criteria

At present, Standard No. 124's performance criteria are based on measuring the position of the ''throttle,'' which is defined as the component of the fuel metering device that connects to the driver-operated accelerator control to regulate engine power and speed. The advantage of this indicator of accelerator control operation is that it is simple to measure. The lag time of the actual change in engine power and speed, which can be considerable because it depends on engine characteristics such as compression and rotational inertia and test conditions such as load and temperature, does not complicate the determination of whether the throttle returns to idle within the required time. The typical throttle of a gasoline engine is the ''butterfly'' plate in the air intake.

However, the convenient measurement of throttle plate position, has no literal meaning for many engines other than conventional gasoline engines. For a modern diesel engine, the hydraulically actuated, electrically controlled unit injection (HEUI) fuel injectors function as multiple throttles, and for a vehicle powered by an electric motor, the motor speed controller is considered the throttle. For HEUI fuel injectors and for electric motor speed controllers, there is no observable component equivalent to a throttle that changes position when the accelerator control is operated.

Furthermore, electronic accelerator control systems now being installed on some gasoline engines have a spring-centered throttle plate. In the absence of an electrical signal at the throttle plate actuator, the spring-centered throttle opens much more than the usual idle position. In the event the electronic accelerator control is disconnected from the throttle plate actuator, these engines cannot satisfy the present fail-safe criterion that the ''throttle return to the idle position.'' On the other hand, engines of this design can accomplish the essential fail-safe performance of returning engine power to a satisfactory idle condition through spark timing control or other means. However, strategies other than throttle plate return would not be recognized as being in compliance under the present Standard. For these reasons, we propose alternative performance criteria to recognize the various ways in which a return to idle state power can be achieved.

D. Criteria for Return to Idle in Normal Operation

Like the present Standard, the proposed Standard has return-to-idle time requirements for two operating conditions: (1) Normal operation of intact accelerator control systems, and (2) fail-safe operation in the event of a severance or disconnection in the accelerator control system. Regarding normal operation, the proposed Standard has retained return of the air throttle to the idle position as the criterion for air-throttled (gasoline) engines. The criterion is still valid for normal operation of engines with mechanical accelerator controls and also for air-throttled engines with electronic accelerator controls.

1. Diesel Engines—For diesels (and other fuel-throttled engines), this proposal accepts TMA's suggestion that the return of the fuel delivery rate (gallons/minute of fuel entering the combustion chambers of the engine) to the idle state be used as the return to idle criterion. For these engines, power is controlled directly by controlling the fuel flow. The result of rapidly returning the accelerator control to idle is a rapid return of the fuel rate to the steady idle rate without the lag required to see the effect on engine speed. In this respect, the fuel rate of fuel-throttled engines is much like the throttle position of air-throttled engines.

2. HEUI Injectors With Multiple ''Throttles''—An engine with a HEUI injection system, now commonplace in commercial trucks, is potentially problematic with respect to return to idle criteria because it has multiple ''throttles,'' its individual HEUI injectors, which can operate independently of each other. This difficulty is overcome by using a measured fuel rate that combines the action of the individual injectors and represents the steady effect of all the injectors' dynamic duty cycles (percent open time or pulse width and frequency). It also solves the problem of the lack of a throttle reference position and thus provides a satisfactory return-to-idle indicant. For many trucks, a fuel rate signal that computes the combined effect of fuel pressure and fuel injector duty cycles is available as a diagnostic signal at the ECM. For engines without a reliable diagnostic signal, direct measurement of fuel flow in the supply and return lines would be necessary.

3. Electric Motors—For vehicles powered by electric motors, the electric power input at the drive motor (computed from voltage and current) can be used as the indicant of return-to-idle. This measurement represents the operation of the motor speed controller that, like an electronic fuel injector, is a throttle without a measurable reference position. Since propulsive power is directly proportional to the drive motor input current and voltage, this indicant is equivalent to throttle position.

4. Response Time Requirements Will Be Retained—AAMA suggested eliminating the response time requirements for return to idle in normal operation, but the agency has chosen to retain these requirements. The elimination of the requirements for normal operation was the subject of a prior NPRM (see 61 FR 19020; April 30, 1996) (No DOT Docket No.) which was withdrawn (see 62 FR 10514; March 7, 1997) (No DOT Docket No.). These requirements continue to protect against accelerator controls with poor operation due to mechanical friction.

E. Fail-Safe Performance Criteria

In the case of fail-safe operation, electronic accelerator control systems can have a variety of ways of curtailing vehicle power in response to an accelerator control system failure. Our intent in the proposed Standard is to take advantage of those possibilities by establishing fail-safe criteria that are performance-oriented rather than design-oriented.

AAMA suggested a criterion for fail-safe behavior in the event of a disconnection or severance of the accelerator control system that is strictly performance based and applies to all forms of vehicle propulsion. That criterion was that the maximum time to return to the idle state in the presence of a single severance, disconnection, or short circuit not exceed the time to return to the idle state in the absence of any such fault by more than three seconds. AAMA further suggested that the engine RPM would be used as the idle state indicant for this test.

This suggested criterion appears to be simple and easily attainable because of the extra three seconds of reaction time, but it is actually a rigorous requirement and a difficult test to perform. We propose not to restrict the test to operation in neutral, as initially suggested by AAMA, because that restriction would neglect real driving safety. We propose that in order to adequately determine whether propulsive power is returned to the idle state, the appropriate time to be measured is the time for a whole vehicle to slow from any speed and power condition back to the speed at which the engine is at the idle RPM. It could easily take 60 seconds for a vehicle to slow from 70 mph to an idle speed of perhaps 20 mph as a result of simply lifting the driver's foot from the accelerator pedal. Random differences in the effect of wind and road surface alone make it unlikely that successive runs, even with a vehicle free of faults, would be repeatable within 3 seconds unless performed on an indoor dynamometer. Also, much of the deceleration is the result of engine braking (negative driving torque), and it is arguable that the safety purpose of the standard is satisfied by the cessation of driving torque alone as a fail-safe response.

In the proposed rule, we have included AAMA's suggested RPM test as performed on a dynamometer, in S6.4, as a compliance test of fail-safe performance, and have made it valid for any type of engine or motor. With the RPM test, the proposed standard includes a compliance test that is purely performance-based and independent of design. However, the RPM test is not the sole fail-safe test in the proposed standard because of the disadvantages just described. This is because there are several optional tests in addition to the RPM option for demonstrating fail-safe performance that, though their applicability depends on design, will be simpler and less burdensome to perform than the RPM test for most vehicles.

1. Alternative Fail-Safe Performance Tests for Air-Throttled Engines—For air-throttled engines, we propose three alternative tests. The first test is the return of the throttle plate to the idle position. This alternative is identical to the present standard and is the least burdensome test for many vehicles in current production. The second test alternative for air-throttled engines is return of the fuel rate to the idle state. For engines of this type, engine power cannot vary substantially from the idle state if the fuel rate is constrained to the value observed at the idle state. Thus, fuel rate is a reliable indicant that engine power is under control. The third test, the RPM test, can be used if neither of the other two tests is compatible with the vehicle's fail-safe design.

2. Alternative Fail-Safe Performance Tests for Fuel-Throttled Engines—Since fuel-throttled engines such as diesel engines may operate with excess air in the combustion chambers, neither the position of an air throttle, if one is present, nor the air intake rate would be an accurate indicant of engine power. Fuel rate, on the other hand, is an accurate and sufficient indicant of engine power for these engines. Consequently, we have included the same fuel rate criterion specified for normal operation of fuel-throttled engines as an optional test for fail-safe

performance of those engines. This test was suggested by TMA for both normal and fail-safe operation. As stated above, the RPM test is the other option for these types of engines.

3. Alternative Fail-Safe Performance Tests for Electric Vehicles—For vehicles driven by electric motors, we are proposing that the normal operation criterion for measuring throttle return time of vehicles driven by electric motors, i.e., return of the drive motor electric power input to the idle state, be used as an optional test of fail-safe performance for these vehicles. Again, as stated above, the RPM test is the other option for these vehicles.

4. Alternative Fail-Safe Performance Tests for Hybrid Vehicles—For a hybrid vehicle with more than one type of propulsion system, the RPM test could be applied to the various propulsion systems working together. Alternatively, the fail-safe performance of the accelerator controls of each separate propulsion system could be demonstrated independently using either optional tests appropriate for each propulsion system or the RPM test.

F. Irrevocable Selection of Test to Which Vehicle is Certified

While we propose alternative compliance options in order to minimize the burden on manufacturers, we are also proposing to require manufacturers to declare the option to which their compliance is certified before the agency performs any compliance test of its own. We have noted previously that when a safety standard provides manufacturers with more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test.

We have had previous experience with enforcing standards having compliance options without an irrevocable election provision. A manufacturer may certify a vehicle based on one compliance option but subsequently, when confronted with an apparent noncompliance (based on a compliance test) consistent with that choice, argue that the compliance test is irrelevant because the vehicle complies with a different compliance option. Such a shift in the manufacturer's compliance stance would create obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities. By granting manufacturers the flexibility of compliance alternatives, the agency does not intend to impose upon itself an obligation to test each vehicle with each compliance option to determine whether the vehicle in fact complies with this standard.

To avoid this circumstance, we intend to compel manufacturers to inform the agency, when asked to do so, of the compliance option on which its certification is based. The agency will test the vehicle in accordance with that information and further will consider that choice irrevocable. We will consider that test to be prima facie proof of compliance or noncompliance, without regard to whether the vehicle may comply with another option the manufacturer was not intending to rely on. Further, we believe that a post hoc argument that a different option can apply raises serious questions about the manufacturer's compliance with its obligations under 49 U.S.C. 30115 to ensure, using reasonable care, that its certificate is neither false nor misleading.

G. Definition of ''Idle State''

TMA and AAMA advised the agency in their comments that the idle state is not fixed but varies according to a number of factors such as engine temperature, accessory load, and emission controls. It may not be possible for a manufacturer to specify absolute values for operating characteristics of the idle state like throttle opening, engine speed, and fuel rate because those characteristics can change according to conditions, e.g., if the engine is warming up or the vehicle's air conditioning is turned on. As a result, the idle state can vary over a limited range without any input from the accelerator pedal. The idle state also can be modified by speed setting devices such as cruise control. Further, some engines may now employ a ''limp home'' mode which can adjust engine operation to prevent stalling in the event of a malfunction and to provide enough power for a vehicle to be moved from an unsafe location.

For mechanical accelerator control systems, the current standard accommodates the existence of a range of idle states by allowing any idle position ''appropriate for existing conditions.'' Thus, in a traditional air-throttled engine in which the idle position is determined by a mechanical throttle stop, the throttle stop itself can change position as dictated by operating conditions. For example, it may move to a position of increased throttle opening when the engine is cold. For compliance testing, the throttle stop provides a convenient reference position that makes determination of compliance a simple matter.

In vehicles with electronic engine controls, there may be no reference position like a throttle stop. Therefore, it is necessary to establish a reference or baseline value for the idle state, whether it is measured by throttle position, fuel rate, RPM, or electrical power input. The standard could require that the manufacturer specify a value for the baseline, but it would be burdensome to have to obtain idle state data for each of the numerous possible combinations of operating conditions for each vehicle used in compliance testing.

Instead, it is easier and more practical to establish a baseline simply by measuring the initial value of the applicable idle state indicant (throttle position, fuel rate, RPM, electrical power input, etc.) at the beginning of a compliance test (i.e., immediately before the fault is induced). The initial value is an appropriate baseline because it accounts for whatever operating conditions exist. Further, it is a convenient baseline because it is measured directly at the time of the test, and does not depend on information provided by the vehicle manufacturer.

Once the baseline is established, the value of the idle state indicant at the end of the test should be expected to be the same as the baseline value established at the start of the test. Compliance is indicated by whether or not the idle state returns to the baseline value within the elapsed time specified in S5.3.

However, this approach only works if operating conditions such as engine temperature, ambient temperature, accessory load, etc., are constant during a test because on many vehicles there is no idle reference position that adjusts along with those conditions. On an electronic engine, idle state adjustments due to changes in operating conditions would likely take place in the internal circuitry of the ECM. Consequently, a noncomplying increase in idle state might be indistinguishable from a permissible one.

Because of this, the proposed standard specifies that operating conditions must be held constant during the test procedures. In a compliance test, the engine must be stabilized before the test and all accessory controls held constant so that any conditions that affect idle state do not change during the course of the test. In order to eliminate variations in engine idle that are not controlled by the driver, the engine will be operated long enough to release the cold start mechanism as well as to stabilize the emissions controls. The reference or baseline value is established by observing the value of the idle state indicant for an engine with a normally functioning accelerator control system. For normal operation, the idle

state following any input to the accelerator pedal is compared to baseline value, and in fail-safe operation, the idle state following a disconnection in the accelerator control system is compared to the baseline value. Return to the baseline must occur within the specified time span. With the engine operating in a steady state with all accessory controls held constant, any difference in the ''before and after'' idle states could not be attributed to a change in operating conditions.

H. Handling Limp Home Strategies

Limp home strategies allow for a temporary increase in idle speed to keep an engine from stalling as a result of certain malfunctions, and enhance safety and convenience by preserving limited mobility to get a partially disabled vehicle off the roadway. The test procedures for fail-safe performance identify the baseline idle state as the idle state for a vehicle without a fault in the accelerator control system (although the test could be run with faults in other engine systems). The test requirements do not allow the vehicle to comply if it is in a higher idle state at the end of the test because there would be no real fail-safe requirement. Whatever idle state resulted from a fault in the accelerator control system could be claimed as a limp-home mode induced by the fault. The question of compliance would be essentially rendered moot (although an unsafe idle condition might be considered a vehicle safety defect.)

Neither TMA nor AAMA discussed the possibility of manufacturers creating a limp home strategy specifically for accelerator control system faults such as disconnections and severances. However, the agency considered a hybrid vehicle, the Toyota Prius, which was designed with a ''limp-off-the-road'' mode for such faults. In this case, a disconnection of the pedal position sensor causes the electric traction motor to receive enough power to move the vehicle off the road. To assure safety, the power is removed upon any activation of the service brake.

We do not view this design as presenting a safety or compliance testing problem. Under the proposed test procedures, fail-safe performance tests would be conducted with the brake pedal (or brake lamp switch) depressed by the minimum amount necessary to cancel the limp-off-the-road idle state during introduction of accelerator control disconnections. We are proposing to include paragraph S5.4 in the Standard to permit limp-off-the-road idle states for accelerator control system faults, but only if they are canceled by any use of the service brake. We have chosen to refer to these as ''limp-off-the-road'' modes because we believe that term is a more accurate description of what their purpose should be, and also to distinguish them from ''limp-home'' modes that are designed to function in response to faults not involving the accelerator control system.

I. Severance and Disconnection

Under the proposed revised standard, electrical connections could be tested for disconnection of a whole connector and for the severance of each individual conductor in the wiring at the connector. Each conductor could be either left open or shorted to ground. This treatment is consistent with the prior agency legal interpretations of the standard relating to single point disconnections and severances in electronic accelerator control systems. (See NHTSA interpretation letter of August 8, 1988 to Isuzu Motors America, Inc.)

In the test procedures of the proposed regulatory text, ''induce fault'' refers to the act of disconnecting one component of the accelerator control system, or severing a single conducting wire to a component, or disconnecting or severing one mechanical linkage or spring within the accelerator control system.

J. Two Sources of Energy for Returning Throttle to Idle

At present, Standard No. 124 at S5.1 states that there shall be at least two sources of energy capable of returning the throttle to the idle position within the specified time limits from any accelerator position or speed, whenever the driver removes the opposing actuating force. S5.1 also specifies that, whenever one source of energy fails, the other shall fulfill the return-to-idle function.

In the past, springs have been the predominant sources of energy for return to idle. That appears to still be the case for accelerator pedal (treadle) assemblies of vehicles with electronic accelerator controls. These assemblies usually incorporate redundant springs. Such springs would be considered part of the accelerator control system under the proposed standard. Fail-safe operation would be tested by disconnecting a spring, just as it is tested in the existing standard. Although having two or more springs on the treadle is an effective countermeasure for instances where a spring disconnection occurs, it is not a sufficient condition to ensure return of the throttle to the idle state. Many vehicles now have electric motors, solenoids, or other devices to control the actual throttle on the engine. Redundant springs on the treadle could be rendered irrelevant if, e.g., the electrical connector to the treadle were disconnected. Under this proposal, fail-safe performance could be tested by disconnecting any single spring in the accelerator pedal or any single spring anywhere else in the ACS.

We believe that all sources of energy connected to the accelerator control system for throttle return, whether springs, solenoids, electric actuators, or other devices, should be treated uniformly as single components whose disconnection must not result in losing control of engine power.

Because the standard requires return to idle regardless of whether there are two sources of energy present, the current requirement may be considered somewhat redundant. Also, it is evident that many manufacturers will provide two or more springs on treadle assemblies whether there is an explicit requirement for it. Nevertheless, since we tentatively conclude that this requirement would continue to ensure that disconnection of one spring would not cause a runaway engine, we propose to retain it in Standard No. 124.

K. Stabilization of Engine Power and Idle State Tolerance

A significant concern in the regulation of ACS failures is that after a fault occurs, the engine should return to a benign power state very quickly, and should also stabilize at a benign condition. It would be unsafe for engine power to return only temporarily to a safe idle state and subsequently jump to a relatively high idle, even after a significant delay.

It is evident from agency tests that an engine with a fault in the ACS may return to or below the baseline idle state initially and within the specified time, but may not stabilize at or below the baseline. Rather, engine power can increase after the initial return to idle. Also, it is reasonable to expect that the idle level attained after fault introduction might be subject to fluctuation because current engines or motors operating in a fault condition might not always be able to achieve a smooth, uniform idle state. Engine operation might be rough, with speed oscillations and/or an elevated idle speed. These are not unexpected side effects when severances or disconnections occur, particularly in modern engines with electronic controls that might be capable of evoking a variety of control strategies to avoid stalling. Such variations in idle conditions may occur independently of

any limp-off-the-road provisions built into the engine control system.

The current standard is silent regarding the need to remain at idle after returning to the idle state when a fault occurs. With traditional mechanical linkages, there was little or no reason to believe that an engine's fail-safe response would change after the first few seconds. The throttle's initial return to or below the idle position after fault introduction was thought to be a sufficient measure of performance, and there was no need to consider engine power behavior at any later instant.

The current standard does not allow for return to any condition that is above the idle state, even by a small amount. Further, it does not give any consideration to whether an elevated idle condition is benign or not. In the past, the prevalence of mechanical throttle systems made such considerations unnecessary because a broken accelerator control system generally was not capable of making adjustments in order to compensate for disconnections or severances.

With electronic engine controls, the situation has changed. Engine computers continuously monitor engine operation. When the computer recognizes a problem, it can adjust engine operation. Such adjustments may occur on a delayed basis. Thus, power output behavior of electronic engines can change over a period of seconds after a fault occurs. Even if an engine returns to a safe power level initially, there might be fluctuations in engine idle parameters. These fluctuations could periodically exceed the baseline idle state by a significant amount.

For example, in one agency test of a fuel-throttled diesel engine in a school bus (GTL Test No. 3473), in which a fault was introduced in the ACS by severing one of the wires between the accelerator pedal position sensor and the engine control module, the fuel rate signal returned very quickly (within 0.2 seconds) to an indicated rate approximately the same as the fuel rate at idle before the wire was severed. By itself, this result appeared to indicate that the vehicle's ACS met a safe level of performance. However, within one second after fault introduction, the fuel rate increased momentarily to a level (approximately 1.2 gallons/hour) that was 2.4 times the baseline value (approximately 0.5 gallons/hour). The indicated fuel rate stabilized at exactly the baseline rate or less only after about 3.4 seconds had elapsed after fault introduction.

In this example, the initial return of indicated fuel rate to zero was evidence that engine power had dropped to a safe level in response to the ACS fault. Since the fuel rate subsequently increased before two seconds had elapsed to a level greater than the baseline, it was necessary to look at the fuel rate behavior for a greater time interval after the fault was introduced to determine if the engine continued to operate at a safe power level. In this case, it did so after a few seconds.

We believe there is no safety reason why the engine power should not be allowed to vary as long as a relatively benign idle condition is achieved within the time specified in S5.3 of the existing standard and maintained. In this example, the engine did return to a benign power level, approximately equal to the baseline power level at idle, within the prescribed time and it also did stabilize, after several seconds, at exactly the baseline level.

In order to address issues relating to stabilization of the idle state, we believe it is appropriate to require return to an idle state that is reasonably close to the baseline idle state, even if not identical to it, by specifying a tolerance which, when applied to the baseline, defines a maximum safe idle condition while also providing for some reasonable amount of variation.

We are proposing to permit a 50 percent increase from the idle state in fail-safe operation. That is, the idle state achieved after fault introduction must not be any more than 50 percent greater than the baseline idle state as determined prior to fault introduction. This level of tolerance would accommodate the kind of engine behavior such as speed fluctuations that the agency observed in tests that were conducted for the purpose of updating Standard No. 124. It would also eliminate the need to either lengthen the allowable time to return to idle in S5.3 or to specify an allowable delay before a complete return to the baseline idle state is achieved in a compliance test.

We are also proposing to require that an engine must remain at the idle state, within the 50 percent tolerance, after initially returning to or below that level following a disconnection or severance. That is, an engine or motor cannot be considered to comply if it returns to an acceptable idle state only temporarily and then increases to a relatively high power level. Under this proposal, the engine would be required to remain at the idle state indefinitely. This requirement would also prevent random or periodic fluctuations in idle state that are large enough to significantly exceed the baseline idle state, even though the idle state might be within compliance during portions of the oscillations. We do not believe this requirement expands Standard No. 124's scope because we believe that a requirement to remain at idle fulfills exactly the same safety need as the requirement to initially return to idle, and it is, in fact, implied in the existing standard.

To measure fuel rate, engine RPM, or electric power, the 50 percent tolerance would be calculated by multiplying the baseline value of the measured quantity by 1.5. To measure the air throttle position, the percent opening is the ratio of throttle plate angular displacement to its full travel. It is calculated by dividing the angular displacement to its full travel. The percent opening would be calculated by dividing the angular displacement of the throttle plate relative to its fully closed position by the angular displacement of the wide open throttle relative to fully closed.

The above described definition of ''percent throttle opening'' is included in the ''Definitions'' section of the proposed Standard. As an example, a throttle plate that is designed to rotate 80 degrees from its fully closed position to its fully open position would be considered 20 percent open when rotated 16 degrees from its fully closed position. If a baseline idle position for this throttle at given idle state conditions were measured to be 8 degrees from the fully closed position, then the 50 percent tolerance would be 4 degrees. Thus, the maximum opening following fault inducement in S6.3.4 and the release of the throttle in S6.3.5 would be 12 degrees from the fully closed position.

VII. Leadtime

We propose that the new standard apply to passenger cars, multipurpose passenger vehicles, trucks and buses manufactured on or after the first September 1st that occurs two or more years after the publication of the final rule. Public comment is sought on this proposed lead time. We believe that two years is sufficient lead time for industry since we do not believe that compliance with this proposed rule would involve any new technology, or performance specifications that manufacturers cannot meet with existing design, tooling, or manufacturing capabilities. We further believe that conducting the proposed test procedures would not involve any new technologies or procedures that manufacturers would find difficult to conduct. Since this rulemaking would not make any substantive changes in the scope of Standard No. 124, manufacturers or passenger cars, multipurpose passenger vehicles, trucks or buses would not need to make any changes in vehicle manufacturing

processes or procedures to ensure that their vehicles meet Standard No. 124.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The purpose of the proposed revision of Standard No. 124, *Accelerator control systems*, is to specifically clarify the requirements as they apply to ''non-mechanical'' accelerator control systems, and not an expansion of the present requirements. These proposed requirements were developed with the agency working in concert with the motor vehicle industry, to prevent interpretation problems that have been associated with the present standard. Therefore, there are no new costs involved with the proposed revisions, and a regulatory evaluation has not been prepared.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with 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 unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This proposed rule would 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 reason is that this proposed rule, if made final, would apply to motor vehicle manufacturers, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children.

D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, ''Civil Justice Reform,'' we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Head of the Agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. The statement of the factual basis for the certification is that since this rulemaking would not make any substantive changes in the scope of Standard No. 124, small manufacturers of passenger cars, multipurpose

passenger vehicles, trucks or buses would not need to make any changes in vehicle manufacturing processes or procedures to ensure that their vehicles meet Standard No. 124. Accordingly, the agency believes that this proposal would not affect the costs of motor vehicle manufacturers considered to be small business entities.

F. National Environmental Policy Act

We have analyzed this proposal for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that, if made final, this proposed rule would not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action would not impose any filing or recordkeeping requirements on any manufacturer or any other party. For this reason, we discuss neither electronic filing and recordkeeping nor do we discuss a fully electronic reporting option by October 2003.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources (including data from International Organization of Standards or other standards bodies), we have determined that there are not any available and applicable voluntary consensus standards that we can use in this notice of proposed rulemaking. We have searched the SAE's Recommended Practices applicable to accelerator control systems. We found SAE J1843 *Accelerator Pedal Position Sensor for Use with Electronic Controls in Medium and Heavy-Duty Vehicle Applications* APR93, the purpose of which is to ''provide a common electrical and mechanical interface specification that can be used to design electronic accelerator pedal position sensors and electronic control systems for use in medium and heavy-duty vehicle applications.'' However, the specifications in this SAE Standard are limited to the pedal position sensor and a connector-pin diagnostic. It does not provide guidance on the entire accelerator control system. Since the SAE Standard does not provide guidance on an issue material to this rulemaking, we have developed our own proposal.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Data Quality Guidelines

After reviewing the provisions of this NPRM pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (''Guidelines'') issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and prepared, in draft form, by the Department of Transportation (DOT) (67 FR 21319, Apr. 30, 2002), NHTSA has determined that if made final, nothing in this rule would result in ''information dissemination'' to the public, as that term is defined in the Guidelines.

If a determination were made that public distribution of data resulting from this rule, constituted information dissemination and was, therefore, subject to the OMB/DOT Guidelines, then the agency would review the information prior to dissemination to ascertain its utility, objectivity, and integrity (collectively, ''quality''). Under the Guidelines, any ''affected person'' who believed that the information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

K. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that the Federal Motor Vehicle Safety Standards (49 CFR Part 571), be amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.124 would be revised to read as follows:

§ 571.124 Standard No. 124; Accelerator control systems.

S1. *Scope.* This standard establishes requirements for the return of engines and electric motors that are connected to a vehicle's drive wheels to the idle state, whenever the actuating force on the driver-operated accelerator control is removed, or there is a severance or disconnection in the accelerator control system.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries resulting from engine over-speed caused by malfunctions in the accelerator control system.

S3. *Application.* This standard applies to passenger cars, multi-purpose passenger vehicles, trucks, and buses.

S4. *Definitions.*

Accelerator control system means all vehicle components, including all engine control modules, that either operate the throttle in response to movement of the driver-operated accelerator control or return the driver-operated accelerator control and the throttle to the idle position upon release of an actuating force.

Air throttle position means the ratio of the angular displacement of the throttle plate in that position relative to its fully closed position to its wide open angular displacement relative to its fully closed position.

Air-throttled engine means an internal combustion engine in which the power is regulated primarily through control of the air intake to the combustion chambers.

Ambient temperature means the surrounding air temperature, at a distance such that it is not significantly affected by heat from the vehicle under test.

Driver-operated accelerator control means any device, such as the accelerator pedal, that allows the driver to change the speed of a vehicle's engine or motor by changing input to the device, but does not include the cruise control or engine controls for other driver-operated ancillary components or systems.

Fuel delivery rate means the rate at which fuel enters the combustion chambers of an engine.

Fuel-throttled engine means an internal combustion engine in which the power is regulated primarily through control of fuel delivery to the combustion chambers.

Idle state means the engine power output to the drive wheels under idle

state conditions when there is no input to the driver-operated accelerator control.

Idle state conditions include, but are not limited to, engine temperature, air conditioning load, emission control, limp home mode, and the use of the cruise control.

Input electric power delivery means a power (wattage) computation using the input current and voltage to an electric motor and an appropriate power factor, if applicable.

Limp home mode means a device or design that restricts the engine or motor to a limited speed range when certain faults other than accelerator control system faults are detected by the engine management system.

Limp-off-the-road mode means a device or design that increases engine or motor speed above the idle state in response to a fault in the accelerator control system.

RPM means the engine or motor speed in revolutions per minute.

Throttle means the component of an engine that is connected to the accelerator control system and that controls the air intake to the combustion chambers of an air-throttled engine, the fuel delivery to the combustion chambers of a fuel-throttled engine or the electric power to an electric traction motor in response to the driver-operated accelerator control.

S5. *Requirements.* Each vehicle shall meet the following requirements when its engine or motor is running under any load condition, when tested under the applicable provisions of S6.

S5.1 *Performance in Normal Operation.* The throttle shall return to or below the idle state within the time limit specified in S5.3 from any position of the driver-operated accelerator control or any speed of which the engine or motor is capable, whenever the actuating force is removed from the driver-operated accelerator control. The idle state of the throttle in normal operation is measured by one of the following indicators when the engine or motor is at a stable idle and its idle state conditions remain constant:

(a) the air throttle position of an air-throttled engine;

(b) the fuel rate to the combustion chambers of a fuel-throttled engine; or

(c) the input electrical power (calculated from the measurements of current and voltage) for an electric traction motor.

S5.2 *Fail-safe Performance.*

S5.2.1 In the event of disconnection or severance of any one component of an accelerator control system at a single point, the engine or motor power shall return to or below the idle state, within the tolerance allowed by S6, within the time limit specified in S5.3, from any position of the driver-operated accelerator control or any speed of which the engine is capable. Each electronic control module in an accelerator control system is considered to be a single component. Severances and disconnections include those which can occur in the external connections of an electronic control module to other components of the accelerator control system and exclude those which can occur internally in an electronic control module.

S5.2.2 The time to return to the idle state is measured either from the first removal of the actuating force by the driver or from the time of severance or disconnection.

S5.2.3 The accelerator control system shall meet the requirements of this section when either open circuits or short circuits to ground result from disconnections and severances of electrical wires and connectors.

S5.2.4 *Selection of compliance options.* Where options for testing fail-safe performance are specified in S6, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

S5.3 *Accelerator response time.*

S5.3.1 Except as provided in S5.3.2, the maximum time to return to idle state shall be 1 second for vehicles of 4,536 kilograms (10,000 pounds) or less gross vehicle weight rating (GVWR), and 2 seconds for vehicles of more than 4,536 kilograms (10,000 pounds) GVWR.

S5.3.2 The maximum time to return to idle state shall be 3 seconds for any vehicle that is exposed to ambient air at ''18 degrees Celsius to ''40 degrees Celsius during a test or for any portion of the conditioning period described in S6.

S5.4 *Limp-Off-the-Road Mode for Accelerator Control System Faults.*

S5.4.1 Any increase in the idle state as a limp-off-the-road mode response to a fault in the accelerator control system that is greater than the tolerances provided in S6. shall be removed upon application of the service brake within the time limit specified in S5.3 and shall not recur as long as the service brake is applied.

S5.4.2 For purposes of S5.4, application of the service brake means any application that is sufficient to illuminate the vehicle's stop lamps.

S5.5 *Driver-Operated Accelerator Control.* There shall be at least two sources of energy, each of which is separately capable of returning the driver-operated accelerator control to the idle position within the applicable time limit specified in S5.3, from any position whenever the driver removes the actuating force.

S6. *Test Procedures and Conditions.*

S6.1.1 The air-conditioning setting selected for testing shall be any point within the vehicle's air conditioning control.

S6.1.2 If a vehicle is equipped with limp home mode, the idle state condition is determined with the limp home mode either on or off.

S6.1.3 For idle state conditions such as emissions control that do not provide a means of adjustment, the engine or motor will be operated long enough to stabilize its idle state prior to testing.

S6.1.4 *Air-throttled engines.* An air-throttled engine is tested for fail-safe performance under S6.2, S6.3, or S6.4, at the manufacturer's option.

S6.1.5 *Fuel-throttled engines.* A fuel-throttled engine is tested for fail-safe performance under S6.3, or S6.4 at the manufacturer's option.

S6.1.6 *Electric motors.* An electric motor is tested for fail-safe performance under S6.4 or S6.5 at the manufacturer's option.

S6.1.7 *Baseline value.* The baseline value is the value of the engine or motor power indicant specific to each test procedure below measured for an engine or motor without faults in its accelerator control system for the idle state conditions that will exist at the beginning and end of the test.

S6.1.8 Conditions applicable to all test procedures. The test procedures are conducted with the vehicle's service brake applied by the minimum amount necessary to disengage any limp-off-the-road mode effects.

S6.1.9 *Temperature.* The conditioning and test procedures are conducted at any ambient temperature between ''40 degrees Celsius and +50 degrees Celsius.

S6.2 *Return of Air Throttle Position.*

S6.2.1 Condition the vehicle to the selected ambient temperature for 12 hours.

S6.2.2 Operate the engine at idle long enough to determine the baseline air throttle position for the idle state condition.

S6.2.3 Impose test load and engine speed conditions.

S6.2.4 Induce fault while measuring air throttle position.

S6.2.5 After at least 3 seconds, remove actuating force on driver-operated accelerator control while measuring air throttle position.

S6.2.6 The air throttle shall return to and remain indefinitely in a position that is no greater than 50 percent more open than the baseline idle position of S6.1.2 in the response time specified in S5.3 following either S6.2.4 or S6.2.5.

S6.3 *Return of Fuel Delivery Rate.*

S6.3.1 Condition the vehicle to the selected ambient temperature for 12 hours.

S6.3.2 Operate engine at idle long enough to determine fuel delivery rate in the idle state.

S6.3.3 Impose test load and engine speed conditions.

S6.3.4 Induce fault while measuring fuel delivery rate.

S6.3.5 After at least 3 seconds, remove actuating force on driver-operated accelerator control while measuring fuel delivery rate.

S6.3.6 The fuel delivery rate shall return to and shall remain indefinitely at a value that is no greater than 50% more than the idle state value of S6.3.2 in the response time specified in S5.3 following either S6.3.4 or S6.3.5.

S6.4 *Return of Engine or Motor RPM.*

S6.4.1 This test is performed on a chassis dynamometer providing the same resistance as a function of road speed for test runs as for baseline runs.

S6.4.2 Vehicle load, tire pressures and all other factors affecting rolling resistance are kept constant between baseline and test runs.

S6.4.3 Condition the vehicle to the selected ambient temperature.

S6.4.4 Operate the engine or motor at idle long enough to determine the baseline idle RPM on the chassis dynamometer in the same gear which will be selected for the baseline return-to-idle time measurement of S6.4.5 and the fail-safe test of S6.4.8.

S6.4.5 Begin baseline return-to-idle time measurement by imposing test load and engine or motor speed conditions.

S6.4.5.1 Return the external test load to that of S6.4.4 and simultaneously remove the actuating force on the driver-operated accelerator control.

S6.4.5.2 Record the time for the RPM to return to the idle RPM determined in S6.4.4. plus 50 percent.

S6.4.6 Begin fail-safe test by imposing test load and engine or motor speed conditions as in S6.4.5.

S6.4.7 Return the external test load to that of S6.4.4 and remove the actuating force on the driver-operated accelerator control in the manner of S6.4.6 and simultaneously induce fault while measuring RPM.

S6.4.8 The time following S6.4.9 for the RPM to return to a level that is no greater than 50 percent more than the baseline idle RPM of S6.4.4 shall not exceed the normal idle RPM return time of S6.4.7 by more than three seconds.

S6.4.9 The RPM shall remain indefinitely at a level that is no greater than 50 percent more than the baseline idle RPM of S6.4.4.

S6.5 *Return of Input Power Delivery to an Electric Motor.*

S6.5.1 Condition test vehicle to selected ambient temperature.

S6.5.2 Operate the motor at idle long enough to determine the baseline idle input power (which may be zero for some vehicles.)

S6.5.3 Impose test load and engine speed conditions.

S6.5.4 Induce fault while measuring input voltage and total current delivery.

S6.5.5 After at least 3 seconds, remove actuating force on driver-operated accelerator control while measuring input voltage and total current delivery.

S6.5.6 The input power to the motor shall return to and shall remain indefinitely at a value that is no more than 50 percent greater than the baseline idle value of S6.5.2 in the response time specified in S5.3 following either S6.5.4 or S6.5.5.

Issued on: July 16, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–18477 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–59–Pb

Notices

Federal Register

Vol. 67, No. 141

Tuesday, July 23, 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

Forest Service

Trout Slope West Timber Project, Ashley National Forest, Uintah County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ashley National Forest has proposed to harvest live and dead timber within the Trout Slope West area of the Vernal Ranger District. The objectives of the proposal are to: reduce potential fuel loadings within treatment areas, prevent a likely future forest condition of blown down and jack-strawed timber, reduce stand density and thereby increase the growth of individual residual trees, begin the development of greater tree species diversity within treatment areas, and to recover the economic value of wood products associated with these objectives.

DATES: To be most useful, comments concerning the scope of the analysis should be received in writing by August 14, 2002.

ADDRESSES: Send written comments to: Brad Exton, District Ranger, Vernal Ranger District, Ashley National Forest, 255 N. Vernal Avenue, Vernal, Utah 84078, or e-mail at *bexton/r4_Ashley@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Specific questions about the proposed project and analysis should be directed to Ralph Rau, ID Team Leader, Vernal Ranger District, 355 N. Vernal Ave., Vernal, Utah, (435) 789–1181

SUPPLEMENTARY INFORMATION: This proposal arises out of the Vernal Ranger District's Trout Slope Landscape Assessment (TSLA), (1996) that describes the existing condition of an 80,000-acre area between East Park and Leidy Peak. The assessment suggests a desired future condition for the area and recommends resource management strategies to move the area towards the desired condition as a more specific complement to the broad direction of the Ashley National Forest Land and Resource Management Plan (FLRMP), (1986).

The Trout Slope West analysis area is approximately 18,500 acres and lies between Oak Park Reservoir to the east and Leidy Peak to the west. The project area is approximately 24 miles to the northwest of Vernal, Utah and can be accessed via Taylor Mountain Road and Forest Service Road 018. There are approximately 33 miles of open system roads that provide public access to the area. The proposed action was selected from the TSLA by using existing stand level data, areas with existing roads, and areas that included either high proportions of dead and dying trees or were in need of thinning. Environmental conditions that were considered in developing the proposal were sensitive soils, riparian areas, a timber stand patch size and arrangement in relation to wildlife use, slopes suitable for tractor harvesting, forest type, landtype associations, level and types of recreation use, archaeological resources, and vegetative structual stages.

Proposed Action: The proposed action includes the following activities:

1. Individual tree selection and salvage on approximately 1700 acres.
2. Intermediate harvest (thinning) on approximately 470 acres.
3. Placement of a temporary bridge on the North Fork of Ashley Creek, located about one-quarter mile to the east of Long Park Reservoir. The bridge would be removed when harvest activities are completed.
4. Reconstruction of approximately one-half mile of existing road to allow for correct placement of the bridge noted above.
5. Approximately 12 miles of existing roads would be opened to access proposed harvest areas. A minimal amount of work including cleaning of ditches, and turnouts, spot blading as required, and removal of down timber would be necessary to make the roads suitable for hauling. All of these roads would be closed at the end of harvest operations and seeded with grasses as needed.

Responsible Official: The responsible official for the environmental impact statement is Bert Kulesza, Forest Supervisor, Ashley National Forest. The Forest Supervisor's address is 355 North Vernal Ave., Vernal, Utah 84078.

Nature of Decision To Be Made: The decision to be made is: Should the proposed action for the Trout Slope West Area be implemented or a different alternative that arises out of issues identified through public scoping and internal agency concerns.

Scoping Process: Formal scoping begins upon publication of this notice and will include mailing of information to known and interested parties.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. To be most helpful please submit your comments by August 30, 2002. All comments become part of the public record and can be made available upon request.

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 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 17, 2002.

Bert Kulesza,

Forest Supervisor.

[FR Doc. 02–18513 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Couverden Timber Sale Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) on a proposal to harvest timber for the Couverden Timber Sale(s) project on the south end of the Chilkat Peninsula north of Icy Strait and west of Lynn Canal on the Juneau Ranger District, Tongass National Forest. The proposed action provides for: (1) Timber harvest on approximately 1500 acres of forested land resulting in the production of an estimated 25 million board feet of sawlog and utility timber volume, (2) construction of approximately 5 miles of new specified road and 3 miles of temporary road, and (3) reconstruction of 19 miles of existing specified road. The Record of Decision will disclose how the Forest Service allocates timber harvest in the project area using the existing transportation infrastructure including existing roads and the permitted log transfer facility known as Homeshore LTF.

DATES: A public mailing that outlines the project timeline and public involvement opportunities is planned for distribution in Summer 2002. Individuals who want to receive this mailing should contact us within 30 days of the publication of this NOI. To be most useful, comments concerning the scope of this project should be received by September 15, 2002. The Draft Environmental Impact Statement is expected in Winter 2003 and will begin a 45-day public comment period. The Final Environmental Impact Statement and Record of Decision are expected Fall 2004.

ADDRESSES: Please send written comments to: District Ranger, Juneau Ranger District, ATTN: Couverden EIS, 8465 Old Dairy Road, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Stan McCoy, Project Team Leader, telephone (907) 790–7431 or Dave Carr, Timber Management Assistant, telephone (907) 790–7402. Juneau Ranger District, 8465 Old Dairy Road, Juneau, AK 99801.

SUPPLEMENTARY INFORMATION:

Background

The proposed timber sale is located about 30 air miles west of Juneau, Alaska, 20 air miles southeast of Gustavus, Alaska and 10 air miles northeast of Hoonah, Alaska on the south end of the Chilkat Peninsula north of Icy Strait and west of Lynn Canal. The project is within townships 41 and 42 south, Ranges 61, 62 and 63 west, Copper River Meridian. The Juneau Ranger District of the Tongass National Forest, Juneau, Alaska, administers the project area. The project area contains Value Comparison Units 1170, 1180, 1190, and 1200 as designated by Tongass Land and Resource Management Plan. The project area includes approximately 66,486 acres. It includes portions of Homeshore, Humpy, and Swanson river drainages within the developed timber management land use designation. The project area includes one medium old growth reserve as designated in Tongass Land and Resource Management Plan. Another medium old growth reserve is located north of the project area near the community of Excursion Inlet. A Forest Plan amendment may be required to modify the old growth reserve boundaries associated with this project. Inventoried roadless area #304, Chilkat-West Lynn Canal, lies north and east of the project area and encompasses 198,525 acres. This Inventoried roadless area is currently managed for semi-remote recreation and old growth habitat. The proposed action does not include timber harvest or road construction in the adjacent inventoried roadless area.

The purpose and need for the Couverden Project is: (1) To implement the direction contained in the 1997 Tongass Land Management Plan and the 1997 ROD, including goals, objectives, management prescriptions, and standards and guidelines; (2) to maintain wood production from suitable timber lands, providing a continuous supply of wood to meet societies needs; (3) to help provide a stable supply of timber from the Tongass National Forest which meets existing and potential market demand and is consistent with sound multiple use and sustained yield objectives; and (4) to help meet the desired future condition of the landscape as described by the 1997 Tongass Land and Resource Management Plan.

Public Participation

Opportunities for the public to participate in the development of the Couverden Timber Sale Environmental Impact Statement will be provided throughout the process. The Forest Service will use a combination of methods to engage and involve the public, including public mailings, postings on the Tongass National Forest internet web page, public meetings and the news media. The comment period on the Draft Environmental Impact statement will be a minimum of 45 days from the date the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register.** The Draft EIS is projected to be filed with the EPA in Fall 2004.

The Forest Service believes it is important to give reviewers notice of several court rulings 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). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 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 received by the Forest Service at a

time when it can meaningfully consider and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns with regard to the proposed action, comments during scoping and on the Draft Supplemental EIS should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the document. Comments may also address the adequacy of the Draft Supplemental EIS or the merits of the alternatives formulated and 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. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on 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. 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. Requesters should be aware that, under FOIA, confidentiality may be granted 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 seven days.

Permits: required for implementation include the following.

1. U.S. Army Corps of Engineers
- Approval of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act;
- Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;

2. Environmental Protection Agency
- National Pollutant Discharge Elimination System (402) Permit;

3. State of Alaska, Department of Natural Resources
- Tideland Permit and Lease or Easement;

4. State of Alaska, Department of Environmental Conservation
- Solid Waste Disposal Permit;
- Certification of Compliance with Alaska Water Quality Standards.

Responsible Official

The Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision, and state the rationale for the chosen alternative in the Record of Decision.

Dated: July 16, 2002.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 02–18514 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on August 19, 2002 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act.

DATES: The meeting will be held on August 19, 2002 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education Conference Room, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Joyce Anderson, Designated Federal Official, USDA, Shasta Trinity National Forests, P.O. Box 1190, Weaverville, CA 96093. Phone: (530) 623–1709. Email: *jandersen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will focus on prioritizing and selecting Title II projects for fuels treatment and sediment reduction. 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: July 16, 2002.

S.E. ''Lou'' Woltering,

Forest Supervisor.

[FR Doc. 02–18623 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of revision.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to revise a currently approved information collection, the Agricultural Surveys Program.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Surveys Program.

OMB Control Number: 0535–0213.

Expiration Date of Approval: January 31, 2004.

Type of Request: Intent to revise a currently approved information collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing State and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. The Agricultural Surveys Program contains a series of surveys that obtains basic agricultural data from farmers and ranchers throughout the Nation for preparing agricultural estimates and forecasts. The Program is being revised to discontinue the September small grain forecast. NASS will no longer forecast acreage, yield, and production in the September Crop Production report for durum wheat, other spring wheat, all wheat, and barley. Final acreage, yield, and production estimates will continue to be published for these crops—along with winter wheat, oats, and rye—in the annual Small Grains report, released on the last working day of September.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 547,000.

Estimated Total Annual Burden on Respondents: 139,000 hours.

These data will be collected under the authority of 7 U.S.C. 2204(a).

Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778. Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: July 10, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–18484 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the Stocks Report.

DATES: Comments on this notice must be received by September 26, 2002 to be assured of consideration.

ADDRESSES: Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024 or gmcbride@nass.usda.gov.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Stocks Report.

OMB Control Number: 0535–0007.

Expiration Date of Approval: August 31, 2002.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, stocks, disposition, and prices. The Stocks Report Surveys provide estimates of stocks of grains, hops, oilseeds, peanuts, potatoes, and rice that are stored off-farm. These off-farm stocks are combined with on-farm stocks to estimate stocks in all positions. Stocks statistics are used by the U.S. Department of Agriculture to help administer programs; by State agencies to develop, research, and promote the marketing of products; and by producers to find their best market opportunity. NASS intends to request that the survey be approved for another 3 years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 18 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 13,000.

Estimated Total Annual Burden on Respondents: 15,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: July 9, 2002.

Rich Allen,

Associate Administrator.

[FR Doc. 02–18489 Filed 7–22–02; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership (MEP) Client Impact Survey.

Form Number(s): None.

OMB Approval Number: 0693–0021.

Type of Request: Regular submission.

Burden Hours: 1,083.

Number of Respondents: 6,500.

Average Hours Per Response: 10 minutes.

Needs and Uses: The Manufacturing Extension Partnership (MEP), sponsored by NIST, is a national network of locally based manufacturing extension centers working with small manufacturers to help them improve their productivity, improve profitability and enhance their economic competitiveness. The collection of information from clients about the impact of MEP services is essential for NIST officials to evaluate program strengths and weaknesses and plan improvements in program effectiveness and efficiency. This information is not available from existing programs or other sources.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *Mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days after publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–18497 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 7 of the 2001 Panel

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 23, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *MClayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, Census Bureau, FOB 3, Room 3387, Washington, DC 20233–0001, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information about providing health care in the home, children's well-being, retirement plans, and taxes. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2001 Panel is currently scheduled for three years and will include nine waves of interviewing beginning February 2001. Approximately 50,000 households will be selected for the 2001 Panel, of which 37,500 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 78,750 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves of interviewing will occur in the 2001 SIPP Panel during FY 2003. The total annual burden for the 2001 Panel SIPP interviews would be 118,125 hours in FY 2003.

The topical modules for the 2001 Panel Wave 7 collect information about:

- Home Health Care
- Children's Well-Being
- Retirement and Pension Plan Coverage
- Annual Income and Retirement Accounts
- Taxes

Wave 7 interviews will be conducted from February 2003 through May 2003.

A 10-minute reinterview of 2,500 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,253 burden hours in FY 2003.

An additional 1,050 burden hours is requested in order to continue the SIPP Methods Panel testing. The test targets SIPP items and sections that require thorough and rigorous testing in order to improve the quality of core data.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of one to four years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2001 Panel, respondents are interviewed a total of nine times (nine waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: 0607–0875.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 78,750 per wave.

Estimated Time Per Response: 30 minutes, on average.

Estimated Total Annual Burden Hours: 120,428.

Estimated Total Annual Cost: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: July 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–18498 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071702B]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Protected Resources Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, and Bluefish Board(s), and its Executive Committee will hold a public meeting.

DATES: The meetings will be held on Tuesday, August 6, to Thursday, August 8, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA; telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, August 6, the Protected Resources Committee will meet from 9:30–10:30 a.m. There will be a report of the 35th Stock Assessment Review Committee (SARC) from 10:30 a.m. until 12:30 p.m. The Council will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board from 1:30–5:00 p.m. regarding scup specifications for 2003. On Wednesday, August 7, the Council will meet jointly with the ASMFC's Summer Flounder, Scup and Black Sea Bass Board from 8 a.m. until 3 p.m. regarding summer flounder and black sea bass specifications for 2003. The Council will meet with the ASMFC's Bluefish Board from 3 p.m. to 5 p.m. regarding 2003 specifications. On Thursday, August 8, Council will meet from 8:30 a.m. until 2 p.m.

Agenda items for the committees and Council meetings are:

The Protected Resources Committee will review the status of NMFS action regarding white marlin; review SARC reports on summer flounder, scup, and silver hake;

The Council and ASMFC's Summer Flounder, Scup, Black Sea Bass, and Bluefish Board(s) will review Monitoring Committee recommendations regarding the 2003 harvest level and commercial management measures, and recommend the 2003 harvest level and commercial management measures for scup, summer flounder, black sea bass, and bluefish; receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; and, under continuing business the Council will discuss Russian research proposal for mackerel and its total allowable level of foreign fishing (TALFF) implications.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 17, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–18590 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071202H]

Endangered Species; File No. 1388

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. David A. Nelson, U.S. Army Research And Development Center, Waterway Experimental Station, 4104 Freetown Road, Vickburg, MS 39183, has applied in due form for a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), loggerhead (Caretta caretta), Kemp's ridley (*Lepidochelys kempi*) and leatherback (*Dermochelys coriacea*) turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 22, 2002.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Lillian Becker or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and

exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes three projects along the northwestern Atlantic Ocean and the Gulf of Mexico. The first is to perform turtle relocation trawling for U.S. Army Corps of Engineer dredging projects. The purpose of this action is risk assessment or relocation of the turtles in the channels being dredged. All turtles captured will be handled, flipper and PIT tagged, and released away from the dredging hopper. The applicant requests to take 180 loggerhead, 25 Kemp's ridley, 2 Hawksbill, 20 green, and 2 leatherback turtles per year.

The second project is to perform relative abundance and habitat use surveys of near shore areas for green turtles. The turtles will be captured in tangle nets, measured, flipper and PIT tagged, and released. These turtles will also be tagged with both radio and sonic transmitters or time-depth recorders and radio transmitters. The applicant requests to take 75 green turtles per year.

The third project is to investigate large-scale movements and diving behavior. Turtles will be captured by trawling measured, flipper and PIT tagged, and released. A satellite transmitter will be attached. The applicant requests to take 20 loggerhead, 5 Kemp's ridley, and 5 green turtles per year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: July 16, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–18591 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2002–C–002]

Notice of Change in Publication Format for the Official Gazette of the United States Patent and Trademark Office—Patents

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Patent and Trademark Office (USPTO) will discontinue the publication of the paper version of the *Official Gazette of the United States Patent and Trademark Office—Patents.* Electronic publication via CD–ROM and Internet versions (the *eOG:P*) will replace the printed copy.

DATES: The last publication of the paper version will be September 24, 2002. The electronic publication of the CD–ROM will commence October 1, 2002.

SUPPLEMENTARY INFORMATION:

Background

The USPTO has published the *Official Gazette of the United States Patent and Trademark Office—Patents* since 1872 and it has historically served as the official notification of patent issuance. The *Official Gazette—Patents* is published weekly in conjunction with the issuance of patents. Entries in the *Official Gazette—Patents* contain patent bibliographic information such as inventor name(s), assignee name (if applicable), patent number, patent title, and classification. The entry also contains a representative claim and drawing (if applicable). Each weekly issue also includes an alphabetical index of patentees.

Explanation and Advantages of Change

In view of the widespread access to computers and the Internet and in accordance with the Paperwork Reduction Act of 1995, the USPTO will discontinue the printed copy distribution of the *Official Gazette—Patents,* effective October 1, 2002. Weekly electronic publication via CD–ROM and Internet versions (the *eOG:P*) will replace the paper. Beginning with the July 2, 2002, issue, the *eOG:P* and printed copy will be published on a concurrent basis until the paper version is discontinued.

The information provided by the electronic products will be unchanged from the traditional printed copy. Users will continue to browse patents by classification or patent type. However, the advantages offered by an electronic format will enable easier access to the information. Some of these advantages include: A cumulative patentee and assignee index regardless of patent type, in addition to the standard separate patentee indexes by patent type; direct links from the patentee index entry to the image of the patent; the addition of patentees by country to the geographical index by state; direct links to the patents by state or country; direct links to the patent from classification; and the addition of plant patent images. The electronic information can be easily printed or saved for future use.

The *eOG:P* on CD–ROM will be published and distributed close to issue date. The CD–ROM product will be available from the Information Products Division, Chief Information Officer, United States Patent and Trademark Office, as an annual subscription for $300 per year and as single copies for $15 per issue.

The *eOG:P* will also be available on the USPTO Web site at *www.uspto.gov/web/patents/patog/* each Tuesday, beginning July 2, 2002.

The USPTO will continue paper publication of the *Official Gazette—Trademarks, the Official Gazette Notices* and the *Consolidated Listing of Official Gazette Notices.*

FOR FURTHER INFORMATION CONTACT: Information Products Division at 703–306–2600.

Dated: July 16, 2002.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 02–18478 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

Proposed Information Collection; Comment Request; National Medal of Technology Nomination Applications

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on

the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 23, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet (*mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Mildred Porter, Director, National Medal of Technology Program, Technology Administration, 1401 Constitution Avenue, NW., Room 4226, Washington, DC 20230. In addition, written comments may be sent via fax, (202) 501–8153, and e-mail to *mporter@ta.doc.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

This information collection is critical for the Nomination Evaluation Committee to determine nomination eligibility and merit for selection of the Nation's leading technological innovators honored by the President of the United States. The National Medal of Technology Nomination Application solicits nominations that recognize an individual's or company's extraordinary leadership and innovation in technological achievement. The information is needed in order to comply with Public Law 96–480 and Public Law 105–309. Comparable information is not available on a standardized basis.

II. Method of Collection

Nomination applications and instructions are electronically posted on the National Medal of Technology web site. The forms are being revised for electronic submission beginning with the 2003 applications.

III. Data

OMB Number: 0692–0001.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal Government.
Estimated Number of Respondents: 102.
Estimated Time Per Response: 25 hours.
Estimated Total Annual Respondent Burden Hours: 2,550.
Estimated Total Annual Respondent Cost Burden: None.

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarize and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 17, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–18496 Filed 7–22–02; 8:45 am]

BILLING CODE 3510–18–P

COMMISSION ON THE FUTURE OF THE UNITED STATES AEROSPACE INDUSTRY

Public Meeting

AGENCY: Commission on the Future of the United States Aerospace Industry.

ACTION: Notice.

SUMMARY: This meeting is the fourth in a series of planned public meetings being held by the Commission to carry out its statutory charge with respect to the U.S. civil and military, air and space industry. The focus of this meeting is to receive testimony from and conduct discussions with representatives of the following areas: Aviation (airline and business aircraft operations, air traffic control and pilots), aerospace suppliers, the investment community, space and planetary organizations, and RDT&E infrastructure. In addition, General Ronald R. Fogelman will present the results of the National Academy of Science's Aeronautics and Space Engineering Board's Vision 2050 Report. The meeting will close with a discussion about the next meeting.

Section 1092 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398) established the Commission on the Future of the United States Aerospace Industry to study the issues associated with the future of the United States national security; and assess the future importance of the domestic aerospace industry for the economic and national security of the United States. The Commission in governed by the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation of advisory committees and implementing regulations (41 CFR Subpart 101–6.10). All interested parties are welcome to submit written comments at any time.

Time and Date: Thursday, August 22, 2002; 8:30 a.m. to 5:30 p.m.

ADDRESSES: Herbert C. Hoover Building Auditorium, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cindy Waters, 1235 Jefferson Davis Highway, Suite 940; Arlington, Virginia, 22202; phone 703–602–1515; e-mail *waters@osd.pentagon.mil.* Reasonable accommodations will be provided for any individual with a disability. Pursuant to the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, any individual with a disability who requires reasonable accommodation to attend the public meeting of the Aerospace Commission may request assistance by contacting Ms. Cindy Waters at least five (5) working days in advance.

Dated: July 17, 2002.

Charles H. Huettner,

Executive Director, Commission on the Future of the United States Aerospace Industry.

[FR Doc. 02–18574 Filed 7–22–02; 8:45 am]

BILLING CODE 6820–WP–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notification of Pending Legal Proceedings Pursuant 10 17 CFR 1.60

AGENCY: Commidity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish

notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the rule requiring notification of pending legal proceedings pursuant to 17 CFR 1.60.

DATES: Comments must be submitted on or before September 23, 2002.

ADDRESSES: Comments may be mailed to Barbara W. Black, Office of Executive Director, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Barbara W. Black, (202) 418–5130; FAX: (202) 418–5541; email: *bblack@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Notification of Pending Legal Proceedings Pursuant to 17 CFR 1.60, OMB control number 3038–0033—Extension

The rule is designed to assist the Commission in monitoring legal proceedings involving the responsibilities imposed on contract markets and their officials and futures commission merchants and their principals by the Commodity Exchange Act, or otherwise.

The rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

The Commission estimates the burden of this collection of information as follows:

	17 CFR section	Annual number of respondents	Total annual responses	Hours per response	Total hours
Estimated annual reporting burden	1.60	100	100	.10	10

There are no capital costs or operating and maintenance costs associated with this collection.

Dated: July 17, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–18485 Filed 7–22–02; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Final Programmatic Environmental Assessment and Finding of No Significant Impact for the Millennium Challenge 2002 Joint Integrating Experiment

AGENCY: U.S. Joint Forces Command, DoD.

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to section 101(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of NEPA, U.S. Joint Forces Command (JFCOM) gives notice that a Programmatic Environmental Assessment (EA) has been prepared and an Environmental Impact Statement (EIS) is not required for the Millennium Challenge 2002 Joint Integrating Experiment scheduled to be conducted during July and August 2002 in the southwest region of the U.S. and offshore waters of southern California. JFCOM is issuing a Finding of No Significant Impact (FONSI).

FOR FURTHER INFORMATION CONTACT: Mr. Steven Chambliss, Joint Experimentation, U.S. Joint Forces Command, 1562 Mitscher Ave., Suite 200, Norfolk, VA 23551–2488; phone (757) 836–0966.

SUPPLEMENTARY INFORMATION: Millennium Challenge 2002 (MC02) is a Department of Defense (DoD) ''major joint integrating experiment'' scheduled to be conducted from July 24 to August 15, 2002 in the southwest region of the U.S. and offshore waters of Southern California. Congressional language in the FY01 Defense Authorization Act mandated conduct of the joint integrating experiment and specifically directed the demonstration of a rapid, decisive military operational concept. MC02 responds to Congressional direction and is sponsored by U.S. Joint Forces Command (USJFCOM) based in Norfolk, Virginia. Each of the services proposes to conduct their own experimentation under the umbrella of MC02. The Services have separately assessed the environmental impacts of their actions and determined that the impacts will not be significant. JFCOM conducted an overall, or programmatic assessment of the MC02 Proposed Actions. This assessment considered the potential cumulative effects of the Proposed Actions of the four individual Services during MC02.

Proposed Action

A military Joint Task Force (JTF) will be established by the Secretary of Defense to conduct exercise military operations against hypothetical Country RED. The Commander of the Joint Task Force (CJTF) will be the Commander of the Army III Corps who will command the operation from a land-based headquarters in Suffolk, Virginia and from the San Diego-based Navy Command Ship, USS CORONADO. Each of the Services will provide combat forces to the Joint Task Force. The Air Force proposes to participate with an Air Expeditionary Wing (AEW) at Nellis AFB, Nevada and Nevada Test and Training Range (NTTR) and would conduct 5 days of live flying during MC02. For the Army, the Proposed Action involves approximately 4,500 soldiers conducting operations at the National Training Center (NTC), Fort Irwin, CA. Southern California Logistics Airport (SCLA) near Victorville, CA would be used as a transshipment base (TSB) for movement of Army units by air and ground to and from NTC.

The Marine Corps participation in MC02, called Millennium Dragon, would include a small amphibious landing at MCB Camp Pendleton and urban warfare training exercises at SCLA. Operations would be battalion-sized with a maximum of approximately 1,200 Marines participating. The Navy proposes to conduct a series of experimental activities within MC02 called Fleet Battle Experiment Juliet (FBE J). Activities planned include special operations, mine warfare, anti-submarine warfare (ASW), anti-surface warfare (ASUW), joint fires, and intelligence, surveillance, and reconnaissance (ISR). Forces participating would include 12 ships, 19 aircraft, and about 2,500 personnel at various locations including ocean operating areas off southern California, Point Mugu sea range, San Clemente Island, San Nicolas Island, and China Lake land range.

Alternatives Considered

Geographic Alternatives Evaluated: Ten selection criteria were identified for the location of the MC02 live events: The only other region in the U.S. that could satisfy some of the criteria is the mid-Atlantic region including military ranges in Virginia, North Carolina, and Georgia, and offshore operating areas. The mid-Atlantic region did not meet several key criteria that are essential to fully achieving MC02 objectives.

No-Action Alternative

The no-action alternative would: Fail to comply with Congressional direction to conduct the exercise in fiscal year 2002; fail to assess the U.S. capability to conduct Rapid Decisive Operations (RDO); slow the Department of Defense transformation effort by limiting experimentation to virtual and simulated events; curtail ongoing Service experimentation efforts which are embedded in MC02; increase the quantity of live events required in future joint integrating experiments; and hamper the Services' requirements determination process in which experimental insights gained in MC02 will drive development of future acquisition requirements. Implementation of the No Action alternative would only postpone the integrating experimentation that DoD must inevitably conduct.

Environmental Impacts

The analysis evaluated the potential environmental consequences of military operations in the southwest U.S. and offshore southern California as part of Millennium Challenge 2002. The resource areas analyzed included air quality, water quality, airborne and underwater noise, biological resources, land use, cultural resources, socioeconomics, environmental justice, transportation and circulation, and hazardous materials and waste. The individual Services separately assessed that their individual experimentation activities would have a less than significant impact on the environment. The programmatic assessment in this EA also concluded that overall there would be no significant impacts from MC02 actions in any resource area.

Cumulative Impacts

The individual Services' Proposed Actions would take place within the boundaries of their own existing bases and facilities, test and training ranges, ocean operating areas, or leased facilities. Considerations in assessing the potential cumulative impacts of the MC02 Proposed Actions include: size of the area in which Proposed Actions would occur; multiple service Proposed Actions occurring at the same location; and Proposed Actions compared to normal activity levels. The very large size of the proposed operations area resource. The single MC02 locale with significant overlap of service actions is at SCLA near Victorville, California. Both Marines and the Army plan to use SCLA during MC02, but for different functions. The cumulative impact of Army and Marine activities at SCLA on air quality, airborne noise, land use, and public health and safety were assessed as less than significant. Though MC02 is a large exercise, the level of field activity proposed at any individual base, range, or facility is within the capacity of the base, range, or facility to handle and typical of normal activity levels.

The Proposed Actions of MC02 will occur over a 23-day period in July and August 2002. To the extent there are potential environmental impacts, the short duration will cause the impacts to dissipate over time and cease to contribute to cumulative impacts in the region. Based on the considerations and factors discussed above, the proposed activities of MC02 would not have a significant cumulative effect on the environment in the southern California and Nevada region.

Determination

An analysis of the proposed action determined that there are no significant short-term or long-term effects to the human environment or surrounding populations from Millennium Challenge 2002. The analysis also determined that the proposed activities of MC02 would not have a significant cumulative impact on the environment in the southern California and Nevada region. After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 101(2)(C) of NEPA. Therefore, an Environmental Impact Statement for Millennium Challenge 2002 is not required.

Dated: July 16, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–18479 Filed 7–22–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information System Agency.

ACTION: Notice of membership of the Defense Information Systems, Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATES: June 28, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Anita Brooks, SES Program Manager, Civilian Personnel Division, Manpower, Personnel and Security Directorate, Defense Information Systems Agency (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the DISA SES Performance Review Board. They will serve a one-year renewable term, effective 28 June 2002.

Ms. Diann L. McCoy, Principal Director for Applications Engineering, DISA.

James David Bryan, Major General, USA, Vice Director, DISA.

Mr. John Penkoske, Director for Manpower, Personnel, and Security, DISA.

Mr. Robert Hutten, Director for Strategic Plans, Programming and Policy, DISA.

Sue A. Engelhardt,

Chief, Civilian Personnel Division.

[FR Doc. 02–18558 Filed 7–22–02; 8:45 am]

BILLING CODE 3610–05–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency.

ACTION: Notice to alter systems of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

S322.10.DMDC is being altered to add a new use for the information being released to the Social Security Administration as follows ''c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).''

DATES: This action will be effective without further notice on August 22, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 2, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 16, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (April 26, 2002, 67 FR 20748).

CHANGES:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new use for the information being released to the Social Security Administration as follows ''c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).''

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

PRIMARY LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

BACK-UP LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the

U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal (non-postal) civilian employees and all Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized web access to DMDC computer systems and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching. Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number, email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Pub. L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical

studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC Web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with Web access, and to ensure that access is only for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical

analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated

military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub. L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Public Law 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

22. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, conduct scientific studies or medical follow-up programs

and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes.

Note: This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DOD office requiring creation of the report should maintain its record keeping copy in accordance with NARA-approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–CF, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–18480 Filed 7–22–02; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational, scientific, technical, and environmental implications of the alternatives considered, announces its decision to employ two SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment. This decision, which pertains only to the employment of two SURTASS LFA sonar systems (rather than the up to four analyzed in the Final Overseas Environmental Impact Statement and Environmental Impact Statement [OEIS/EIS] for SURTASS LFA Sonar), implements the preferred alternative, Alternative 1, identified in the Final OEIS/EIS for SURTASS LFA Sonar.

Pursuant to 10 U.S.C. 5062, the Navy is required to be trained and equipped for prompt and sustained combat incident to operations at sea. To fulfill this mandate, the Navy provides credible, combat-ready naval forces capable of sailing anywhere, anytime, as powerful representatives of American sovereignty. Fleet readiness is the foundation of the Navy's war fighting capability, and there is a direct link between fleet readiness and training. For the Navy, fleet readiness means essential, realistic training opportunities, in both open-ocean and littoral environments.

The Navy is facing existing and emerging threats from foreign naval forces. For example, several non-allied nations are fielding new, quiet submarines. New anti-ship, submarine-launched cruise missiles are also being introduced. When quiet submarines and anti-ship cruise missiles are combined, they pose a formidable threat to our sailors and Marines, who are called upon to project power from the sea and maintain open sea lanes.

In order to successfully locate and defend against these threats, our sailors must train realistically with both active and passive sonar. In executing anti-submarine (ASW) missions, sonar is the key to survival for our ships and sailors. The employment of SURTASS LFA will enable the Navy to meet the clearly defined, real-world national security need for improved ASW capability by allowing Navy Fleet units to reliably detect quieter and harder-to-find foreign submarines underwater at long range, thus providing adequate time to react to and defend against the threat, while remaining a safe distance beyond a submarine's effective weapons range.

SUPPLEMENTARY INFORMATION: The text of the Record of Decision is provided as follows:

The Department of the Navy (Navy), pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c); the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures, 40 CFR parts 1500–1508; 32 CFR part 775; and Presidential Executive Order (EO) 12114 (Environmental Effects Abroad of Major Federal Actions), announces its decision to employ two SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment. This decision, which pertains only to the employment of two SURTASS LFA sonar systems (rather than the up to four analyzed in the Final Overseas Environmental Impact Statement and Environmental Impact Statement [OEIS/EIS] for SURTASS LFA Sonar), implements the preferred alternative, Alternative 1, identified in the Final (OEIS/EIS) for SURTASS LFA Sonar.

Background

The U.S. and its military forces must have the ability to project power decisively throughout the world. A key to the ability of the U.S. and its military forces to project power is the protection of U.S. and allied forward deployed Naval units against the threat of opposing force submarines. Of the approximately 500 non-U.S. submarines in the world, 224 are operated by non-allied nations. Many of these are the more advanced, quieter diesel-electric submarines that present a real threat to U.S. and allied forces. When these units are in a defensive mode, that is, not required to travel great distances or at high speed, they have a capability nearly equal to that of a modern U.S. nuclear submarine. At minimal cost, this threat potential can be readily obtained.

Where once the U.S. Navy could detect hostile submarines before they could get close enough to launch their weapons, by the 1990's this response time, against the quietest threat, had shrunk to mere minutes. To regain the needed response time and thereby protect our forces, the Navy embarked on an extensive research program to develop new technologies to detect submarines at long ranges. Among the technologies investigated were radar, laser, magnetic, infrared, electronic, electric, hydrodynamic, biologic and sonar (high-, mid- and low frequency). Although no single technology investigated was effective during all tactical and environmental conditions, the most effective and best available technology for reliable long-range detection was Low Frequency Active (LFA) sonar.

LFA sonar is an augmentation to the passive (SURTASS) detection system. Under certain, specific oceanic conditions, passive sonar can provide the detection required. However, under environmental conditions found in many ocean areas, passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot detect quiet, harder-to-find submarines during all conditions, particularly at long ranges.

SURTASS LFA Sonar System Description

SURTASS LFA sonar is a long-range, all-weather sonar system that operates in the low frequency (LF) band between 100 and 500 Hertz (Hz). It has both active and passive components. The active component of the system, LFA, is a set of 18 low frequency acoustic transmitting source elements (called projectors) suspended by cable from underneath a ship. The source level of an individual projector is 215 dB. These projectors produce the active sonar signal or ''ping.'' A ''ping,'' or transmission, can last between 6 and 100 seconds. The time between transmissions is typically 6 to 15 minutes. The average duty cycle (ratio of sound ''on'' time to total time) is between 10 and 20 percent. The SURTASS LFA sonar signal is not a continuous tone, but rather a transmission of waveforms that vary in frequency and duration. The duration of each continuous frequency sound transmission is nominally 10 seconds or less. The signals are loud at the source, but levels diminish rapidly over the first kilometer. The passive, or listening, component of the system is SURTASS, which detects returning echoes from submerged objects, such as threat submarines, through the use of hydrophones on a receiving array that is towed behind the ship. The SURTASS LFA ship maintains a minimum speed of 5.6 kilometers (km) per hour (kph) (3 knots [kt]) through the water to tow the horizontal line hydrophone array.

Alternatives Considered

In preparing the OEIS/EIS the Navy considered three alternatives, including Alternative 1 (SURTASS LFA sonar employment [up to four systems] with geographic restrictions and monitoring mitigation); Alternative 2 (unrestricted SURTASS LFA sonar employment [up to four systems]); and the No Action alternative. Each alternative was evaluated and compared against the others in terms of fulfillment of the Navy's validated need for reliable detection of quieter and harder-to-find underwater submarines at long range, and the potential for environmental impacts. The word ''employment'' as used in this context means the use of SURTASS LFA sonar during routine training and testing, as well as the use of the system during military operations. ''Employment'' does not apply to the use of the system in armed conflict or direct combat support operations, nor during periods of heightened threat conditions, as determined by the National Command Authorities (President and Secretary of Defense or their duly designated alternates or successors).

Alternative 1, which is the Navy's preferred alternative in the Final OEIS/EIS, involves the employment of up to four SURTASS LFA systems with certain geographical restrictions and monitoring mitigation to reduce potential adverse effects on the marine environment. The geographic restrictions include limiting SURTASS LFA sonar received levels to not exceed 145 dB at known recreational or commercial diving sites; limiting SURTASS LFA sonar received levels to below 180 dB within 22 km (12 nm) of all coastlines (including islands) and in areas declared as Offshore Biologically Important Areas (OBIAs); and the use of sound pressure level (SPL) modeling to accurately gauge the 145 dB and 180 dB sound fields prior to commencing operations. The monitoring mitigation includes visual monitoring, the use of passive acoustic monitoring, and use of the high frequency marine mammal monitoring (HF/M3) sonar to detect marine mammals entering or within the 180-dB sound field. (*See* ''*Mitigation*'' below for further details).

Additionally, under this alternative, the Navy's Long Term Monitoring Program (budgeted at a level of $1M per year for five years, starting with the issuance of the first Letter of Authorization [LOA] by NMFS under the Marine Mammal Protection Act [MMPA]) will provide information to further the understanding of the potential effects of anthropogenic (human-generated) sounds on the marine environment.

Alternative 2 involves the unrestricted operation of up to four SURTASS LFA sonar systems in the active mode. Under this alternative, the Navy would employ these systems with no mitigation measures (*i.e.,* no geographic restrictions or monitoring mitigation to prevent potential effects on marine animals and divers). This alternative would maximize the Navy's operational flexibility and capability to employ SURTASS LFA sonar. However, this alternative has a higher potential to affect the marine environment than the other alternatives.

Under the No Action Alternative, operational employment of SURTASS LFA sonar would not occur. This would foreclose employment of SURTASS LFA sonar technology, and severely impair the Navy's ability to train to locate and defend against enemy submarines. Because the fleet must ''train as it fights,'' this would in turn directly impact Fleet readiness and national security. The lack of a reliable, long-range underwater submarine detection capability would make it possible for potentially hostile submarines to clandestinely place themselves into position to threaten U.S. and allied Fleet units and land-based targets. Without this long-range surveillance capability, the reaction times to submarines would be greatly reduced and the effectiveness of close-in, tactical systems to neutralize threats would be seriously, if not fatally, compromised. Although it is the most environmentally preferable alternative,

the No Action Alternative would not fulfill the need to improve U.S. detection of quieter and harder-to-find underwater submarines at long range.

Environmental Impacts

The Navy analyzed the potential impacts of the employment of up to four SURTASS LFA sonar systems, with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment, in several resource areas. Among the resource areas covered were impacts upon marine mammals, fish and sea turtles, human divers and swimmers, commercial and recreational fishing, whale watching and marine mammal research and exploration activities. This ROD summarizes the potentially significant, but mitigable impacts associated with the decision and the implementation of the selected alternative. The Navy also considered the selected action's potential for indirect effects and cumulative impacts, and ensured consistency with federal policies addressing environmental justice (EO 12898) and protection of children from environmental health and safety risks (EO 13045).

The main areas of impact analysis concerned the potential impact of low frequency sounds upon marine life and human divers. The analytical process utilized in preparation of the OEIS/EIS first conducted a scientific literature review to determine data gaps. Next, scientific screening of marine animal species for potential sensitivity to low frequency underwater sound was undertaken. Following these steps, scientific research and the estimation of the potential for effects from low frequency sound on marine mammals and humans in water was conducted. The research on marine mammals led to the development of a method for quantifying risk to marine mammals. Next, underwater acoustic modeling was conducted. These elements combined to produce an estimation of marine mammal stocks potentially affected. Similar methodologies were used to provide estimations of potential injuries to fish and sea turtles. Finally, geographic restrictions and monitoring mitigation were established to minimize the potential for effects to a negligible level.

Specifically with regard to marine mammals, the analysis of potential impacts contained in the OEIS/EIS was developed based on a literature review, the results of the Navy's Low Frequency Sound Scientific Research Program (LFS SRP) and underwater acoustical modeling. The potential impacts considered were for injury and/or significant change to biologically important behaviors. Biologically important behaviors are those related to activities essential to the continued existence of a species, such as feeding, migrating, breeding and calving.

Initially, it was determined there was potential for injurious effects within short ranges from the SURTASS LFA sonar. This area was designated as the LFA Mitigation Zone and covers a volume of water ensonified to a level at or above 180 dB (sound pressure level) by the SURTASS LFA sonar transmit array. Under normal operating conditions, this zone will vary between the nominal ranges of 0.75 to 1.0 km (0.40 to 0.54 nm) from the source array ranging over a depth of approximately 87 to 157 m (285 to 515 ft). (The center of the array is at a nominal depth of 122 m [400 ft]).

For the purposes of the SURTASS LFA sonar analyses presented in the Final OEIS/EIS and this ROD, all marine mammals exposed to received levels at or above 180 dB are evaluated as if they are injured. This determination was based on estimations of the range of frequencies at which an animal's hearing is most sensitive and the associated hearing thresholds (including an examination of anatomical models of inner ear function); extrapolation from human exposure results; comparison to fish hearing studies; and recent measurements of levels of temporary threshold shift (TTS) in marine mammals.

For the purposes of the SURTASS LFA sonar analysis presented in the Final OEIS/EIS and this ROD, an animal will have to be within the 180-dB sound field during transmission for injury to occur. The probability of this occurring is negligible because of the visual and acoustic monitoring that will be used whenever the SURTASS LFA sonar is transmitting. (*See* ''*Mitigation*'' below for further details.)

Knowing that cetacean behavioral responses to low frequency sound signals needed to be better defined using controlled experiments, the Navy supported the three-year LFS SRP conducted by independent scientists beginning in 1997. The LFS SRP was designed to supplement the limited scope of data from previous studies. This field research program was based on a systematic process for selecting the marine mammal indicator species (baleen whales were used as indicator species for other marine animals in the studies because they are the animals that are the most likely to have the greatest sensitivity to low frequency sound, have protected status, and have shown avoidance responses to low frequency sounds) and field study sites, using inputs from several workshops involving a broad group of interested parties (academic scientists, federal regulators, and representatives of environmental and animal welfare groups). Controlled experimental tests were designed and conducted by independent scientists who are recognized experts in the fields of marine mammalogy, marine bioacoustics and underwater acoustics. The LFS SRP involved the following species and settings: Phase I—blue and fin whales feeding in the Southern California Bight (September–October 1997); Phase II—gray whales migrating past the central California coast (January 1998); and Phase III—male humpback whales singing off Hawaii (February–March 1998). The LFS SRP produced new information about responses to low frequency sounds at received levels from 120 to 155 dB. The scientific team explicitly focused on situations that promoted high received levels, but were seldom able to achieve received levels above 155 dB due to the motion of the whales and maneuvering constraints of the low frequency source vessel. Prior to the LFS SRP, the expectation was that whales would begin to show avoidance responses at received levels of 120 dB. Immediately obvious avoidance responses were expected for received levels greater than 140 dB. Although the LFS SRP experiments detected some short-term behavioral responses at estimated received levels between 120 and 155 dB and several behavioral responses were revealed through later statistical analysis, the independent scientists conducting the research concluded that there was no significant change in a biologically important behavior detected in any of the three phases. Most animals that did respond returned to normal baseline behavior within a few tens of minutes. The modeled underwater acoustic received levels, which were calculated in the Final OEIS/EIS subsequent to the LFS SRP, have demonstrated that the range of exposure levels for subject animals during the LFS SRP covered a significant portion of the received level range that will be expected during actual SURTASS LFA sonar operations.

To estimate the percentage of marine mammal stocks potentially affected on a yearly basis under the selected alternative, the typical annual SURTASS LFA sonar operating schedule was correlated to 31 acoustically modeled sites. Conservative predictions from the modeling of the annual estimates of percentages of marine mammal stocks potentially

affected by SURTASS LFA sonar operations in the Pacific/Indian Oceans and Atlantic Ocean/Mediterranean Sea are given in the Final OEIS/EIS. Since marine mammal stocks are reproductively isolated, decreases in one stock cannot be replaced by animals from other stocks. Therefore, to accurately assess the potential effect of SURTASS LFA sonar, each stock was examined independently.

Under the selected alternative, the potential impact on any stock of marine mammals from injury is considered negligible, and the potential effect on the stock of any marine mammal from significant change in a biologically important behavior is considered minimal. However, because there is some potential for incidental takes, the Navy is requesting a Letter of Authorization (LOA) under the MMPA for each SURTASS LFA sonar system from NMFS for the taking of marine mammals incidental to the employment of SURTASS LFA sonar during training, testing and routine military operations. The Final Rule for issuance of the LOA for SURTASS LFA operations was published on 16 July 2002. In the Final Rule the National Marine Fisheries Service (NMFS) determined that employment of SURTASS LFA as described in Alternative 1 of the OEIS/EIS and implemented in this ROD will have negligible impacts on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of such marine mammals for subsistence uses. Additionally, NMFS considers the unintentional takes to be ''small numbers of marine mammal species or population stocks.''

The Navy has also consulted with NMFS under Section 7 of the ESA concerning the possible incidental taking of listed species, including marine mammals, sea turtles, and fish. In a Biological Opinion dated 30 May 2002, NMFS indicated that employment of the SURTASS LFA sonar as described by Alternative 1 of the Final OEIS/EIS and implemented by this ROD may adversely affect, but is not likely to jeopardize the continued existence of affected endangered and threatened species.

Regarding impacts to fish, the risk of physical harm or injury from exposure to SURTASS LFA sonar transmissions will be no greater than that for marine mammals. Several factors support this finding. First, coastal waters, OBIAs and recreational dive sites commonly contain significant concentrations, abundances and diversity of fish stocks, and geographic restrictions imposed on the SURTASS LFA sonar system employment limits received levels to no greater than 145 dB at known recreational and commercial dive sites and below 180 dB within 22 km (12 nm) of any coastline and in offshore biologically important areas. Based on prior studies, it is reasonable to consider hearing loss or injury to fish from SURTASS LFA sonar transmissions to be limited to received levels of 180 dB and higher. Thus, areas of high fish abundance and diversity will not be exposed to levels of LFA sounds that could potentially cause injury. Second, the SURTASS LFA sonar signal has a narrow bandwidth (approximately 30 Hz) whereas most fish species have much wider hearing bandwidths, which minimizes the potential for masking important regions of fish hearing bandwidth. Third, given that the SURTASS LFA sonar ship is always moving and that the system has a low system duty cycle (20 percent or less), fish will spend little time in the LFA mitigation zone. Finally, the LFA mitigation zone is small relative to fisheries resource regions and open ocean fish habitats. In any event, because only two SURTASS LFA sonar systems will be employed under this ROD, any potential for impacts to fish is less than for the four systems analyzed in the Final OEIS/EIS.

Pelagic fish are food for many marine mammals. If these prey species were within the 180-dB sound field of the SURTASS LFA sonar during source transmission (no more than 20 percent of the time), they could potentially be indirectly affected. However, it is unlikely that prey availability for marine mammals would be altered for more than a few hours. Based on the analyses of potential effects on fish, the potential for injury to fish on a stock level is negligible.

Sea turtle encounters with SURTASS LFA sonar will be limited and not significant due to the same factors described above for fish. Thus, it is unlikely that a significant portion of any sea turtle stock will experience adverse effects on movements, migration patterns, breathing, nesting, breeding, feeding, or other normal behaviors. In any event, because only two SURTASS LFA sonar systems will be employed under this ROD, any potential for impacts to sea turtles is less than for the four systems analyzed in the Final OEIS/EIS. Moreover, given that sea turtles are comparable in size to a small marine mammal, the visual monitoring and active acoustic monitoring employed under the implemented alternative will further reduce the risk of sea turtles encountering the SURTASS LFA sonar system.

Because data regarding the effects of underwater low frequency sound on humans were limited, the Navy conducted two scientific research studies to analyze the potential effects of low frequency sound on human divers. This research, in conjunction with guidelines developed from psychological aversion testing, led to the conclusion that low frequency sounds at or below 145 dB received level would not have an adverse effect on recreational or commercial divers. The Naval Submarine Medical Research Laboratory then established a 145-dB received level criterion for recreational and commercial divers, which has been endorsed by both the Navy's Bureau of Medicine and Surgery and the Naval Sea Systems Command.

Impacts on human divers, swimmers, surfers, snorkelers, and others that may submerse themselves below the ocean's surface will not be significant. Several factors support this conclusion. First, geographic restrictions imposed on SURTASS LFA sonar system employment limits received levels to no greater than 145 dB at known recreational and commercial dive sites. Second, exposure to low frequency sound energy will be eliminated or greatly reduced at beaches that are separated from the open ocean by a land mass (barrier island) or beaches along a broad, shallow portion of the continental shelf. Third, other than for very short periods of time, swimmers, surfers, and snorkelers are located at depths not greater than 2 m (6.5 ft), where substantial sound transmission losses occur in the top layer of water (up to 20 dB less than sound fields in adjacent deeper water). Also, as noted earlier, only two SURTASS LFA sonar systems will be employed under this ROD, so any potential impacts to divers are less than for the four systems analyzed in the Final OEIS/EIS.

Under the selected alternative, there will be negligible impacts on fish (as discussed previously) and, hence, negligible impact on commercial and recreational fishing in marine waters, fisheries trade, or related employment.

There will be no significant impacts on whale watching activities as a result of the employment of SURTASS LFA sonar, primarily because of the geographic restrictions imposed on SURTASS LFA sonar operations, which are designed to avoid areas of high concentrations of marine mammals. Thus, operations will not occur in prime whale watching areas.

Employment of the system and implementation of the selected alternative will not result in potential adverse impacts to existing

governmental, commercial, or academic research and exploration activities. SURTASS LFA sonar sound fields will not exceed 145 dB within known recreational and commercial dive sites, which includes blue water (open ocean) dive sites related to oceanic research. Many research and exploration activities are conducted from vessels under the University National Oceanographic Laboratory System (UNOLS), which cooperates with the Navy on a continuous basis. In addition, data from the Navy's proposed Long Term Monitoring Program can be used to supplement ongoing and future oceanographic and marine environmental research endeavors.

The potential cumulative impact issue associated with SURTASS LFA sonar operations is the addition of underwater sound to oceanic ambient noise levels, which, in turn, could have impacts on marine animals. Analysis of the potential cumulative impacts requires a discussion of recent changes to ambient sound levels in the world's oceans; the operational parameters of the SURTASS LFA sonar system, including the required mitigation; and the contribution of SURTASS LFA sonar to oceanic noise levels relative to other human-generated sources of oceanic noise. As noted in the Final OEIS/EIS, since 1950 oceanic ambient noise levels have risen by as much as 10 dB, mostly due to commercial shipping. Two SURTASS LFA sonars can transmit sound into the ocean for a total maximum of 36 days per year'versus a total of 21.9 million days per year for the 60,000 vessels of the world's merchant fleet (assuming 80 percent of the merchant ships are at sea at any one time). Therefore, within the existing environment, the potential for accumulation of noise in the ocean by the intermittent operation of SURTASS LFA sonars is considered negligible.

Any cumulative impacts on fish (including sharks), sea turtle or marine mammal stocks from implementation of the selected alternative are a long-term issue, and are estimated to be extremely small because the system will transmit for a relatively brief period of time on an annual basis (estimated maximum of 432 hours per vessel per year); the system will operate at a low duty cycle (on no more than 20 percent of the time); and the system will not be stationary. In any event, because only two SURTASS LFA sonar systems will be employed under this ROD, any potential for impacts is less than for the four systems analyzed in the Final OEIS/EIS. Moreover, all observations made during the LFS SRP suggest that behavioral effects terminate when transmissions stop. Thus, the maximum scale on which any impacts are likely to occur is a nominal 30-day operational at-sea mission.

Mitigation

All practicable means to avoid or minimize environmental harm have been adopted through the incorporation of mitigation measures into operation of the SURTASS LFA sonar. The objective of these mitigation measures is to avoid injury to marine mammals and sea turtles near the SURTASS LFA sonar source and to recreational and commercial divers in the marine environment. Mitigation measures involve both geographic restrictions and operational measures. Geographic restrictions include limiting the SURTASS LFA sonar-generated sound field to a maximum of 145 dB (received level) in the vicinity of known recreational or commercial dive sites; limiting the SURTASS LFA sonar-generated sound field to below 180 dB (received level) within 22 km (12 nm) of any coastlines (including islands) and in offshore areas outside this zone that have been determined to be Offshore Biologically Important Areas (OBIAs); and estimating SURTASS LFA sound pressure levels prior to and during operations to provide the information necessary to modify operations, including the delay or suspension of transmissions, in order not to exceed the 145-dB and 180-dB sound field criteria.

Additionally, monitoring will take place during operations to prevent injury to marine animals. This monitoring will take three forms. First, visual monitoring for marine mammals and sea turtles will be conducted from the vessel during daylight hours by personnel trained to detect and identify marine mammals and sea turtles. Monitoring will begin 30 minutes before sunrise for ongoing missions or 30 minutes before SURTASS LFA sonar is deployed and continue until 30 minutes after sunset or until the SURTASS LFA sonar have been recovered. Second, passive acoustic monitoring using the SURTASS array will listen for sounds generated by marine mammals as an indicator of their presence when SURTASS is deployed. Finally, active acoustic monitoring will take place using the High Frequency Marine Mammal Monitoring (HF/M3) sonar, which is a Navy-developed, enhanced high frequency commercial sonar to detect, locate, and track marine mammals that may pass close enough to the SURTASS LFA sonar's transmit array to enter the 180-dB sound field (LFA mitigation zone). HF/M3 sonar monitoring will begin 30 minutes before the first SURTASS LFA sonar transmission of a given mission is scheduled to commence and continue until transmissions are terminated. Whenever a marine mammal or sea turtle is detected within the LFA mitigation zone (180–dB sound field) or within the 1-km buffer zone beyond the LFA mitigation zone (interim operational restriction per NMFS Final Rule), the Officer in Charge will order the immediate delay or suspension of SURTASS LFA sonar transmissions, until the animal is determined to have moved beyond the buffer zone.

The startup of the HF/M3 sonar will involve a ramp-up from a source level of approximately 180 dB to ensure there is no inadvertent exposure of local animals to received levels 180 dB and above. If the operating area is found to be clear, the source level will be increased in 10-dB steps until full power (if required) is attained, at which time the operator will adjust the HF/M3 sonar controls as necessary to optimize system performance. The HF/M3 sonar and its operating protocols were designed to minimize potential effects on marine animals.

The HF/M3 sonar operates with a similar power level (220 dB), signal type and frequency (30 to 40 kHz) as high frequency ''fish finder'' type sonars used worldwide by both commercial and recreational fishermen. The HF/M3 sonar is located near the top of the SURTASS LFA sonar vertical line array. Its computer terminal for data acquisition, processing and display is located in the SURTASS Operations Center. The general characteristics of the HF/M3 sonar are provided in the Final OEIS/EIS.

Analysis and testing of the HF/M3 sonar operating capabilities indicate that this system substantially increases the probability of detecting marine mammals that may pass close enough to the SURTASS LFA sonar's transmit array to enter the 180–dB sound field (LFA mitigation zone) and provides excellent monitoring capability (particularly for medium to large marine mammals) beyond the LFA mitigation zone, in the 1-km buffer zone. The system's ability to detect marine mammals of various sizes has been verified in several sea trials. Recent testing of the HF/M3 sonar, as documented in the Final OEIS/EIS, has demonstrated a probability of detection above 95 percent within the LFA mitigation zone for most marine mammals.

Long Term Monitoring (LTM) Program

The LTM program consists of two parts. First are NMFS-directed reports

under the Final Rule. These reports will provide the necessary information for assessments of whether any taking of marine mammals occurred within the SURTASS LFA mitigation zone during operations based upon data from the monitoring mitigation (visual, passive acoustic, active acoustic). Data analysis from the LTM and post-operation acoustic modeling will provide post-mission estimates of any incidental harassment takes. The second part of the LTM program involves long-term independent scientific research efforts on topics designed to fill data gaps and further the overall understanding of the effects of anthropogenic sound and noise on the marine environment. While the Navy believes that the research and analyses contained in the Final OEIS/EIS are sufficient to permit informed decision-making regarding the employment of SURTASS LFA sonar, it believes that it would be prudent to continue research. The LTM program has been budgeted by the Navy at a level of $1M per year for 5 years, starting with the issuance of the first LOA.

During routine operations of SURTASS LFA sonar, technical and environmental data will be collected and recorded. These will include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs. As part of the LTM Program and as stipulated in the MMPA Final Rule/LOA, the following reports are required. First, a mission report will be provided to NMFS on a quarterly basis with the report including all active-mode missions that have been completed 30 days or more prior to the date of the deadline for the report. Second, the Navy will submit an annual report to NMFS no later than 90 days prior to expiration of an LOA. Finally, the Navy is required to provide a final comprehensive report analyzing any impacts of SURTASS LFA sonar on marine mammal stocks during the 5-year period of the regulations.

Summary of Public Involvement

The public participation program for the OEIS/EIS began with publication of a Notice of Intent (NOI) to prepare an EIS in the Federal Register (FR) on July 18, 1996. Three public scoping meetings were held in August 1996 to determine the scope of issues to be addressed by the OEIS/EIS. In addition to conducting the public participation program, the Navy invited representatives of concerned environmental groups, or non-governmental organizations, to an outreach meeting held on January 8, 1997 in Washington, DC. Three additional meetings were held between February 1997 and June 1998. The purpose of these meetings was to provide interested parties with detailed briefings on SURTASS LFA sonar and to exchange views on the EIS process and content. The outreach meetings provided significant input to the OEIS/EIS development.

The Navy also organized a Scientific Working Group (SWG) on ''The Potential Effects of Low Frequency Sound on the Marine Environment.'' The SWG provided a forum for scientific discourse among Navy and non-governmental organizations to address the underlying scientific issues needing resolution for development of the OEIS/EIS. Group members included representatives from the Navy, the National Marine Fisheries Service, the Marine Mammal Commission, several leading universities, several leading marine research institutions, and an observer from the League for Coastal Protection, who represented the public environmental community. The SWG met three times and was responsible for designing the LFS SRP, which provided critical research on the impacts of low frequency sounds upon marine mammals. The results from the LFS SRP were key factors driving the development and conclusions of the OEIS/EIS.

On July 31, 1999, copies of the Draft OEIS/EIS were distributed to agencies and officials of federal, state, and local governments, citizen groups and associations, and other interested parties (FR Vol. 64 No. 146). Documents produced for the SURTASS LFA Sonar Draft OEIS/EIS were also made available for review at 17 public libraries located in many coastal states, including Hawaii.

A 90-day public review and comment period on the Draft OEIS/EIS ended on October 28, 1999. During this period, three public hearings were held on the Draft OEIS/EIS with notifications published in the **Federal Register** on September 14, 1999 (FR Vol. 64 No. 177) and in local newspapers. Over 1,000 comments were received on the Draft OEIS/EIS, covering federal, state, regional, and local agencies, groups and associations, and private individuals. All oral and written comments received were considered in the preparation of the Final OEIS/EIS.

On January 19, 2001, copies of the Final OEIS/EIS were distributed to agencies and officials of federal, state, and local governments, citizen groups and associations, and other interested parties (FR Vol. 66 No. 23). The Final OEIS/EIS was also made available for review at 17 public libraries located in many coastal states, including Hawaii.

The SURTASS LFA Sonar OEIS/EIS Internet Web site (*http://www.surtass-lfa-eis.com*) will be available for information purposes until 60 days after publication of the ROD in the **Federal Register.**

Comments on the Final OEIS/EIS

The Navy received eleven comment letters on the Final OEIS/EIS, including one comment from the U.S Environmental Protection Agency (USEPA), six comments from individuals, and four from non-governmental organizations. Comments received were considered when preparing this ROD.

The USEPA in its comments on the Draft OEIS/EIS recommended that information from the NMFS biological opinion be included in the Final OEIS/EIS. As the biological opinion was not completed when the Final OEIS/EIS was published, in comments on the Final OEIS/EIS the USEPA similarly requested that the Navy clearly define the mitigation measures in the ROD based on the biological opinion. This information has been provided in this document.

Six comment letters were received from individuals. Responses to issues raised in four of the letters were adequately addressed in the Final OEIS/EIS and/or the NMFS Final Rule. The comments of another individual, which primarily concerned diver issues, were addressed in sufficient detail in the Final OEIS/EIS and Technical Report Number 3 (Summary Report on the Bioeffects of Low Frequency Waterborne Sound). The comments of Mr. K. C. Balcomb, which primarily concerned the Bahamas stranding and the potential for injury to marine mammals from resonance, have been addressed in this document under the discussion concerning the requests for the Navy to do a supplemental EIS and were addressed in the NMFS Final Rule.

The Cape Cod Commercial Hook Fisherman's Association, Inc., raised concerns about impacts that active sonar will have on the New England groundfishery. The potential for impacts from SURTASS LFA sonar to fish and commercial/recreational fishing was addressed in the Final OEIS/EIS. Under the selected alternative, there will be negligible impacts on commercial and recreational fishing in marine waters, fisheries trade, or related employment.

The Navy received two letters from the Natural Resources Defense Council (NRDC) (letters of 31 May 2001 and 4 February 2002) and one from Earth Island Institute (EII) (letter of 27 September 2001) stating that since the Final SURTASS LFA Sonar OEIS/EIS

was published in January 2001 significant new information relevant to environmental concerns and bearing on the Final OEIS/EIS analysis and conclusions has been developed. These letters further requested that the Navy prepare a supplemental EIS (SEIS) based on the matters presented. Under CEQ regulations governing NEPA, Federal agencies are required to prepare an SEIS when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)).

First, the letters have suggested that there is a potential for non-auditory physiological impacts on marine mammals, induced by acoustic resonance of the LFA signal in the bodies of animals. They also suggest that resonance can cause serious physical injury or death at far lower acoustic intensities and over a much wider range of impact than the Navy has heretofore calculated.

In response to the resonance issue raised by these letters and comments to NMFS Proposed Rule, Cudahy and Ellison (2002) analyzed the potential for injury related to resonance from SURTASS LFA signals. Their analysis does not support the claim that resonance from LFA sonar will cause injury. Physical injury due to resonance will not occur unless it will increase stress on tissue to the point of damage. Therefore, the issue is not whether resonance occurs in air/gas cavities, but whether tissue damage occurs. Cudahy and Ellison (2002) indicate that the potential for in vivo tissue damage to marine mammals from exposure to underwater low frequency sound will occur at a damage threshold on the order of 180 to 190 dB or higher. These include: (1) Transluminal (hydraulic) damage to tissues at intensities on the order of 190 dB or greater; (2) vascular damage thresholds from cavitation at intensities in the 240–dB regime; (3) tissue shear damage at intensities on the order of 190 dB or greater; and (4) tissue damage in air-filled spaces at intensities above 180 dB.

In a workshop held April 24 and 25, 2002, an international group of 32 scientists with backgrounds in acoustics met at NMFS Headquarters in Silver Spring, Maryland, to consider the question of acoustic resonance and its possible role in tissue damage in marine mammals. The group concluded that it is not likely that acoustic resonance in air spaces plays a primary role in tissue damage in marine mammals exposed to intense acoustic sources. Tissue displacements are too small to cause damage, and the resonant frequencies of marine mammal air spaces are too low to be excited by most sounds produced by humans. Resonance of non-air containing tissues was not ruled out. While tissue trauma from resonance in air spaces seems highly unlikely, the group agreed that resonance in non-air containing tissues cannot be considered negated until certain experiments are performed. (PersComm with Dr. Roger L. Gentry, Workshop Organizer, NMFS Office of Protected Resources, 14 May 2002)

In summary, the best available scientific information shows that, while resonance can occur in marine animals, this resonance does not necessarily cause injury, and any such injury is not expected to occur below a sound pressure level of 180 dB. Because the Draft and Final OEIS/EISs used 180 dB as the criterion for the determination for the potential for injury to marine life and for the implementation of geographic and monitoring mitigation measures, any non-auditory physiological impacts associated with resonance were accounted for. The 145–dB restriction for known recreational and commercial dive sites will provide an additional level of protection to marine animals in these areas. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Additionally, it has been claimed that air space resonance impacts will cause damage to the lungs and large sinus cavities of cetaceans, that LFA sound could induce panic and subsequent problems with equalization, and that LFA sonar could cause bubble growth in blood vessels. With regard to the specific impacts to lungs and sinus cavities, there is abundant anatomical evidence that marine mammals have adapted to dramatic fluctuations in pressure. For example, marine mammal lungs are reinforced with more extensive connective tissues than their terrestrial relatives. These extensive connective tissues, combined with the probable collapse of the alveoli at the depths at which significant SURTASS LFA signals can be heard, make it very unlikely that significant lung resonance effects could be realized. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Regarding the issue of equalization (or more correctly—decompression), it is likely that marine mammals, which have evolved in an ambient hydrostatic pressure environment spanning several orders of magnitude [$1:10^3$], would be pre-disposed to have an innately rugged physiology for handling pressure changes and are unlikely to have problems with decompression. Therefore, it is unlikely that they would experience these problems. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

One of the letters (NRDC, 4 February 2002) cited a 2001 paper, which building on a theoretical model advanced in a paper published in 1996, hypothesizes that intense, low-frequency sound could spur the growth of nitrogen bubbles in diving animals and result in embolism, hemorrhaging, and decompression sickness. According to the paper, marine mammals whose bodies are already saturated or supersaturated with nitrogen—a condition induced in at least some species by diving—could be especially vulnerable to such injuries. The NRDC letter alleges that the potential for debilitating injury resulting from this process was not addressed by the Navy in its final EIS for the LFA system.

The papers referred to above are ''Acoustically Enhanced Bubble Growth at Low Frequencies and Implication for Human Diver and Marine Mammal Safety'' by L.A. Crum and Y. Mao in the Journal of the Acoustical Society of America (1996), and ''Can Diving-induced Tissue Nitrogen Supersaturation Increase the Chance of Acoustically Driven Bubble Growth in Marine Mammals?'' by D. S. Houser, R. Howard, and S. Ridgway in the Journal of Theoretical Biology in 2001. The ''bubble growth'' issue as presented in Crum and Mao (1996) was discussed in the Final OEIS/EIS based on comments concerning possible effects on divers, even though that paper is also relevant to marine mammals. Both papers raised concerns regarding the potential for low frequency sound (note: in both papers, the authors considered ''low frequency'' to be below 5,000 Hz; the SURTASS LFA Sonar Final OEIS/EIS, by contrast, defined ''low frequency'' as below 1,000 Hz) to cause bubble growth from saturated and supersaturated gases in the blood (similar to the human diver condition known as the bends). Crum and Mao (1996), whose analysis was peer reviewed, concluded that sound pressure induced bubble growth would not be of concern until the sound pressure level exceeded 190 dB. Houser et al. (2001) hypothesized that due to their dive profiles, beaked and sperm whales could have high supersaturation of gases in their blood and tissues at or

near the end of their dive cycles (at or near the surface). At these high levels of supersaturation, the primary factor in producing bubble growth is static diffusion, which is not induced by sound pressure. Because the SURTASS LFA sonar monitoring mitigation measures will prevent marine mammals from being exposed to sound levels of 180 dB and above within the LFA mitigation zone, marine mammals will not be exposed to sound levels that could cause bubble growth due to supersaturation. Additionally, since high levels of supersaturation of gases in the tissue and blood are a normal part of marine mammal diving behavior, it must also be assumed that marine mammals have evolved mechanisms to deal with bubble growth by this method. Further, this evolutionary process has included marine mammal exposure to loud sound pressure levels from their own vocalizations and from others in the diving pod. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Further, it is claimed there is a general correlation between naval maneuvers (which may include active sonar) and other mass strandings and multi-species strandings associated with beaked whales. The stranding information provided in the letters has been analyzed by both the Navy and NMFS. Based on this analysis, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

It has also been asserted that the interim report on the Bahamas stranding event (DoC and SECNAV, 2001) provides significant new information. For the following reasons, I have concluded that it does not.

First, as the report notes, SURTASS LFA sonar was not involved in the Bahamas stranding, and it has been confirmed that SURTASS LFA sonar has never been associated with any strandings. Second, the LFS SRP made systematic evaluations of the animals most likely to be potentially affected by low frequency sound. While beaked whales, the primary species that stranded in the Bahamas, may be sensitive to frequencies above that employed by SURTASS LFA sonar, the available evidence does not show that they are more sensitive to low frequency sounds than the species selected as subjects for the LFS SRP (baleen whales).

Finally, the interim report on the Bahamas stranding concluded that the cause of this stranding was the confluence of the Navy mid-range frequency sonar and contributory factors including the presence of a strong surface duct, unusual underwater bathymetry, constricted channel with limited egress, intensive active use of multiple sonar units over an extended period of time, and the presence of beaked whales that appear to be sensitive to the frequencies produced by these sonars.

In addition to the geographic restrictions and monitoring mitigation protocols required for the proposed action (Alternative 1), the Navy will apply interim operational restrictions required by NMFS in the Final Rule that include a maximum frequency of 330 Hz and a 1-km buffer zone outside of the LFA mitigation zone. Taken as a whole, these protocols and SURTASS vessel maneuvering restrictions (due to the length of the acoustic arrays) will preclude employment in narrow channels surrounded by land such as those in the Bahamas.

The letters have also asserted, in light of the interim Bahamas stranding report that resonance may have had an impact that caused the strandings, that the 180-dB threshold for injury is suspect for marine mammals, that baleen whales may also have stranded in the incident, and that the treatment of the incident in the Final EIS was dismissive.

Possible impacts associated with resonance were discussed earlier. The Navy does not agree that the interim Bahamas stranding report raises doubts about using 180 dB as the basis for determining injury with respect to the SURTASS LFA Sonar Final OEIS/EIS. The Final OEIS/EIS provides detailed discussions supporting the selection of 180 dB as the scientifically reasonable criterion for the potential onset of injury to marine mammals, and are not repeated here. In addition, research published after the Final OEIS/EIS was issued has strengthened this selection. Au and Andrews (2001) measured humpback whale calls off Hawaii at 189 dB; the average call source level for blue whales was calculated by McDonald et al. (2001) to be 186 dB; Charif et al. (2002) found source levels for fin whales up to 186 dB; and Møhl et al. (2000) recorded source levels for sperm whale clicks up to 223 dB. If marine mammals vocalize at these levels, it is reasonable to conclude that these species have also evolved mechanisms to protect themselves and conspecifics from high vocalization source levels.

Two minke whales, which are baleen whales, stranded in the Bahamas, but in a different geographical area than the beaked whales. The minke whales returned to deep water and were not reported to re-strand, so no information about the cause or causes of their strandings is available.

Based on the analysis discussed above, I have concluded that claims associated with the interim Bahamas stranding report do not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

One of the letters claimed that the Final OEIS/EIS failed to discuss the cumulative or synergistic effects of operation of the SURTASS LFA sonar system in the same area with other low-frequency active sonar systems employed by other countries. All low frequency range active sonar systems used by other nations that the Navy is aware of are above 1 kHz, except for the SACLANTCEN (NATO) TVDS system. The NATO TVDS system has both mid- and low-frequency components with frequency ranges of 2.8 to 3.3 kHz and 450 to 700 Hz, respectively (SACLANTCEN, 1998). The U.S. Navy does not intend to operate SURTASS LFA sonar with this NATO system. I have concluded that the potential for SURTASS LFA sonar to operate with other low frequency systems is unlikely and, therefore, this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

One letter also alleged that the Final OEIS/EIS failed to adequately discuss the use of new and advanced passive sonar technologies—such as Advanced Deployable Systems, towed arrays equipped with Acoustic Rapid Commercial-off-the-shelf Insertion (ARCI) processing, Robust Passive Sonar (RPS), and other systems—which have the potential to achieve the strategic goal of locating ''quiet'' submarines. As stated in the Final OEIS/EIS, LFA ''is an augmentation to the passive (SURTASS) detection system, and is planned for use when passive performance is inadequate.'' Under certain conditions, such as areas of high ambient (background) noise (e.g., high shipping density), passive sonar cannot detect quiet targets. Therefore, passive systems alone cannot meet the Navy's requirement to detect quiet, harder-to-find submarines during all conditions, particularly at long ranges. Passive sonar technologies, such as the Advanced Deployable System (ADS), were discussed in the Final OEIS/EIS and also in the Final Rule. Additionally, SURTASS LFA sonar will have ARCI as its processor. Therefore, I have

concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Finally, one letter suggested that the Navy prepare an SEIS because the Final OEIS/EIS analysis relied heavily on behavioral audiograms obtained on bottlenose dolphins for its analysis of auditory impacts rather than the newly reported alternative, electro-physiological method (auditory brainstem response) for measuring hearing loss in marine mammals. The letter stated that results indicate that hearing loss in bottlenose dolphins may occur to a greater degree and possibly at lower levels of exposure than had been presumed using behavioral techniques.

The auditory brainstem response (ABR) method referenced in the letter was used to measure temporary threshold shift (TTS), not to measure hearing loss. Additionally, an abstract received from the principal investigator on the referenced research states, ''Following the collection of the evoked auditory potential thresholds, the dolphin's thresholds were also reexamined using a conventional standard behavioral psychophysical procedure. The data show very similar thresholds using the two different procedures'' (PersComm with Dr. P.E. Nachtigall, 11 February 2002). Thus, the Navy's analysis in the Final OEIS/EIS remains valid. Furthermore, the Navy did not rely primarily on behavioral audiograms obtained on bottlenose dolphins in the Final OEIS/EIS for the analysis of auditory impacts. The subject study by Schlundt *et al.*, (2000) was only one set of data used to estimate the potential effects on marine mammal hearing, which included marine mammal hearing thresholds, extrapolation from human hearing loss studies, temporary threshold shift studies, and comparison to fish hearing studies. Therefore, I have concluded that this claim does not constitute significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

NMFS received several comments under their Proposed Rulemaking regarding the Navy's Final OEIS/EIS. The Navy has worked closely with NMFS in responding to these comments, which have been incorporated into NMFS Final Rule for the Taking of Marine Mammals Incidental to Navy Operations of SURTASS LFA Sonar (**Federal Register** July 16, 2002). In making the decision regarding employment of the SURTASS LFA sonar system, the Navy has fully considered the responses to comments within the NMFS Final Rule for the Taking of Marine Mammals Incidental to Navy Operations of SURTASS LFA Sonar.

Other Considerations

On June 10, 2002, the General Accounting Office (GAO) completed an investigation into the Defense Acquisition of the SURTASS LFA Sonar and issued a report (GAO–02–692) entitled, ''Testing Needed to Prove SURTASS/LFA Effectiveness in Littoral Waters.'' This exhaustive examination concluded that the primary benefit of SURTASS LFA sonar is that it will provide a significant increase in long-range undersea detection capabilities in the open ocean, with fewer assets and operators than other technologies, thus, validating the purpose as defined in the SURTASS LFA Sonar Final EIS. In its singular recommendation, GAO stated that the Navy should establish a test plan and conduct testing of the system to demonstrate its capabilities in littoral areas, which they defined as coastal, near-shore regions. Future testing pursuant to this decision will include testing in the littorals. Therefore, I have concluded that this report does not provide any significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

In a recent article (Croll, D.A, C.W. Clark, A. Acevedo, B. Tershy, S. Flores, J. Gedamke, and J. Urban. 2002. ''Bioacoustics: Only male fin whales sing loud songs.'' Brief Communications, Nature 417: 809), the authors concluded, ''. . . .the recovery of fin- and blue-whale populations from past exploitation could be impeded by low-frequency sounds generated by human activity.'' These low-frequency vocalizations are considered to be breeding displays by males. They also stated, ''An increase in ambient noise could thus reduce the distance over which receptive females might hear the vocalizations of males.'' One of the coauthors, Dr. Chris Clark of Cornell University, was a principal investigator on the LFS SRP and a preparer/reviewer of the Final OEIS/EIS. He has stated that the low frequency contribution to ambient noise of greatest concern is from commercial shipping. He also stated that SURTASS LFA sonar does not contribute to ambient noise in the frequency band of fin whale and blue whale songs (below 100 Hz). Further, the information presented in Croll et al. (2002) was known during the preparation of and is consistent with the conclusions of the SURTASS LFA Final OEIS/EIS. Therefore, I have concluded that this article does not provide any significant new information relevant to the employment of SURTASS LFA sonar that would require an SEIS.

Conclusions

I have considered the following issues relative to the potential environmental impacts from the employment of the SURTASS LFA sonar system including, but not limited to, adequacy of scientific information on human divers and the Navy sponsored research to study the potential effects of low frequency sound on divers to fill these gaps; adequacy of scientific information on marine animals and the Low Frequency Sound Scientific Research Program conducted by independent bioacousticians and marine biologists; development of impact criteria including risk continuum and thresholds; analytical methodology, analyses, and results of the determination of potential impacts; the NOAA/Navy Joint Interim Report Bahamas Marine Mammal Stranding Event of 15–16 March 2000 as it relates to the potential for SURTASS LFA sonar to cause tissue damage/injury to marine mammals; resonance and bubble growth issues as they relate to the potential for SURTASS LFA sonar to cause tissue damage/injury to marine animals; NMFS Final Rule for the Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar and their response to comments received on the Proposed Rule; NMFS Biological Opinion on the Navy's Proposed Employment of Surveillance Towed Array Sensor System Low Frequency Active Sonar; comments received on the SURTASS LFA Sonar Final OEIS/EIS; and requests from environmental groups for the Navy to prepare a supplemental EIS based on significant new information.

Based upon my review of the comparative analysis of the potential for environmental and socioeconomic effects from the three alternatives presented in the Final OEIS/EIS and public comments received during the NEPA process, I have decided to implement Alternative 1 of the Final OEIS/EIS, which was identified as the Navy's preferred alternative, with certain geographical restrictions and monitoring mitigation designed to reduce potential adverse effects on the marine environment, but only to employ two SURTASS LFA sonar systems rather than the four systems analyzed under Alternative 1. Only two SURTASS LFA sonar systems will be available during the next five years. There is no budget identified for any further SURTASS LFA sonar systems through fiscal year 2007. This decision permits the Navy to

reasonably fulfill its purpose of providing U.S. forces with reliable, effective, and efficient long-range detection of new-generation, quiet submarines, while the geographic restrictions and monitoring mitigation requirements constitute all practical means to avoid or minimize environmental harm from the alternative selected. In addition, this decision and implementation of this alternative provide for continued long-term monitoring and research, which will further enhance the understanding of the potential effects of anthropogenic sounds on the marine environment.

Actions requiring issuance of NMFS Letter(s) of Authorization (LOA[s]) are being addressed through NMFS rulemaking under 50 CFR part 216 and the Final Rule (**Federal Register**, 16 July 2002). Actions requiring issuance of incidental take statements (ITS[s]) are being addressed as part of the NMFS Biological Opinion on the U.S. Navy's proposed use of SURTASS LFA Sonar that has been prepared by NMFS in accordance with section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Consultation No. F/FPR/2000/00483, dated 30 May 2002).

Operational employment of the SURTASS LFA sonar system onboard the R/V Cory Chouest is contingent upon issuance of a LOA for that system, which the Navy anticipates being issued with an effective date of 15 August 2002 (30 days after the Final Rule is published in the **Federal Register**), in specific bio-geographic provinces approved for operations. Operational employment is also contingent upon issuance of an ITS concurrent with the above LOA and for the same specified bio-geographic provinces.

Operational employment of the second SURTASS LFA sonar system is contingent upon issuance of a LOA and ITS for that system, in specified bio-geographic provinces approved for operation. The LOA and ITS for this system will be requested by the Navy in accordance with the above regulations when appropriate.

Dated: July 16, 2002.

Donald R. Schregardus,

Deputy Assistant Secretary of the Navy, (Environment).

[FR Doc. 02–18592 Filed 7–22–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 23, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 17, 2002.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision of a currently approved collection.

Title: Early Childhood Longitudinal Study: Birth Cohort/24 month followup.

Frequency: Other: one-time.

Affected Public: Individuals or household (primary), Businesses or other for-profit, Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 29644.

Burden Hours: 23114.

Abstract: The Early Childhood Longitudinal Study, Birth Cohort (ECLS–B) is a nationally representative longitudinal study of children born in the year 2001. The 24 month followup represents the second round of data collection for members of this cohort. Children are assessed using state of the art assessment tools, parents are interviewed as well as child care providers. Together with the Kindergarten component of this early childhood studies program, the survey informs the research and general community about children's health, early learning, development and education experiences. The focus of this survey is on characteristics of children and their families that influence children's first experiences with the demands of formal schools as well as early health care and in- and out-of-home experiences.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2092. 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 *vivian_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 Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of English Language Acquisitions

Type of Review: Revision of a currently approved collection.

Title: Application for Grants under School Improvement: Elementary School Foreign Language Incentive Program (SC).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 7650.

Abstract: This application is used by public elementary schools and local education agencies to apply for formula grants authorized under the Elementary School Foreign Language Incentive Program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2108. 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 *vivian_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 Sheila Carey at (202) 708–6287. 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. 02–18486 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 22, 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 Acting 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: July 17, 2002.

William Burrow,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Master Promissory Note (JS).

Frequency: On occasion.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 706000.

Burden Hours: 706000.

Abstract: This form is the means by which a student borrower agrees to repay a Federal Direct Stafford/Ford Loan and/or a Federal Direct Unsubsidized Stafford/Ford Loan.

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 2037. 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 (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–18487 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299A]

Office of Elementary and Secondary Education, Office of Indian Education; Demonstration Grants for Indian Children; Notice Inviting Applications for New Discretionary Program Awards for Fiscal Year (FY) 2002

Purpose of Program: The purpose of the Demonstration Grants program is to provide financial assistance to projects to develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary students, through activities such as:

(a) Innovative programs related to the educational needs of educationally deprived children;

(b) Educational services that are not available to such children in sufficient quantity or quality, including remedial instruction, to raise the achievement of Indian children in one or more of the core academic subjects of English, mathematics, science, foreign languages, art, history, and geography;

(c) Bilingual and bicultural programs and projects;

(d) Special health and nutrition services, and other related activities, that address the special health, social, and psychological problems of Indian children;

(e) Special compensatory and other programs and projects to assist and encourage Indian children to enter, remain in, or reenter school, and to increase the rate of secondary school graduation;

(f) Comprehensive guidance, counseling, and testing services;

(g) Early childhood and kindergarten programs, including family-based preschool programs that emphasize school readiness and parental skills, and the provision of services to Indian children with disabilities;

(h) Partnership projects between local educational agencies (LEAs) and institutions of higher education that allow secondary school students to enroll in courses at the postsecondary level to aid these students in the transition from secondary school to postsecondary education;

(i) Partnership projects between schools and local businesses for school-to-work transition programs designed to provide Indian youth with the knowledge and skills they need to make an effective transition from school to a first job in a high-skill, high-wage career;

(j) Programs designed to encourage and assist Indian students to work toward, and gain entrance into, an institution of higher education; or

(k) Other services that meet the purpose of this program.

Eligible Applicants: Eligible applicants for this program include a State educational agency (SEA); LEA; Indian tribe; Indian organization; federally supported elementary and secondary school for Indian students; Indian institution, including an Indian institution of higher education; or a consortium of such institutions that meet the requirements of 34 CFR 75.127 through 75.129.

Note: An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The written agreement must be submitted with the application. The agreement must be signed or the applicant must submit other evidence that all the members of the consortium agree to the contents of the agreement. Letters of support do not meet the consortium requirements. The Secretary rejects and does not consider an application that does not meet these requirements.

Applications Available: July 23, 2002.

Deadline for Transmittal of Applications: August 22, 2002.

Deadline for Intergovernmental Review: September 22, 2002.

Available Funds: $4,200,000.

Estimated Range of Awards: $150,000 to $400,000.

Estimated Average Size of Awards: $280,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Requirement: Projects funded under this competition must budget for a one and one-half day Project Directors' meeting during each year of the budget.

Maximum Annual Award Amount: In no case does the Secretary make an award greater than $400,000 during any single budget period in the award. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 75 double-spaced pages, using the following standards:

(1) A ''page'' is 8½″ × 11″ (one side only) with one-inch margins (top, bottom and sides).

(2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, and graphs), use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section (including the narrative budget justification); the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if one applies these standards; or
- Exceed the equivalent of the page limit if one applies other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) 34 CFR Part 263.

Priorities

Absolute Priority

Under Section 34 CFR 75.102 of EDGAR, the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.21(c) identify the absolute priorities for the Demonstration Grants for Indian Children program that may be selected by the Secretary. For the FY 2002 grant competition, the Secretary reserves all of the funds available for new awards under the Demonstration Grants for Indian Children program to fund only those applications that meet one or more of the following absolute priorities found at 34 CFR 263.21(c):

(1) School readiness projects that provide age-appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the kindergarten school level.

(2) Early childhood and kindergarten programs, including family-based preschool programs, emphasizing school readiness and parental skills.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including mathematics and science, to enable Indian students to successfully transition to postsecondary education.

Competitive Preference

(1) In making multiyear grants under this program, the Secretary will award five (5) additional points to an application that presents a plan for combining two or more of the activities described in Section 7121(c) of the Act over a period of more than one year.

(2) In making grants under this program, the Secretary will award five (5) additional points to an application submitted by an Indian tribe, Indian organization, and Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meet the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) additional priority points. The written consortium agreement must be submitted with the application. The agreement must be signed or the applicant must submit other evidence that all the members of the consortium agree to the contents of the agreement. Letters of support do not meet the consortium requirements. The Secretary rejects and does not consider an

application that does not meet these requirements.

Authority: Section 7143; 20 U.S.C. 7473.

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria were established based on the regulations for evaluating discretionary grants found in 34 CFR 75.200 through 75.209.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Demonstration Grants for Indian Children program, CFDA 84.299A, is one of the programs included in the pilot project. If you are an applicant under the Demonstration Grants for Indian Children program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print the ED 424 form from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Demonstration Grants for Indian Children program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications and Transmittal Instructions) in the application package.

Note: Your e-APPLICATION must be submitted through the Internet using the software provided on the e-Grants Web Site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date. All e-APPLICATION submissions that are attempted after that time on the closing date will not be accepted. Applicants that miss the e-APPLICATION submission time must print out their entire application (an original and two copies) and transmit hard copies of the application, following the transmittal procedures for mail or hand delivery, not later than midnight of the closing date.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site *(http://www.ed.gov/edpubs.html)* or its E-mail address *(edpubs@inet.ed.gov).* If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299A.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–1683. Internet address: *Cathie.Martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document at the following site: *http://www.ed.gov/offices/OESE/oie/index.html.*

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7831.

Dated: July 18, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18602 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299B]

Indian Professional Development; Office of Elementary and Secondary Education, Office of Indian Education; Notice Inviting Applications for New Discretionary Grant Program Awards for Fiscal Year (FY) 2002

Purpose of Program: The purposes of this program are to (1) increase the number of qualified Indian individuals in professions that serve Indian people;

(2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the capacities described in (2). Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

For FY 2002 the competition for new awards focuses on projects designed to meet the priority described in the PRIORITY section of this application notice.

Eligible Applicants: Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State or local educational agencies, in consortium with institutions of higher education; Indian tribes or organizations, in consortium with institutions of higher education; and Bureau-funded schools. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application. Letters of support do *not* meet the consortium requirements.

Deadline for Transmittal of Applications: August 22, 2002.

Deadline for Intergovernmental Review: September 22, 2002.

Applications Available: July 23, 2002.

Available Funds: $5,000,000.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $333,333.

Estimated Number of Awards: 15.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice.

Budget Requirement: Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Maximum Annual Award Amount: In no case does the Secretary make an award greater than $500,000 for a single budget period of 12 months for the first 24 months of the award period. The last 12-month budget period of a 36-month award will be limited to induction services only at a cost not to exceed $75,000. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 75 double-spaced pages, using the following standards:

(1) A ''page'' is 8½″ x 11″ (one side only) with one-inch margins (top, bottom and sides).

(2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, and graphs), use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section (including the narrative budget justification); the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if one applies these standards; or
- Exceed the equivalent of the page limit if one applies other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 263, Professional Development Program.

Absolute Priority

Under Section 34 CFR 75.102 of EDGAR, the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.5(c) identifies the absolute priorities for the Professional Development that may be selected by the Secretary. For the FY 2002 grant competition, the Secretary reserves all of the funds available for new awards under the Professional Development program to fund only those applications that meet the following absolute priority found at 34 CFR 263.5(c)(1):

Pre-Service Training for Teachers

Provides support and training to Indian individuals to complete a pre-service education program that enables individuals to meet the requirements for full State certification or licensure as a teacher through:

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program in which they are completing their first year of work in schools with significant Indian student populations.

Note: In working with various institutions of higher education and State certification/licensure requirements, we found that States requiring a degree in a specific subject area (e.g., specialty areas or teaching at the secondary level), generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria are established in 34 CFR 263.6.

Fiscal Information: Stipends may be paid only to full-time students. For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1,750 per month for full-time students and $175 allowance per month per dependent during the academic year. The terms ''stipend,'' ''full-time student,'' and ''dependent allowance'' are defined in 34 CFR 263.3.

Competitive Preference

(1) The Secretary will award five (5) additional points to an application submitted by an Indian tribe, organization, or institution of higher education. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, organization or institution of higher education will be considered eligible to receive the five (5) additional priority points.

Authority: 20 U.S.C. 7473.

(2) The Secretary will award a total of five additional points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agency for the application. The

consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the five priority points. The consortium agreement must be signed by all partners and submitted with the application. Letters of support do not meet the consortium requirements. These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference 1—Preference for Indian Applicants.

Tribal colleges and universities are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Professional Development program, CFDA 84.299B, is one of the programs included in the pilot project. If you are an applicant under the Professional Development program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print the ED 424 form from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Professional Development program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications and Transmittal Instructions) in the application package.

Note: Your e-APPLICATION must be submitted through the Internet using the software provided on the e-Grants Web Site *(http://e-grants.ed.gov)* by 4:30 p.m. (Washington, DC time) on the deadline date. All e-APPLICATION submissions that are attempted after that time on the closing date will not be accepted. Applicants that miss the e-APPLICATION submission time must print out their entire application (an original and two copies) and transmit hard copies of the application, following the transmittal procedures for mail or hand delivery, not later than midnight of the closing date.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299B.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774. Internet address: *Cathie.Martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

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You may also view this document at the following site: *http://www.ed.gov/offices/OESE/oie/index.html.*

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7442.

Dated: July 18, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–18603 Filed 7–22–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Chemistry and Metallurgy Research Building Replacement Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act ((NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the DOE Regulations Implementing NEPA (10 CFR part 1021), the National Nuclear Security Administration (NNSA), an agency within the U.S. Department of Energy (DOE), announces its intent to prepare an environmental impact statement (EIS) to assess the consolidation and relocation of mission critical chemistry and metallurgy research (CMR) capabilities at Los Alamos National Laboratory (LANL) from degraded facilities such that these capabilities would be available on a long-term basis to successfully accomplish LANL mission support activities or programs. DOE invites individuals, organizations, and agencies to present oral or written comments concerning the scope of the EIS, including the environmental issues and alternatives that the EIS should address.

DATES: The public scoping period starts with the publication of this Notice in the **Federal Register** and will continue until August 31, 2002. DOE will consider all comments received or postmarked by that date in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable. Public scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding the EIS with NNSA officials. The locations, dates and times for the public scoping meetings are as follows:

August 13, 2002, from 4–8 p.m., Cities of Gold Hotel, Pojoaque, New Mexico

August 15, 2002, from 4–8 p.m., Fuller Lodge, Los Alamos, New Mexico

The DOE will publish additional notices on the dates, times, and locations of the scoping meetings in local newspapers in advance of the scheduled meetings. Any necessary changes will be announced in the local media. Any agency, state, pueblo, tribe, or units of local government that desire to be designated a cooperating agency should contact Ms. Elizabeth Withers at the address listed below by August 16, 2002.

ADDRESSES: Written comments or suggestions concerning the scope of the CMRR EIS or requests for more information on the EIS and public scoping process should be directed to: Ms. Elizabeth Withers, EIS Document Manager, U.S. Department of Energy, National Nuclear Security Administration, Office of Los Alamos Site Operations, 528 35th Street, Los Alamos, New Mexico, 87544; facsimile at (505) 667–9998; or E-mail at *ewithers@doeal.gov.* Ms. Withers may also be reached by telephone at (505) 667–8690.

In addition to providing comments at the public scoping meetings, all interested parties are invited to record their comments, ask questions concerning the EIS, or request to be placed on the EIS mailing or document distribution list by leaving a message on the EIS Hotline at (toll free) 1–877–491–4957. The Hotline will have instructions on how to record comments and requests.

FOR FURTHER INFORMATION CONTACT: For general information on NNSA NEPA process, please contact: Mr. James Mangeno (NA–3.6), NNSA NEPA Compliance Officer, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585, or telephone 202–586–8395. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: Los Alamos National Laboratory (LANL) is located in north-central New Mexico, 60 miles north-northeast of Albuquerque, 25 miles northwest of Santa Fe, and 20 miles southwest of Española in Los Alamos and Santa Fe Counties. It is located between the Jemez Mountains to the west and the Sangre de Cristo Mountains and Rio Grande to the east. LANL occupies an area of about 27,800 acres or approximately 43 square miles and is operated for DOE NNSA by a contractor, the University of California. It is a multidisciplinary, multipurpose institution engaged in theoretical and experimental research and development. LANL has been assigned science, research and development, and production NNSA mission support activities that are critical to the accomplishment of the NNSA national security objectives (as reflected in the Stockpile Stewardship and Management Programmatic EIS (DOE/EIS–0236). Specific LANL assignments for the foreseeable future include production of War-Reserve (WR) products, assessment and certification of the stockpile, surveillance of the WR components and weapon systems, ensuring safe and secure storage of strategic materials, and management of excess plutonium inventories. In addition, LANL also supports actinide (actinides are any of a series of elements with atomic numbers ranging from actinium-89 through lawrencium-103) science missions ranging from Plutonium-238 heat-source program for the National Aeronautics and Space Administration (NASA) to arms control and technology development. LANL's main role in NNSA mission objectives includes a wide range of scientific and technological capabilities that support nuclear materials handling, processing and fabrication; stockpile management; materials and manufacturing technologies; nonproliferation programs; and waste management activities.

The capabilities needed to execute the NNSA mission activities require facilities at LANL that can be used to handle actinide and other radioactive materials in a safe and secure manner. Of primary importance are the facilities located within the CMR Building and the Plutonium Facility (located at Technical Areas (TAs) 3 and 55, respectively), which are used for processing, characterizing and storage of special nuclear material. Most of the LANL mission support functions previously listed require analytical chemistry, material characterization, and actinide research and development support capabilities and capacities that currently exist at facilities within the CMR Building and are not available elsewhere. Other unique capabilities are located at the Plutonium Facility. Work is sometimes moved between the CMR Building and the Plutonium Facility to make use of the full suite of capabilities that these two facilities provide.

Mission critical CMR capabilities at LANL support NNSA's stockpile stewardship and management strategic objectives; these capabilities are necessary to support the current and future directed stockpile work and campaign activities conducted at LANL. The CMR Building is over 50 years old and many of its systems and structural components are in need of being upgraded, refurbished, or replaced. Recent studies conducted in the late 1990s have identified a seismic fault trace located beneath the CMR Building, which greatly enhances the level of structural upgrades needed at the CMR

Building to meet current structural seismic code requirements for a Hazard Category 2 nuclear facility. Performing the needed repairs, upgrades and systems retrofitting for long-term use of the aging CMR Building to allow it to adequately house the mission critical CMR capabilities would be extremely difficult and cost prohibitive. Over the long-term, NNSA cannot continue to operate the assigned LANL mission critical CMR support capabilities in the existing CMR Building at an acceptable level of risk to public and worker health and safety without operational restrictions. These operational restrictions would preclude the full implementation of the level of operation DOE decided upon through its Record of Decision for the 1999 LANL Site-wide Environmental Impact Statement for the Continued Operation of Los Alamos National Laboratory (DOE/EIS–0238). CMR capabilities are necessary to support the current and directed stockpile work and campaign activities at LANL. The currently estimated end-of-life for the existing CMR Building is about 2010. The CMR Building is near the end of its useful life and action is required by NNSA to assess alternatives for continuing these activities for the next 50 years.

Currently, NNSA expects that the CMR Building Replacement Project EIS (CMRR EIS) will evaluate the environmental impacts associated with relocating the CMR capabilities at LANL to the new buildings sited at the following alternative locations: (1) Next to the Plutonium Facility at Technical Area 55 (TA–55) at LANL (the Proposed Action), or (2) a ''greenfield'' site(s) at or near TA–55. NNSA will evaluate performing minimal necessary structural and systems upgrades and repairs to portions of the existing CMR Building and continuing the use of these upgraded portions of the structure for office and light laboratory purposes, as well as evaluating the potential decontamination and demolition of the entire existing CMR Building as disposition options coupled with the alternatives for construction and operation of new nuclear laboratory facilities at the two previously identified locations. The EIS would also consider the performance of minimal necessary structural and systems upgrades and repairs to the existing CMR Building as a no-action alternative with continued maintenance of limited mission critical CMR capabilities at the CMR Building. It is possible that this list of reasonable alternatives may change during the scoping process.

The CMR Building contains about 550,000 square feet (about 51,100 square meters) of floor space on two floors divided between a main corridor and seven wings. It was constructed to 1949 Uniform Building Codes in the late 1940s and early 1950s. DOE has maintained and upgraded the building over time to provide for continued safe operations. In 1992, DOE initiated planning and implementation of CMR Building upgrades intended to address specific safety, reliability, consolidation and safeguards issues (these were the subject of DOE/EA–1101). These upgrades were intended to extend the useful life of the CMR Building an additional 20 to 30 years. However, in 1997 and 1998, a series of operational, safety and seismic issues surfaced regarding the long-term viability of the CMR Building. In the course of considering these issues, the DOE determined that the originally planned extensive upgrades to the building would be much more expensive and time-consumptive than had been identified. Furthermore, the planned upgrades would be marginally effective in providing the required operational risk reduction and program capabilities to support NNSA mission assignments at LANL. As a result, in January 1998, the DOE directed the down-scope of the CMR Building upgrade projects to only those upgrades needed to ensure safe and reliable operations through about the year 2010. CMR Building operations and capabilities are currently being restricted in scope due to safety and security constraints; it is not being operated to the full extent needed to meet the DOE NNSA operational requirements established in 1999 for the foreseeable future over the next 10 years. In addition, continued support of LANL's existing and evolving missions roles are anticipated to require additional capabilities such as the ability to handle large containment vessels in support of Dynamic Experiments.

In January 1999, the NNSA approved a strategy for managing operational risks at the CMR Building. The strategy included implementing operational restrictions to ensure safe operations. These restrictions are impacting the assigned mission support CMR activities conducted at the CMR Building. This management strategy also committed NNSA to developing long-term facility and site plans to relocate the CMR capabilities elsewhere at LANL by 2010, as necessary to maintain continuing LANL support of national security and other NNSA missions.

Purpose and Need: NNSA needs to provide the physical means for accommodating the continuation of the CMR Building's functional, mission-critical CMR capabilities beyond 2010 in a safe, secure, and environmentally sound manner at LANL. At the same time, NNSA should also take advantage of the opportunity to consolidate like activities for the purpose of operational efficiency, and it is prudent to provide extra space for future anticipated capabilities or activities requirements.

Proposed Action and Alternatives: The Proposed Action (Preferred Alternative) is to construct a new facility at TA–55 composed of two or three buildings to house the existing CMR Building capabilities. One of the new buildings would provide space for administrative offices and support activities; the other building(s) would provide secure laboratory spaces for research and analytical support activities. Construction of the laboratory building(s) at above ground level would be considered. Tunnels may be constructed to connect the buildings. At a minimum, the buildings would operate for the next 50 years. A parking lot or structure would also be constructed as part of the Proposed Action.

Reasonable alternatives to the proposed action have not been definitively identified, but could include construction of a new CMR facility at a nearby location to TA–55 within an undeveloped ''greenfield'' area. Another alternative could consider continuing use of portions of the existing CMR Building with the implementation of minimal necessary structural and systems upgrades and repairs for office and light laboratory purposes, together with the construction of new nuclear laboratory facilities at the two previously identified locations. If either of the two alternatives were chosen that would completely remove CMR activities from the existing CMR Building, options for the disposition of the existing CMR Building could include an option for continuing use of the existing CMR Building with the implementation of minimal necessary structural and systems upgrades and repairs for offices or other purposes appropriate to the condition of the structure, and an option for complete decontamination and demolition of the entire CMR Building with subsequent waste disposal. As required by the Council on Environmental Quality NEPA regulations, a No Action alternative will also be evaluated. The No Action alternative would be to continue the current use of the CMR Building for CMR operations with minimal structural and equipment component replacements and repairs so that it could continue to function,

although the CMR capabilities would likely be restricted to minimal levels.

Potential Issues for Analysis: NNSA has tentatively identified the following issues for analysis in this EIS. Additional issues may be identified as a result of the scoping process.

1. Potential human health impacts (both to members of the public and to workers) related to the proposed new facility and anticipated LANL nearby activities during normal operations and reasonably foreseeable accident conditions.

2. Potential impacts to air, water, soil, visual resources and viewsheds associated with constructing new buildings, relocating and continuing CMR operations.

3. Potential impacts to plants and animals, and to their habitats, including Federally-listed threatened or endangered species and their critical habitats, wetlands and floodplains, associated with constructing new buildings, relocating and continuing CMR operations.

4. Potential impacts from geologic site conditions and land uses associated with constructing new buildings, relocating and continuing CMR operations.

5. Potential impacts from irretrievable and irreversible consumption of natural resources and energy associated with constructing new buildings, relocating and continuing CMR operations.

6. Potential impacts to cultural resources, including historical and prehistorical resources and traditional cultural properties, from constructing new buildings, relocating and continuing CMR operations.

7. Potential impacts to infrastructure, transportation issues, waste management, and utilities associated with constructing new buildings, relocating and continuing CMR operations.

8. Potential impacts to socioeconomic conditions from constructing new buildings, relocating and continuing CMR operations.

9. Potential environmental justice impacts to minority and low-income populations as a result of constructing new buildings, relocating and continuing CMR operations.

10. Potential cumulative impacts from the Proposed Action and other past, present, and reasonably foreseeable actions at LANL.

NNSA anticipates that certain classified information will be consulted in the preparation of this CMRR EIS and used by decision-makers to decide where and how to relocate the CMR capabilities from the existing CMR Building. This EIS may contain a classified appendix. To the extent allowable, the EIS will summarize and present this information in an unclassified manner.

Related NEPA Reviews: Following is a summary of recent NEPA documents that may be considered in the preparation of this EIS and from which this EIS may be tiered, and of future EISs that may be in preparation simultaneously with the CMRR EIS. The CMRR EIS will include relevant information from each of these documents.

- The Final Stockpile Stewardship and Management Programmatic Environmental Impact Statement (SSM PEIS) (DOE/EIS–0236). The SSM PEIS addressed the facilities and missions to support the stewardship and management of the U.S. nuclear stockpile. The Record of Decision (ROD) was issued in 1996 and identified stewardship and management mission support activities assigned to LANL, in particular, the reestablishment of DOE's plutonium pit production capability.
- The Final Los Alamos National Laboratory Site-Wide Environmental Impact Statement (SWEIS) (DOE/EIS–0238). The SWEIS analyzed four levels of operations alternatives for LANL to meet its existing and potential future program assignments: The No Action Alternative, the Expanded Operations Alternative, the Reduced Operations Alternative, and the Greener Alternative. The SWEIS also provided project specific analysis for two proposed projects: The Expansion of TA–54/Area G Low Level Waste Disposal Area; and Enhancement of Plutonium Pit Manufacturing. The SWEIS Record of Decision identified the Expanded Alternative with reduced pit manufacturing capabilities as the level of operations DOE would undertake at LANL over the next ten years.
- The Draft Environmental Impact Statement for the Proposed Relocation of Technical Area 18 Capabilities and Materials at Los Alamos National Laboratory (TA–18 EIS) (DOE/EIS–0319). The TA–18 EIS considers relocating the TA–18 criticality mission activities to another location at LANL; to the Nevada Test Site near Las Vegas, Nevada; to Sandia National Laboratory at Albuquerque, New Mexico; or to the Argonne National Laboratory—West near Idaho Falls, Idaho. If retained at LANL, the TA–18 activities could be housed in new buildings constructed next to the Plutonium Facility at TA–55; could remain in the current facilities without any upgrades; or could remain in upgraded facilities at TA–18.
- The NNSA is considering initiation of the preparation of an EIS on the proposed Modern Pit Facility. As the analysis for this new facility progresses it will be incorporated, if applicable, into the CMRR EIS to the extent practicable.

Public Scoping Process: The scoping process is an opportunity for the public to assist the NNSA in determining the alternatives and issues for analysis. The purpose of the scoping meetings is to receive oral and written comments from the public. The meetings will use a format to facilitate dialogue between NNSA and the public and will be an opportunity for individuals to provide written or oral statements. NNSA welcomes specific comments or suggestions on the content of these alternatives, or on other alternatives that could be considered. The above list of issues to be considered in the EIS analysis is tentative and is intended to facilitate public comment on the scope of this EIS. It is not intended to be all-inclusive, nor does it imply any predetermination of potential impacts. The CMRR EIS will describe the potential environmental impacts of the alternatives, using available data where possible and obtaining additional data where necessary. Copies of written comments and transcripts of oral comments will be available at the following locations: Los Alamos Outreach Center, 1350 Central Avenue, Suite 101, Los Alamos, New Mexico, 87544; and the Zimmerman Library, University of New Mexico, Albuquerque, New Mexico 87131.

Issued in Washington, DC, this 15th day of July, 2002.

Linton Brooks,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 02–18552 Filed 7–22–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–259–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub Second Revised Sheet No. 641, to be effective on July 1, 2002.

Algonquin states that the purpose of this filing is to comply with the directives of the Commission's Letter

Order dated June 26, 2002, in Docket No. RP02–259 (June 26 Order).

Algonquin states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 26 Order conditionally accepted certain of the tariff sheets contained in Algonquin's May 1 tariff filing, effective July 1, 2002, subject to the condition that Algonquin file, within fifteen days of the June 26 Order, substitute revised tariff sheets to reflect the changes required by the June 26 Order. Algonquin is submitting this filing in compliance with the June 26 Order.

Algonquin states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18544 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–260–001]

Algonquin LNG, Inc.; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Fifth Revised Sheet No. 64A, to be effective on July 1, 2002.

ALNG states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 26, 2002, in Docket No. RP02–260 (June 26 Order).

ALNG states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 26 Order conditionally accepted the tariff sheets contained in ALNG's May 1 tariff filing, effective July 1, 2002, subject to the condition that ALNG file, within fifteen days of the June 26 Order, substitute revised tariff sheets to reflect the changes required by the June 26 Order. ALNG is submitting this filing in compliance with the June 26 Order.

ALNG states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18545 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–252–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 11, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective July 1, 2002:

Substitute Third Revised Sheet No. 389
Substitute Fourth Revised Sheet No. 393
Substitute First Revised Sheet No. 395A

Columbia Gulf states that on May 1, 2002, it made a filing with the Commission to comply with Order No. 587–N (98 FERC 61,257 (2002)). The order amended the Commission's regulations to require pipelines to permit releasing shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity. On June 26, 2002, the Commission approved the tariff sheets filed on May 1, 2002, but directed Columbia Gulf to make minor modifications. The tariff sheets in the instant filing reflect the changes mandated by the Commission.

Columbia Gulf states that copies of its filing have been served to Colombia Gulf's firm customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18543 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–388–000]

Dominion Transmission Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 17, 2002.

Take notice that on July 11, 2002, Dominion Transmission Inc. (DTI)

tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective August 10, 2002:

Twelfth Revised Sheet No. 31
Fifteenth Revised Sheet No. 32
Ninth Revised Sheet No. 33
Tenth Revised Sheet No. 35
Third Revised Sheet No. 1113
Second Revised Sheet No. 1114
Second Revised Sheet No. 1125

DTI states that the proposed revised sheets will enable customers to more easily determine the rates applicable to DTI's pipeline services. The filing makes cosmetic changes to DTI's gas pipeline tariff and corresponding changes to verbiage in DTI's General Terms and Conditions of Service—no substantive change to DTI's rates or services is made.

DTI states that a copy of DTI's filing has been served upon all of DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18550 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–262–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub Eighth Revised Sheet No. 145, and Sub Original Sheet No. 154A, to be effective on July 1, 2002.

East Tennessee states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 28, 2002, in Docket No. RP02–262.

East Tennessee states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 28 Order conditionally accepted the tariff sheets contained in East Tennessee's May 1 tariff filing, effective July 1, 2002, subject to the condition that East Tennessee file, within fifteen days of the June 28 Order, substitute revised tariff sheets to reflect the changes required by the June 28 Order.

East Tennessee states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18546 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–264–001]

Egan Hub Partners, L.P.; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub 1st Rev First Revised Sheet No. 69A, to be effective on July 1, 2002.

Egan Hub states that the purpose of this filing is to comply with the directives of the Commission's Letter Order dated June 27, 2002, in Docket No. RP02–264 (June 27 Order).

Egan Hub states that, on May 1, 2002, it filed revised tariff sheets in this docket to comply with Order No. 587–N. The June 27 Order conditionally accepted the tariff sheets contained in Egan Hub's May 1 tariff filing, effective July 1, 2002, subject to the condition that Egan Hub file, within fifteen days of the June 27 Order, substitute revised tariff sheets to reflect the changes required by the June 27 Order. Egan Hub is submitting this filing in compliance with the June 27 Order.

Egan Hub states that copies of its filing have been mailed to all parties listed on the Service List compiled by the Secretary of the Commission in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18547 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–237–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 11, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet No. 127
Substitute First Revised Sheet No. 162
Substitute First Revised Sheet No. 163
First Revised Sheet No. 164
Substitute First Revised Sheet No. 841
First Revised Sheet No. 842

Kern River states that the purpose of this filing is to comply with the Commission's Letter Order dated June 27, 2002, by submitting revised tariff sheets to manually implement partial day recalls of released capacity, beginning on July 1, 2002.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18542 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–583–002]

Kinder Morgan Texas Pipeline, L.P.; Notice of Application

July 17, 2002.

Take notice that on July 3, 2002, Kinder Morgan Texas Pipeline, L.P. (KMTP), 500 Dallas Street, Suite 1000, Houston, Texas 77002, filed an application in Docket No. CP96–583–002, as supplemented on July 15, 2002, pursuant to section 3 of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations, seeking to amend the Section 3 authorization and Presidential Permit previously issued on November 26, 1996, and December 17, 1997,[1] all as more fully set forth in the application. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

KMTP requests that the Commission grant the requested authorization in time to allow construction of the border crossing facility to commence by the end of the third quarter of 2002.

Any questions concerning this application may be directed to Philip R. Telleen, 747 East 22nd Street, Lombard, Illinois 60148, phone (630) 691–3749 or fax (630) 691–3628.

KMTP states that is has been authorized to construct border crossing facilities, near Salineno in Starr County, Texas, that will link a Texas intrastate pipeline with a new pipeline system in Mexico to serve increasing market demand in Mexico. KMTP seeks amended authorization to: (1) Increase the size of KMTP's planned border crossing pipeline from 24-inch to 30-inch diameter pipe, thereby increasing its design capacity from 270 MMcfd to 375 MMcfd; (2) eliminate the previously authorized dual 12-inch meter as part of the border crossing facilities; and (3) redefine the border crossing facilities as extending 878 feet to the middle of the Rio Grande River.

KMTP states that the currently authorized pipeline and metering facilities have not been constructed. In this amendment, KMTP is proposing to increase the pipeline diameter size of the border crossing facility so that it will be the same size as both the upstream and downstream interconnecting facilities. In addition, because the meter will be constructed on the Mexico pipeline facilities rather than as part of the proposed border crossing facilities, the border crossing facilities will extend 878 feet from the location where the directional drill will begin to the International Border at the middle of the river. KMTP estimates the cost of the border crossing facilities (without the meter) to be approximately $500,000.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 7, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's

[1] *MidCon Texas Pipeline Corp.*, 77 FERC ¶ 61,205 (1996); *MidCon Texas Pipeline Operator, Inc.*, 81 FERC ¶ 61,326 (1997). KMTP's former name is MidCon Texas Pipeline Operator, Inc.

environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18533 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–319–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 10, 2002 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. Third Revised Sheet No. 357, to be effective July 1, 2002.

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on June 27, 2002, in the above-referenced docket. National Fuel further states that the revised tariff language clarifies the Intra-Day nomination periods in Section 10.2 of its General Terms and Conditions.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18549 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–001]

SCG Pipeline, Inc.; Notice of Amendment

July 17, 2002.

Take notice that on July 11, 2002, SCG Pipeline, Inc (SCG), P.O. Box 102407, Columbia, South Carolina, 29224–2407, filed in Docket No. CP02–57–001 an amendment to its application pursuant to section 7(c) of the Natural Gas Act (NGA) and the Commission's Rules and Regulations, all as more thoroughly described in the application on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

In its original application in this proceeding, SCG requested authorization for the following:

(i) A certificate of public convenience and necessity authorizing SCG to construct, install, and operate natural gas pipeline facilities, and to acquire from Southern Natural Gas Company (Southern) an interest in the capacity of pipeline facilities (the Twin 30s) in Georgia, and South Carolina;

(ii) A blanket certificate of public convenience and necessity pursuant to Part 284, Subpart G of the Commission regulations authorizing the transportation of gas for others;

(iii) A blanket certificate of public convenience and necessity under Part 157, Subpart F of the Commission's regulations authorizing the construction, acquisition, abandonment and operation of certain facilities,

SCG states the purpose of this amendment is to comply with Ordering Paragraph (A) contained in the Commission's order granting a Preliminary Determination on Non-Environmental Issues to SCG on June 26, 2002 [1] (''June 26 Order''). The June 26 Order required SCG to amend its proposal to provide that SCG will acquire from Southern an undivided interest in the Twin 30s assets. Accordingly, SCG has filed an Amendment to the Purchase and Sale Agreement between SCG and Southern to provide that SCG will acquire such an ownership interest.

Any questions regarding SCG's amendment should be directed to Troy Blalock, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South, Carolina, 28223 at (803) 217–1811 or by fax at (803) 217–2104.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 7, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's

[1] 99 FERC ¶ 61345 (2002)

rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18536 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–290–001]

Southern LNG Inc.; Notice of Compliance Filing

July 17, 2002.

Take notice that on July 11, 2002, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 113 to become effective July 1, 2002.

SLNG states that the filing implements certain directives in the Commission's order issued on June 26, 2002, in the captioned proceeding.

SLNG states that copies of the filing will be served upon its customers and interested state commissions, and upon each party designated on the official service listed compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18548 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–56–001]

Southern Natural Gas Company; Notice of Amendment

July 17, 2002.

Take notice that on July 11, 2002, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, 35202–2563, filed in Docket No. CP02–56–001 an amendment to its application pursuant to section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.14 of the Commission's Rules and Regulations for approval of Southern's abandonment by sale to SCG Pipeline, Inc.(SCG), all as more thoroughly described in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (please call (202) 208–2222 for assistance).

Southern purposes to abandon by sale to SCG an undivided interest in the assets of Southern's Twin 30s facilities, which extend from the tailgate of the liquified natural gas facility of Southern LNG, Inc., on Elba Island in Chatham County, Georgia (LNG Facility) to an interconnection to be constructed with the pipeline facilities of SCG at Southern's meter station at Port Wentworth in Chatham County, Georgia. Southern states that this amendment is to comply the Commission's order on June 26, 2002, in this proceeding, in which the Commission found that the proposed abandonment is in the current or future public convenience and necessity, but conditioned its approval on Southern amending its proposal to abandon an interest in the assets of the Twin 30s rather than just capacity.

Any questions regarding Southern's amendment should be directed to Patrick B. Pope, General Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama, 35202–2563 at (205) 325–7126.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before August 7, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR

385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18535 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–30–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

July 17, 2002.

Take notice that on July 12, 2002, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1: Twentieth Revised Sheet No. 26A, Thirtieth Revised Sheet No. 26B, Second Revised Sheet No. 31, Second Revised Sheet No. 33, Sixth Revised Sheet No. 39, Sixth Revised Sheet No. 42, Sixth Revised Sheet No. 180, and Second Revised Sheet No. 220A, with an effective date of August 1, 2002.

Tennessee states that this filing is (1) to update Rate Schedule NET–284 to reflect the conversion of two shippers to service under Rate Schedule FT–A, and (2) to reflect name changes for two of Tennessee's shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18537 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–024]

Transwestern Pipeline Company; Notice of Negotiated Rates

July 17, 2002.

Take notice that on July 10, 2002, Transwestern Pipeline Company (TW) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to become effective July 12, 2002:

2nd Revised Sheet No. 5B.11

TW states that the above sheets are being filed to reflect an amendment to the specific negotiated rate agreement with United States Gypsum Company that deletes one of the primary receipt points in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18539 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–93–000, et al.]

Tomen Power Corporation, et al.; Electric Rate and Corporate Regulation Filings

July 16, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Tomen Power Corporation and Fort Point Power LLC

[Docket No. EC02–93–000]

Take notice that on July 12, 2002, Tomen Power Corporation and Fort Point Power LLC (Applicants) filed with the Federal Energy Regulatory Commission (Commission), a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Applicants request approval of the indirect transfer of a 20% limited partnership interest in Lakewood Cogeneration Limited Partnership from Tomen Power Corporation to Fort Point Power LLC.

Lakewood Cogeneration Limited Partnership states that it is engaged exclusively in the business of owning a 238 MW natural gas-fired topping cycle cogeneration facility located in Lakewood Township, New Jersey, and selling its capacity at wholesale to Jersey Central Power & Light Company. The Applicants request privileged treatment by the Commission of the Membership Interests Purchase Agreement that governs the proposed transfer.

Comment Date: August 1, 2002.

2. Whitewater Hill Wind Partners, LLC

[Docket No. EG02–164–000]

Take notice that on July 11, 2002, Whitewater Hill Wind Partners, LLC (the Applicant), with its principal office at c/o Cannon Power Corporation, P. O. Box 675143, Rancho Santa Fe, California 92067, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of owning and operating an approximately 65 MW generating facility located in Riverside County, California. Electric energy produced by the facility will be sold exclusively at wholesale by Applicant.

Comment Date: August 6, 2002.

3. Crescent Ridge LLC

[Docket No. EG02–165–000]

Take notice that on July 11, 2002, Crescent Ridge LLC (the Applicant), with its principal office at c/o Illinois Wind Energy LLC, 205 W. Monroe Street, 4th Floor, Chicago, IL 60606, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of developing, owning and operating an approximately 51 MW generating facility located in Bureau County, Illinois. Electric energy produced by the facility will be sold exclusively at wholesale by Applicant.

Comment Date: August 6, 2002.

4. State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust B under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and First Chicago Leasing Corporation

[Docket No. EG02–166–000]

Take notice that on July 10, 2002, State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust B under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and First Chicago Leasing Corporation (Applicant) filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Applicant will purchase and hold legal title, as owner trustee for the benefit of owner participants, to a 40 percent leasehold interest in the Aries Power Plant, an approximately 600 MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill in Cass County, Missouri.

Comment Date: August 6, 2002.

5. State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust A under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time, by and between State Street Bank and Trust Company of Connecticut, National Association and Bankers Commercial Corporation

[Docket No. EG02–167–000]

Take notice that on July 10, 2002, State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Owner Trustee on behalf of PH Generating Statutory Trust A under the Trust Agreement, dated as of February 15, 2002 (as amended, restated, supplemented or otherwise modified from time to time), by and between State Street Bank and Trust Company of Connecticut, National Association and Bankers Commercial Corporation (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Applicant will purchase and hold legal title, as owner trustee for the benefit of owner participants, to a 60 percent leasehold interest in the Aries Power Plant, an approximately 600 MW natural gas-fired combined-cycle generating facility being constructed near Pleasant Hill in Cass County, Missouri.

Comment Date: August 6, 2002.

6. American Electric Power Service Corporation

[Docket Nos. ER00–2413–009]

Take notice that on July 10, 2002, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively AEP) filed proposed amendments to its Open Access Transmission Tariff in compliance with the Commission's May 16, 2002 Order in the above-referenced dockets.

AEP requests an effective date of July 1, 2000 for the proposed amendments. Copies of AEP's filing have been served upon AEP's transmission customers and the public service commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 31, 2002.

7. Midwest Independent Transmission System Operator Inc.

[Docket No. ER01–3142–009]

Take notice that on July 10, 2002, the Midwest Independent Transmission System Operator, Inc. submitted its compliance filing pursuant to the Federal Energy Regulatory Commission's (Commission) June 12, 2002 Order On Compliance Filing, Midwest Independent Transmission System Operator, Inc., in which the Commission directed the Midwest ISO to further revise certain language in its Open Access Transmission Tariff.

The Midwest ISO has electronically served a copy of this filing upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: July 31, 2002.

8. TransAlta Energy Marketing (US) Inc.

[Docket No. ER01–3148–002]

Take notice that on July 10, 2002, in compliance with the Federal Energy Regulatory Commission's (Commission) June 11, 2002 letter Order in Docket No. EL01–3148–001, TransAlta Energy Marketing (US) Inc. (TEMUS) tendered for filing a notice of succession reflecting its succession to Merchant Energy Group of the Americas, Inc.''s Rate Schedule FERC No. 2, effective August 29, 2001.

Comment Date: July 31, 2002.

9. Boston Edison Company

[Docket No. ER02–170–003]

Take notice that on July 10, 2002, Boston Edison Company (Boston Edison) tendered for filing Second Revised Rate Schedule FERC No. 167 to replace the filing made on June 13, 2002 in Docket No. ER02–170–002, which was not in conformance with the requirements of Order No. 614. Boston Edison requests that the new First Revised Rate Schedule FERC No. 167 become effective on June 1, 2002.

Comment Date: July 31, 2002.

10. New England Power Company

[Docket No. ER02–1482–002]

Take notice that on July 10, 2002, New England Power Company (NEP) submitted for filing an erratum to NEP's July 1, 2002 compliance filing made in the above-captioned docket. The purpose of the compliance filing was to amend a service agreement, First Revised Service Agreement No. 178, for service under NEP's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 9 between NEP and Middleborough Gas & Electric Department (Middleborough). NEP states that the Network Operating Agreement, which is part of Service Agreement No. 178, was inadvertently omitted from the July 1 filing.

A copy of this filing has been served upon the appropriate state agencies, Middleborough and each person designated on the official service list for this proceeding.

Comment Date: July 31, 2002.

11. Southwest Power Pool, Inc.

[Docket No. ER02–1705–001]

Take notice that on July 10, 2002, Southwest Power Pool, Inc (SPP) tendered certain supplemental information in response to a letter from the Federal Energy Regulatory Commission (Commission) issued on June 26, 2002, in the above-referenced docket. The June 26, 2002 letter requested additional information concerning a proposed upgrade to be in constructed in order to support an interconnection request under an interconnection agreement with Duke Energy Leavenworth that was filed in this proceeding on an unexecuted basis on May 3, 2002.

Comment Date: July 31, 2002.

12. California Power Exchange Corporation

[Docket No. ER02–2234–001]

Take notice that California Power Exchange Corporation (CalPX), on July 10, 2002, tendered for filing an amendment to its July 3, 2002 rate filing in Docket No. ER02–2234–000, to request that the effective date of its proposed Rate Schedule FERC No. 1 be advanced from August 30, 2002 to July 10, 2002, and to provide additional information concerning that rate filing.

The proposed change in effective date responds to actions taken by Enron Power Marketing, Inc. and Enron Corporation and other CalPX Participants in the California electricity market on June 28, 2002 to dismiss certain litigation against CalPX initiated in the United States District Court for the Central District of California.

Comment Date: July 31, 2002.

13. Western Systems Power Pool, Inc.

[Docket No. ER02–2254–001]

Take notice that on July 8, 2002, the Western Systems Power Pool, Inc. (WSPP) submitted an errata to its July 2, 2002 filing to correct a non-substantive error. WSPP seeks an effective date of September 1, 2002, for these changes.

This filing has been posted on the WSPP homepage (*www.wspp.org*) and e-mailed to the active WSPP members thereby providing notice to WSPP members.

Comment Date: July 29, 2002.

14. Southwest Public Service Company

[Docket No ER02–2296–000]

Take notice that on July 9, 2002, Xcel Energy Services Inc., on behalf of Southwestern Public Service Company (SPS), submitted an umbrella agreement and certain executed service agreements between SPS Transmission and SPS Energy Markets under SPS's rate Schedule for the Sale, Assignment or Transfer of Transmission Rights. The agreements are proposed to be effective January 1, 2002, and June 1, 2002, respectively. SPS indicates a copy of the filing has been served upon the State Commissions of Kansas Mexico, Oklahoma and Texas, and on SPS Energy Markets.

Comment Date: July 30, 2002.

15. California Independent System Operator Corporation

[Docket No. ER02–2297–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Cabazon Wind

Partners, LLC for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on Cabazon Wind Partners, LLCand the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 3, 2002.

Comment Date: July 30, 2002.

16. California Independent System Operator Corporation

[Docket No. ER02–2298–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing a Participating Generator Agreement between the ISO and Cabazon Wind Partners, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Cabazon Wind Partners and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 3, 2002.

Comment Date: July 30, 2002.

17. California Independent System Operator Corporation

[Docket No. ER02–2299–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Participating Generator Agreement between the ISO and Whitewater Hill Wind Partners, LLC, for acceptance by the Commission.

The ISO states that this filing has been served on Whitewater Hill Wind Partners and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 3, 2002.

Comment Date: July 31, 2002.

18. California Independent System Operator Corporation

[Docket No. ER02–2300–000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 9, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Meter Service Agreement for ISO Metered Entities between the ISO and Whitewater Hill Wind Partners, LLC, for acceptance by the Commission.

The ISO states that this filing has been served on Whitewater Hill Wind Partners and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 3, 2002.

Comment Date: July 31, 2002.

19. Entergy Services, Inc.

[Docket No. ER02–2301–000]

Take notice that on July 9, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Dominion Energy Marketing, Inc.

Comment Date: July 30, 2002.

20. American Electric Power Service Corporation

[Docket No.ER02–2302–000]

Take notice that on July 8, 2002, the American Electric Power Service Corporation (AEPSC) tendered for filing one (1) non-redacted, confidential copy and one (1) redacted, non-confidential copy of a Service Agreement for the sale of power by AEPSC, which is greater than one year in length. The Power Sales Tariffs were accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5 (Wholesale Tariff of the AEP Operating Companies) and FERC Electric Tariff Original Volume No. 8, Effective January 8, 1998 in Docket ER 98–542–000 (Market-Based Rate Power Sales Tariff of the CSW Operating Companies). AEPSC respectfully requests waiver of notice to permit the attached Service Agreement to be made effective on or prior to June 1, 2002.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: July 29, 2002.

21. KeySpan-Port Jefferson Energy Center, LLC

[Docket No. ER02–2303–000]

Take notice that on July 10, 2002, KeySpan-Port Jefferson Energy Center, LLC (Port Jefferson) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act an executed umbrella service agreement establishing the Long Island Lighting Company d/b/a LIPA, through its agent KeySpan Energy Trading Services, LLC as a customer under Port Jefferson's market-based rate tariff. Port Jefferson requests an effective date of July 10, 2002 for the service agreement.

Comment Date: July 30, 2002.

22. CalPeak Power—Mission LLC

[Docket No. ER02–2304–000]

Take notice that on July 9, 2002, CalPeak Power—Mission LLC (CalPeak Mission) tendered for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1.

Comment Date: July 30, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–2305–000]

Take notice that on July 10, 2002, the California Independent System Operator Corporation (ISO) filed Second Revised Service Agreement No. 412, which is a Participating Generator Agreement (PGA) between the ISO and GWF Energy LLC. The PGA has been revised to update Schedule 1 of the PGA. The ISO requests that the PGA be made effective as of June 10, 2002.

The ISO has served copies of this filing upon GWF Energy LLC and all entities that are on the official service list for Docket No. ER01–2958–000.

Comment Date: July 31, 2002.

24. Louisville Gas and Electric Company

[Docket No. ER02–2306–000]

Take notice that on July 10, 2002, Kentucky Utilities Company (KU) filed a termination notice for power sales service between KU and Florida Power and Light Company (FPL). The terminated services are Service Agreement 113 under KU's FERC Electric Tariff 1R2. FPL requested the contract termination on June 25, 2002.

Comment Date: July 31, 2002.

25. California Independent System Operator Corporation

[Docket No. ER02–2307–000]

Take notice that on July 10, 2002, the California Independent System Operator Corporation (ISO) filed First Revised Service Agreement No. 356, which is a Participating Generator Agreement (PGA) between the ISO and Alliance Colton, LLC, which is now known as Colton Power, L.P. The PGA has been revised to update Schedule 1 of the PGA. The ISO requests that the PGA be made effective as of June 6, 2002.

The ISO has served copies of this filing upon Colton Power, L.P. and all entities that are on the official service list for Docket No. ER01–1610–000.

Comment Date: July 31, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–18490 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–176–000 and CP01–179–000]

Georgia Strait Crossing Pipeline LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Georgia Strait Crossing Project

July 17, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) on natural gas pipeline facilities proposed by Georgia Strait Crossing Pipeline LP (GSX–US) in the above-referenced dockets.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS also evaluates alternatives to the proposal, including system alternatives, route alternatives, and route variations.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities in Whatcom and San Juan Counties, Washington:

- about 32.0 miles of 20-inch-diameter pipeline (onshore mainline pipeline) extending from the interconnect facilities at the international border between the United States and Canada near Sumas, Washington, across Whatcom County, to a new compressor station (Cherry Point Compressor Station) near Cherry Point, Washington;
- about 1.1 miles of 16-inch-diameter pipeline (onshore mainline pipeline) extending from the Cherry Point Compressor Station to the beginning of the marine portion of the pipeline at the edge of the Strait of Georgia;
- about 13.9 miles of 16-inch-diameter marine pipeline (offshore mainline pipeline) extending from the edge of the Strait of Georgia near Cherry Point, Washington to the international border between the United States and Canada at a point about midway between the west end of Patos Island (Washington) and the east end of Saturna Island (British Columbia) in Boundary Pass;
- interconnect facilities including a receipt point meter station, pig launcher, interconnect piping, and associated valves (Sumas Interconnect Facility) adjacent to an existing compressor station in Whatcom County, Washington;
- a new compressor station (Cherry Point Compressor Station) consisting of one 10,302-hp two-stage compressor unit, pig launcher/receiver facilities, and associated valves near Cherry Point in Whatcom County, Washington;
- six mainline valves (MLV), one each at the Sumas Interconnect Facility and Cherry Point Compressor Station and four valves along the proposed pipeline route; and
- an onshore and an offshore tap valve.

The purpose of the GSX–US project is to provide the United States portion of a natural gas transportation system to supply the growing demand for natural gas on Vancouver Island.

The final EIS will be used in the regulatory decision-making process at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules and Practices and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The final EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies of the final EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, the final EIS was filed with the U.S. Environmental Protection Agency, and has been mailed to Federal, state, and local agencies, elected officials, public interest groups, individuals, and affected landowners who requested a copy of the final EIS; public libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the proposed project is available from the Commission's Office of External Affairs at 1–866–208–FERC (1–866–208–3372) or on the FERC Web site (*www.ferc.gov*) using the ''RIMS'' link to information in the docket numbers. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet Web site, click on the ''CIPS'' link, select ''DOCKET #'' from the CIPS menu, and follow the instructions. For assistance with access

to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18534 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 17, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12160–000.

c. *Date filed:* May 3, 2002.

d. *Applicant:* Lake Dorothy Hydro, Inc.

e. *Name of Project:* Lake Dorothy Hydroelectric Project.

f. *Location:* In the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801, (907) 463–6315.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12160–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Lake Dorothy, which has a 998-acre surface area at elevation 2,421 feet; (2) Bart Lake, which has a 250-acre surface area at elevation 986 feet; (3) a lake tap at Bart Lake; (4) a 54-inch-diameter to 96-inch-diameter, 7,500-foot-long tunnel and penstock (combined length); (5) a powerhouse containing a generator unit with an installed capacity of 15 MW; (6) a 138-kV, 3.0-mile-long transmission line connecting the project to the existing submarine transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 74.5 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18538 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: July 16, 2002; 67 FR 46656.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: July 17, 2002; 10 a.m.

CHANGE IN THE MEETING: The following Docket No. and Company has been added to Item G–21 on the Commission Meeting of July 17, 2002.

Item No.	Docket No. and Company
G–21	Docket No. RP01–01–507–000, Transwestern Pipeline Company.

Magalie R. Salas,

Secretary.

[FR Doc. 02–19783 Filed 7–19–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–369–017 and RP98–54–034]

Colorado Interstate Gas Company; Notice of Refund Report

July 17, 2002.

Take notice that on July 11, 2002, Colorado Interstate Gas Company (CIG) tendered for filing its fourth and fifth refund reports in Docket Nos. RP97–369 and RP98–54 et al.

CIG states that this filing and refunds were made to comply with the Commission's Order of September 10, 1997. CIG states that refunds were paid by CIG on December 20, 2000, January 22, 2001 and January 24, 2001.

The May 18, 2001, refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments, pursuant to the Commission's Order dated September 10, 1997 and Settlement Order dated November 21, 2000. Lump sum cash refunds were made by CIG to its former jurisdictional sales customers. The May 18, 2002, refund report summarizes the refunds made as of that date by CIG for Kansas ad valorem tax overpayments, pursuant to the Commission's Order dated September 10, 1997 and Settlement Order dated November 21, 2000. No lump sum cash refunds were made by CIG to its former jurisdictional sales customers in this report. In instances where payment has not been made within thirty (30) days of receipt from the producers, appropriate interest will be computed as provided in the Order.

CIG states that copies of CIG's filing were served on all parties of record in Docket No. RP98–54–000, et al.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18540 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–009]

Dominion Transmission, Inc.; Notice of Report of Refunds

July 17, 2002.

Take notice that on July 11, 2002, Dominion Transmission, Inc. (DTI) filed its report of refunds attributable to the resolution of the above-captioned proceeding. DTI states that the reported refunds and billing adjustments reflect DTI's implementation of the TCRA settlement in the above-captioned proceeding.

DTI states that the purpose of this filing is provide a revised workpaper to show the effect of DTI's May 8 filing on the balances of the Amortization Adder reported in DTI's original February 26 report. This filing does not make any change to the refunds reported in DTI's February 26 and May 8 filings. (DTI's February 26 filing was the original refund report and the May 8 filing reported a programming anomaly in the DTI allocation process, which when corrected resulted in additional refunds for five customers.)

DTI states that copies of its filing are being mailed to affected customers, interested state commissions and all parties to the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 24, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–18541 Filed 7–22–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7249–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters; 40 CFR part 63, subpart TTT; OMB Control Number 2060–0414, expiration date July 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR Number 1856.03 and OMB Control Number 2060–0414, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR Number 1856.03. For technical questions about the ICR contact Maria Malave in the Office of Compliance at (202) 564–7027 or via E-mail to *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters; 40 CFR part 63, subpart TTT, OMB Control No. 2060–0414, expiration date July 31, 2002. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Primary Lead Smelters, published at 40 CFR part 63, subpart TTT, were proposed on April 17, 1998 (63 FR 19200), and promulgated on June 4, 1999 (64 FR 30204). On February 12, 1999, the Agency publicized a supplemental rulemaking for ferroalloys, mineral wool, primary copper, primary lead and wool fiberglass. The supplemental for this rule enhances the requirements of the bag leak detection systems in 40 CFR 63.1625 and 40 CFR 63.1655 of the proposed rule to include an enforceable operating limit. This rule applies to emissions sources (i.e., sinter machine, blast furnace, dross furnace, process fugitive, and fugitive dust sources) from primary lead smelters.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NESHAP regulations. Plants must demonstrate compliance with the emission standards by monitoring their control devices and performing annual emissions testing. Consistent with the NESHAP General Provisions (40 CFR part 63, subpart A), all sources subject to this standard are required to submit one-time notifications of applicability; a one-time report on performance test results for the primary emission control device; an initial report specifying the intended methods of compliance; standard operating procedure manuals for baghouses and fugitive dust control; and a semiannual report that includes a summary of the monitoring results, any baghouse leak detection system alarms and corrective actions. Sources must also maintain records of production for unrefined lead, copper matte, and copper speiss; the date and times of bag leak detection system alarms and the corrective action taken; baghouse inspection and maintenance; any records required as part of the source standard operating procedures manuals; and the compliance methods chosen. Records shall be maintained for a period of 5 years. Records of the most recent 2 years of operation must be maintained onsite.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001; no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 3,061 hours per response. 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.

Respondents/Affected Entities: Primary lead smelters.

Estimated Number of Respondents: 2.

Frequency of Response: Semiannual.

Estimated Total Annual Hour Burden: 12,246 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $6,451,878.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR Number 1856.03; OMB Control Number 2060–0414 in any correspondence.

Dated: July 12, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18578 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7249–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been

forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for Petroleum Refineries; OMB Number 2060–0022, expiration date August 31, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1054.08 and OMB Control No. 2060–0022, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *Auby.susan@epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1054.08. For technical questions about the ICR contact Dan Chadwick of the Office of Compliance at (202) 564–7054 or via e-mail at *chadwick.dan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: Standards of Performance for Petroleum Refineries, (OMB Control No. 2060–0022; EPA ICR No. 1054.08, expiring August 31, 2002. This is a request for extension of a currently approved collection.

Abstract: New Source Performance Standards (NSPS) published at 40 CFR part 60, subpart J were proposed on June 11, 1973, and promulgated on March 8, 1974. These standards apply to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and Claus sulfur recovery plants of more than 20 long tons per day commencing construction, modification, or reconstruction after the date of proposal. The pollutants regulated under this Subpart are particulate matter, carbon monoxide, and sulfur oxides. This information is being collected to assure compliance with 40 CFR part 60, subpart J. In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these records, and retain the file for at least two years following the date of such occurrences, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on January 30, 2002 (67 FR 4421). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 100 hours per response. 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.

Respondents/Affected Entities: Owners and Operators of Petroleum Refineries.

Estimated Number of Respondents: 130.

Frequency of Response: Quarterly, Semi-Annually.

Estimated Total Annual Hour Burden: 17,359 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $91,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the addresses listed above. Please refer to EPA ICR No. 1054.08 and OMB Control No. 2060–0022 in any correspondence.

Dated: July 12, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–18577 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7250–9]

Meeting of the Clean Diesel Independent Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Clean Diesel Independent Review Panel of the Clean Air Act Advisory Committee will hold its third meeting on July 30 and 31, 2002. All panel meetings are open to the public. The preliminary agenda for this meeting will be available on the panel's website in mid-July: *http://www.epa.gov/air/caaac/clean_diesel.html.*

DATES: Tuesday, July 30, 2002, from 10 a.m. to 5:30 p.m. Registration begins at 9:30 a.m. Wednesday, July 31, 2002, from 8:30 a.m. to 4 p.m.

ADDRESSES: The Ritz Carlton, Pentagon City, 1250 South Hayes Street, Arlington, VA 22202, (703) 415–5000, (703) 415–5060 (fax), *http://www.ritzcarlton.com/hotels/pentagon_city/.*

FOR FURTHER INFORMATION CONTACT:

Technical Information: Ms. Mary Manners, Designated Federal Official, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214–4873, fax: (734) 214–4051, e-mail: *manners.mary@epa.gov.*

Logistical and Administrative Information: Ms. Julia MacAllister, FACA Management Officer, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor, MI 48105; telephone: (734) 214–4131, fax: (734) 214–4816, e-mail: *macallister.julia@epa.gov.*

Current Information: http://www.epa.gov/air/caaac/clean_diesel.html.

Individuals or organizations wishing to provide comments to the panel should submit them to Ms. Manners at the address above by September 30, 2002. The Clean Diesel Independent Review Panel expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: July 18, 2002.

Donald E. Zinger,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 02–18712 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0042; FRL–6819–1]

Final National Action Plan for Alkyl-lead; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On August 25, 2000, EPA issued a proposed National Action Plan on alkyl-lead for public review and comment. This Plan is intended to promote further voluntary reductions of use and exposure to alkyl-lead compounds. Alkyl-lead is used as a fuel additive to reduce ''knock'' in certain combustion engines. These compounds also help lubricate internal engine components and protect intake and exhaust valves against recession. Currently, the largest uses of alkyl-lead compounds are in aviation gasoline for general aviation (piston-engine) aircraft, and racing gasoline. Six comments were submitted to the Agency concerning this plan. The Agency has reviewed these comments and has revised the Plan accordingly. This Notice announces the finalization and availability of the Alkyl-lead National Action Plan. This plan was developed pursuant to the Agency's Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Matthai, Pollution Prevention Division, Mail Code 7409M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8839; e-mail address: matthai.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who make, distribute, or use racing and aviation gasoline. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/pbt. To access this document, on the PBT Home Page select ''Strategy and Action Plans.''

2. *In person*. The Agency has established an official record for this action under docket control number OPPT–2002–0042. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. What Action is the Agency Taking?

On November 16, 1998, EPA released its Agency-wide Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants (PBT Strategy). The goal of the PBT Strategy is to identify and reduce risks to human health and the environment from current and future exposure to priority PBT pollutants. This document serves as the Final National Action Plan for alkyl-lead, one of the 12 Level 1 priority PBT pollutants identified for the initial focus of action in the PBT Strategy.

Alkyl-lead compounds are man-made compounds in which a carbon atom of one or more organic molecules is bound to a lead atom. Tetraethyllead (TEL) and tetramethyllead (TML) compounds are the most common alkyl-lead compounds that have been used in the past and are still in use today in the United States. These two alkyl-lead compounds are the focus of this National Action Plan. Alkyl-lead is used as a fuel additive to reduce ''knock'' in combustion engines, help lubricate internal engine components and protect intake and exhaust valves against recession. Currently, the largest uses of alkyl-lead are in aviation gasoline for general aviation (piston-engine) aircraft, and racing gasoline. Neither of these uses are subject to any of the regulations that restrict leaded motor gasoline use.

In the human body, alkyl-lead compounds are distributed through the blood to ''soft tissues'' particularly the liver, kidneys, muscles, and brain. Initial symptoms of alkyl-lead poisoning include, among others: anorexia, insomnia, tremor, weakness, fatigue, nausea and vomiting, mood shifts such as aggression or depression, and impairment of memory. In the case of acute alkyl-lead poisoning, possible health effects include mania, convulsions, delirium, fever, coma, and in some cases even death.

The ultimate goal of this alkyl-lead Plan is to identify and reduce risks to human health and the environment from current and future exposure to alkyl-lead. EPA believes that, with the regulatory actions it has taken to date, this goal is within reach. However, the Agency is concerned about any sub-populations that may remain at risk, for example, individuals exposed at racetracks or general aviation airports. The Agency also recognizes that these remaining risks should not be taken lightly. EPA does not have the authority under the Clean Air Act to regulate the use of leaded gasoline for the racing industry, and the authority to regulate aircraft fuel lies with the Federal Aviation Administration. Therefore, the

Agency has chosen to address the risks that remain for alkyl-lead through voluntary efforts under its PBT pollutants program. It is likely that further reductions in exposures to these chemicals will come only through product substitution and voluntary measures.

List of Subjects

Environmental protection, Alkyl-lead, PBT.

Dated: June 10, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–18588 Filed 7–22–02 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Statement of Policy on Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final agency policy statement (amended).

SUMMARY: The FDIC is amending its Statement of Policy on Bank Merger Transactions to incorporate a recent statutory change to the Bank Merger Act, as amended by the USA PATRIOT Act, which makes an insured depository institution's effectiveness in combating money laundering a factor in evaluating a proposed merger transaction.

EFFECTIVE DATE: July 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kevin W. Hodson, Review Examiner (202/898–6919), Division of Supervision and Consumer Protection; Robert C. Fick, Counsel (202/898–8962), or Carl Gold, Counsel (202/898–8702), Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 327 of the USA PATRIOT Act (Pub. L. 107–56, enacted October 26, 2001) amends section 18(c) of the Federal Deposit Insurance Act 12 U.S.C. 1828(c) (commonly known as the Bank Merger Act), adding a new factor for consideration in deciding merger transactions covered by the Bank Merger Act. The factor reads, ''In every case, the responsible agency shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches.'' The amended statement of policy essentially restates the USA PATRIOT Act requirement. No new informational requirements relating to Bank Merger Act applications are imposed at this time. Consideration of the new factor is required on applications submitted after December 31, 2001. The FDIC is not soliciting comment on the revised Statement of Policy. The amendment to the Policy Statement, which was published at 63 FR 44761 on August 20, 1998, is effective immediately upon publication in the **Federal Register**.

The Statement of Policy is hereby amended by adding a new paragraph at the end of section III., to read as follows:

FDIC Statement of Policy on Bank Merger Transactions

* * * * *

III. Evaluation of Merger Applications

* * * * *

Anti-Money Laundering Record

In every case, the FDIC will take into consideration the effectiveness of each insured depository institution involved in the proposed merger transaction in combating money-laundering activities, including in overseas branches. In this regard, the FDIC will consider the adequacy of each institution's programs, policies, and procedures relating to anti-money laundering activities; the relevant supervisory history of each participating institution, including their compliance with anti-money laundering laws and regulations; and the effectiveness of any corrective program outstanding. The FDIC's assessment may also incorporate information made available to the FDIC by the Department of the Treasury, other Federal or State authorities, and/or foreign governments. Adverse findings may warrant correction of identified problems before consent is granted, or the imposition of conditions. Significantly adverse findings in this area may form the basis for denial of the application.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 12th day of July, 2002.

By order of the Board of Directors.

Valerie J. Best,

Assistant Executive Secretary/Supervisory Counsel.

[FR Doc. 02–18493 Filed 7–22–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1418–DR]

Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1418–DR), dated June 13, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 2002:

Dearborn and Orange Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18531 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1419–DR]

Minnesota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota, (FEMA–1419–DR), dated June 14, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 14, 2002:

Goodhue and Hubbard Counties for Public Assistance.

Itasca, McLeod, and Wright Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18526 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1425–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1425-DR), dated July 4, 2002, and related determinations.

EFFECTIVE DATE: July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Scott Wells of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Sandra L. Coachman as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–18525 Filed 7–22–02; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)(formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Medicare Health Maintenance Organizations/Competitive Medical Plans Beneficiary Reconsideration System (MBRS),'' System No. 09–70–4003. We propose to change the name of the system to read ''Medicare Managed Care Beneficiary Reconsideration (RECON) System,'' to reflect the change in the programs related to this activity. The language in published routine use number 3 will be modified to more accurately reflect activities currently performed by contractors and consultants. We propose to delete published routine use number 5, pertaining to '' a state insurance commissioner * * *'' and an unnumbered routine use authorizing disclosure to the Social Security Administration (SSA). Access to the data for these activities will be accomplished by adding a new routine use which authorizes release of information in this system to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent.'' Disclosure of information to Quality Improvement Organizations (QIO) (formerly Peer Review Organizations) as stated in published routine use number 5 will be treated as a new routine use and prioritized as routine use number 4. We propose to modify the language of published routine use number 4 pertaining to ''a third party'' to limit disclosures authorized under this routine use and to provide clarity to the circumstances for disclosures. Third parties will be treated as a new routine use and prioritized as routine use number 3.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system are considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by recent reorganizations and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the system is to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case. Information in this system will also be disclosed to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant, (2) another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, (3) third party contacts, (4) QIOs, (5) support constituent requests made to a congressional representative, (6) support litigation involving the Agency related to this SOR, and (7) combat fraud and abuse in certain health care programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 17, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered system of records, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.-3 p.m., eastern standard time.

FOR FURTHER INFORMATION CONTACT: Beverly Sgroi, Health Insurance Specialist, Division of Hearings, Appeals & Dispute Resolution, Center for Beneficiary Choices, CMS, Mail-stop S1–05–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7638. The e-mail address is *bsgroi@hhs.cms.gov*.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System of Records.

A. Statutory and Regulatory Basis for SOR

In 1988, CMS established an SOR under the authority of § 1872 of the Social Security Act (the Act) (Title 42 United States Code (U.C.S. section 1395mm). Notice of this system, MBRS, was published in the **Federal Register** (FR) 53 FR 35914 (Sept. 15, 1988), a routine use was added for the Social Security Administration (SSA) at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system contains information concerning Medicare beneficiaries who have been enrolled in a managed care program and who have requested an appeal by CMS, or any person who acts on behalf of these beneficiaries. The system contains the name and address of beneficiaries and the individual representing the beneficiary in this appeal process. It will also contain the beneficiary's social security number (SSN), health insurance claims number (HIC), health insurance plan name and address, health insurance plan number, medical records and statement of fact, service requests/claims data, date of service request/claim received by the health plan, dates of service, beneficiary enrollment form and disenrollment form, verification of enrollment status, date reconsideration request submitted to CMS, and dates of determination by plan and CMS.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release RECON information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of RECON. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., collecting and maintaining information used in processing the claimant's appeal and information necessary to reply to future correspondence.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the RECON without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine uses for disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this system of records. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such Agency to administer a Federal health benefits program, or as necessary to enable such Agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require RECON information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

In addition, other state agencies in their administration of a Federal health program may require RECON information for the purposes of determining, evaluating and/or assessing cost, effectiveness, and /or the quality of health care services provided in the state.

SSA requires RECON data to enable them to assist in the implementation and maintenance of the Medicare program.

State Insurance Commissioners or other state regulators with similar authority acting in a manner consistent with maintaining the integrity of the Medicare program may require RECON data to assist in accomplishing their activities.

3. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, or any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

Third party contacts require RECON information in order to provide support for the individual's entitlement to benefits under the Medicare program, to establish the validity of evidence or to verify the accuracy of information presented by the individual, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

4. To Quality Improvement Organizations (QIO) connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require RECON information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The RECON system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential individual identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the RECON system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of RECON data. RECON information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of RECON data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will

collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 17, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–4003

SYSTEM NAME:

Medicare Managed Care Beneficiary Reconsideration (RECON) System No. 09–70–4003.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information concerning Medicare beneficiaries who have been enrolled in a managed care program and who have requested an appeal by CMS, or any person who acts on behalf of these beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the name and address of beneficiaries and the individual representing the beneficiary in this appeal process. It will also contain the beneficiary's social security number (SSN), health insurance claims number (HIC), health insurance plan name and address, health insurance plan number, medical records and statement of fact, service requests/claims data, date of service request/claim received by the health plan, dates of service, beneficiary enrollment form and disenrollment form, verification of enrollment status, date reconsideration request submitted to CMS, and dates of determination by plan and CMS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under §§ 1852, and 1876 of the Social Security Act (the Act) United States Code (U.S.C.) §§ 1395w–22, and 1395mm).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the SOR is to collect and maintain information necessary to process requests for reconsideration of service requests or claims by or on behalf of Medicare managed care enrollees, promote the effectiveness and integrity of the Medicare managed care program, and reply to future correspondence related to the case. Information in this system will also be disclosed to: (1) Support regulatory and policy functions performed within the Agency or by a contractor or consultant, (2) another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, (3) third party contacts, (4) Quality Improvement Organizations (QIO) (formerly Peer Review Organizations), (5) support constituent requests made to a congressional representative, (6) support litigation involving the Agency related to this SOR, and (7) combat fraud and abuse in certain health care programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the RECON without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected.

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish or modify the following routine uses for disclosures of information maintained in the system:

1. Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such Agency to administer a Federal health benefits program, or as necessary to enable such Agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To third party contacts in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program, the amount of reimbursement, or any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of activities.

4. To Quality Improvement Organizations in connection with review of claims, or in connection with

studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

7. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the name, SSN, and/or HICN of claimant.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the RECON system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Information Systems Security Policy, Standards, and Guidelines Handbook, and OMB Circular No. A–130, Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Case records are transferred to and maintained in an archival file for a period of 15 years.

SYSTEM MANAGER AND ADDRESS:

Director, Division of hearings, Appeals & Dispute Resolution, Center for Beneficiary Choices, CMS, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system is obtained from the reconsideration requests made by or on behalf of Medicare beneficiaries and from inquiries from congressional offices, health plans, providers, state insurance commissioners, state regulators, disenrollment surveys, Medicare carriers or intermediaries, and QIO records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18167 Filed 7–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS) (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Medicare Supplier Identification File (MSIF), System No. 09–70–0530.'' We are deleting routine uses number 2 pertaining to a Medicaid state agency or its fiscal agent to assist in enforcing Medicare and Medicaid sanctions, and number 4 pertaining to contractors. Disclosures previously allowed by routine use number 2 pertaining to a Medicaid state agency will now be covered by proposed routine use number 5. Disclosures previously allowed by routine use number 4 pertaining to contractors will now be covered by proposed routine use

number 1. We propose to add routine use number 4 and 5 to combat fraud and abuse in certain health benefits programs.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system is considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS' intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of this system is to identify supplier businesses that eligible to receive Medicare payments for items and services furnished to Medicare beneficiaries as well as owners, managing employees, and subcontractors in those suppliers. The system will facilitate the identification of business owners who have been sanctioned by the Office of Inspector General and/or have questionable business practices within the Medicare program. The carriers will be able to review questionable claims before payment that has been found to be more effective than post-payment reviews. Information retrieved from this SOR will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the modified routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 24, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Charles Waldhauser, Project Officer, Program Integrity Group, Office of Financial Management, CMS, Mail stop N3–02–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850. The telephone number is 410–786–6140.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for SOR

In 1992, CMS established a SOR under the authority of sections 1124, 1124A, 1126, and 1833(e) of Title XVIII of the Social Security Act (the Act) (Title 42 United States Code (USC) §§ 405, 426, 1395c, and 1395k). Notice of this system, ''Medicare Supplier Identification File (MSIF), System No. 09–70–0530,'' was most recently published in the **Federal Register** (FR) 57 FR 23420 (June 3, 1992), one routine use was added at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63 FR 38414 (July 16, 1998), and at FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses were revised and a third deleted.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

This system contains information on owners and managing employees of suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS), ambulance companies, imaging technology companies, and independent diagnostic testing facilities which provide service or supplies to Medicare beneficiaries. A ''supplier'' of DMEPOS is an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries and that meets the standards which CMS has established and found in 42 CFR § 424.57.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MSIF information as provided for under ASection III. Proposed Routine Use Disclosures of Data in the System.≃

We will only collect the minimum personal data necessary to achieve the purpose of MSIF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., identifying supplier businesses, owner, and managing employees of those suppliers who provide services to Medicare beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MSIF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries and other individuals often request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

4. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MSIF information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

Administrative Safeguards

The MSIF system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act (PRA) of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget (OMB) Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the

system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the Agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

Database Administrator class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;

- Quality Control Administrator class has read and write access to key fields in the database;
- Quality Indicator (QI) Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information; and
- Submitter class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIF system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card-key and/or combination that grant access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System (AIS) resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the Agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the Agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

C. Procedural Safeguards

All automated systems must comply with Federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. We will only disclose the minimum personal data necessary to achieve the purpose of MSIF. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure. CMS has assigned a higher level of security clearance for the information maintained in this system in an effort to provide added security and protection of data in this system.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

No. 09–70–0530

SYSTEM NAME:

''Medicare Supplier Identification File (MSIF), HHS/CMS/OFM''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data

SYSTEM LOCATION:

National Supplier Clearing House, Palmetto Government Benefits Administrators, Interstate-20 at Alpine Road, Columbia, South Carolina 29219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records (SOR) will contain information on owners and managing employees of suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS), ambulance companies, imaging technology companies, and independent diagnostic testing facilities which provide service or supplies to Medicare beneficiaries. A ''supplier'' of DMEPOS is an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries and that meets the standards that CMS has established and found in 42 CFR 424.57.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the business names and addresses, owner's name, owner's social security number, Unique Physician/Practitioner Identification Number (UPIN), managing employee's name, employer identification number or other tax reporting number, and the carrier assigned billing numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of this SOR is given under the provisions of §§ 1124, 1124A, 1126, and 1833(e) of Title XVIII of the Social Security Act (Title 42 United States Code (USC) §§ 405, 426, 1395c, and 1395k).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of this system is to identify supplier businesses that are eligible to receive Medicare payments for items and services furnished to Medicare beneficiaries as well as owners, managing employees, and subcontractors in those suppliers. The system will facilitate the identification of business owners who have been sanctioned by the Office of Inspector General and/or have questionable business practices within the Medicare program. The carriers will be able to review questionable claims before payment that has been found to be more effective than post-payment reviews. Information retrieved from this SOR will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine use in this system meets the compatibility requirement of the Privacy Act. This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (Dec. 28, 00), as amended by 66 FR 12434 (Feb. 26, 01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary). We are proposing to establish the following routine use disclosures of information that will be maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

2. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

3. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government,

is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the Agency collected the records.

4. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

5. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY:

Information can be retrieved by the business names and addresses, owner's name, owner's social security number, UPIN, managing employee's name, employer identification number or other tax reporting number, and the carrier assigned billing numbers.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the MSIF system. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area. Records are maintained by CMS and the repository of the National Archives and Records Administration for a period not to exceed 15 years.

SYSTEM MANAGER AND ADDRESS:

Director, Program Integrity Group, Office of Financial Management, CMS, C3–02–16, 7500 Security Boulevard, Baltimore, Maryland, 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system

manager who will require the system name, identification number, address, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from the application which the supplier completes to obtain Medicare billing numbers. (CMS Form 192-prior to August 1996, CMS Form 885, April 1996–May 1997, and CMS Form 855S-after May, 1997).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18168 Filed 7–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services;

Privacy Act of 1974; Report of Modified or Altered System

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (formerly the Health Care Financing Administration).

ACTION: Notice of modified or altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an SOR, ''Intern and Resident Information System (IRIS), No. 09–70–0524.'' We will broaden the scope of this system to include information on interns and residents (IRs) required in Title 42 Code of Federal Regulations (CFR) § 412.105 (Special treatment: Hospitals that incur indirect costs for graduate medical education programs) and 42 CFR 413.86 (Direct graduate medical education payments). We are also deleting published routine use number 3 authorizing disclosures to contractors, number 6 authorizing disclosures to researchers, and an unnumbered routine use which authorizes the release of information to the Social Security Administration (SSA).

Proposed routine use number 1 will now cover disclosures previously allowed by routine use number 3 pertaining to contractors. Access to the data from this system to SSA will be accomplished by adding a new routine use number 4, which authorizes release of information in this system to ''another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent.'' Routine use number 6 authorizing release to researchers is being deleted because the very specific nature of the data collected is not sought for research purposes.

The security classification previously reported as ''None'' will be modified to reflect that the data in this system are considered to be ''Level Three Privacy Act Sensitive.'' We are modifying the language in the remaining routine uses to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their proposed usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to ensure that no IRs are counted by the Medicare program as more than one full-time equivalent (FTE) employee in the calculation of payments for the costs of direct graduate medical education (GME) and indirect medical education (IME). Information retrieved from this SOR will also be disclosed to: support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, providers and suppliers of services, third-party contacts where necessary to establish or verify information, another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 24, 2002. To ensure that all parties have adequate time in which to comment, the modified or altered SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution (DDLD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 am.–3 pm., Eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Milton Jacobson, Division of Financial Integrity, Office of Financial Management, CMS, Room C3–14–00, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–7553.

SUPPLEMENTARY INFORMATION:

I. Description of the Modified System

A. Statutory and Regulatory Basis for the SOR

In 1990, CMS established a SOR under the authority of sections 1886(d)(5)(B) and 1886(h) of the Social Security Act (the Act) (42 U.S.C. 1395ww(d)(5)(B) and 1395ww(h)). Notice of this system, ''Intern and Resident Information System,'' System No. 09–70–0524, was published in the **Federal Register** (FR) at 55 FR 51163–51165 (Dec. 12, 1990). An unnumbered routine use was added for SSA at 61 FR 6645 (Feb. 21, 1996), three new fraud and abuse routine uses were added at 63

FR 38414 (July 16, 1998), and then at 65 FR 50552 (Aug. 18, 2000), two of the fraud and abuse routine uses was revised and a third deleted. This system was established to ensure that no IRs are counted by the Medicare program as more than one FTE employee in the calculation of payments for the costs of direct GME and IME. The system contains information on IRs in accordance with 42 CFR 413.86(I) for GME and 42 CFR 412.105(f)(2) for IME. This information includes names and social security numbers of IRs who worked at the hospital in approved GME programs during the hospital's cost reporting period. It also discloses information on each IRs medical specialty (e.g., type of residency program), and the number of years each IRs has completed in all types of residency programs. Hospitals are required to submit the information on IRIS diskettes along with their cost reports to their fiscal intermediaries (FI) in accordance with 42 CFR 413.24(f)(5)(I).

The FIs are the primary user of information from IRIS diskettes. They use the information to detect duplicates of IRs being over reported by two or more of their serviced hospitals. FIs with confirmed duplicates of over reported IR at their serviced hospitals can make adjustments to FTE counts of these IRs on cost report settlements.

The FI also use IRIS diskettes for transmitting data on consolidated diskettes to CMS. CMS uploads the data into its mainframe computer for data storage and retrieval purposes. The computer is used to create duplicate reports of over reported IRs for the FI and CMS.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

The system includes the following information for each IR: name, social security number; name of medical, osteopathic, or podiatric school graduated from and date of graduation, type of dental degree and date of graduation, type of residency program for the medical specialty, number of years completed in all types of residency programs, foreign medical school graduation date and certification date, name of employer (e.g., hospital, university, corporation) paying the salary, the percentage of time spent working in either the inpatient areas of the hospital subject to the Prospective Payment System or in the outpatient areas of the hospital or in a non-hospital setting under agreement with the hospital for IME, the percentage of time spent working in any area of the hospital complex or in a non-provider setting under agreement with the hospital for GME, the start and end dates assigned to the hospital and any hospital-based providers (assignment periods) during the hospital's cost reporting period, the start and end dates assigned to any non-hospital or non-provider setting in connection with approved residency programs (assignment periods) during the hospital's cost reporting period, and the full-time or part-time percentage during each assignment period.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release IRIS information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of IRIS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the SOR will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason data is being collected; e.g., that no IRs are counted by the Medicare program as more than one full-time equivalent (FTE) employee in the calculation of payments for the costs of direct graduate medical education (GME) and indirect medical education (IME).

2. Determines that the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

a. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

b. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IRIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been contracted by the Agency to assist in accomplishment of a CMS function relating to the purposes for this SOR and who need to have access to the records in order to assist CMS.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing a CMS function relating to purposes for this SOR.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for

administration of provisions of Title XVIII of the Social Security Act.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual agreement with providers and suppliers of services to assist in accomplishing CMS functions relating to purposes for this SOR.

3. To third-party contacts where necessary to establish or verify information provided on or by IRs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records.

4. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with federal funds.

Other Federal or state agencies in their administration of a Federal health program may require IRIS information in order to support evaluations and monitoring of reimbursement for services provided.

SSA may require IRIS data to enable it to assist in the implementation and maintenance of the Medicare program.

State licensing boards may require IRIS data to enable them to assist in the review of activities related to IRs in their state.

The Medicare Payment Advisory Commission and Congressional Budget Office may require IRIS data to assist in certain budgetary and planning activities related to IR status.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

Individuals may request the help of a Member of Congress in resolving an issue relating to a matter before CMS. The Member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

6. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

7. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require IRIS information for the purpose of combating fraud and abuse in such Federally funded programs.

B. Additional Circumstances Affecting Routine Use Disclosures

This SOR contains Protected Health Information as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), as amended by 66 FR 12434 (2–26–01)). Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information''.

In addition, our policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

A. Administrative Safeguards

The IRIS system will conform to applicable law and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, ''Security of Federal Automated Information Resources.'' CMS has prepared a comprehensive system security plan as required by the Office and Management and Budget Circular A–130, Appendix III. This plan conforms fully to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, ''Guide for Developing Security Plans for Information Technology Systems.'' Paragraphs A-C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

Authorized users: Personnel having access to the system have been trained in Privacy Act and systems security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural,

and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS is monitoring the authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area or workstation and the system location is attended at all times during working hours.

To assure security of the data, the proper level of class user is assigned for each individual user as determined at the agency level. This prevents unauthorized users from accessing and modifying critical data. The system database configuration includes five classes of database users:

- *Database Administrator* class owns the database objects; e.g., tables, triggers, indexes, stored procedures, packages, and has database administration privileges to these objects;
- *Quality Control Administrator* class has read and write access to key fields in the database;
- *Quality Indicator Report Generator* class has read-only access to all fields and tables;
- *Policy Research* class has query access to tables, but are not allowed to access confidential patient identification information; and
- *Submitter* class has read and write access to database objects, but no database administration privileges.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the IRIS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card; key and/or combination which grant access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information System resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the workstations, servers and databases include:

- User Log-ons—Authentication is performed by the Primary Domain Controller/Backup Domain Controller of the log-on domain.
- Workstation Names—Workstation naming conventions may be defined and implemented at the agency level.
- Hours of Operation—May be restricted by Windows NT. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the agency level.
- Inactivity Log-out—Access to the NT workstation is automatically logged out after a specified period of inactivity.
- Warnings—Legal notices and security warnings display on all servers and workstations.
- Remote Access Services (RAS)—Windows NT RAS security handles resource access control. Access to NT resources is controlled for remote users in the same manner as local users, by utilizing Windows NT file and sharing permissions. Dial-in access can be granted or restricted on a user-by-user basis through the Windows NT RAS administration tool.

There are several levels of security found in the IRIS system. Windows NT provides much of the overall system security. The Windows NT security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Netscape Enterprise Server is the security mechanism for all transmission connections to the system. As a result, Netscape controls all information access requests. Anti-virus software is applied at both the workstation and NT server levels.

Access to different areas on the Windows NT server are maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the NT domain. The file and directory level access controls rely on the presence of an NT File System hard drive partition. This provides the most robust security and is tied directly to the file system. Windows NT security is applied at both the workstation and NT server levels.

C. Procedural Safeguards

All automated systems must comply with federal laws, guidance, and policies for information systems security as stated previously in this section. Each automated information system should ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effect of the Modified SOR on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will monitor the collection and reporting of IRIS data. IRIS information on individuals is completed by contractor personnel and submitted to CMS through standard systems located at different locations. CMS will utilize a variety of onsite and offsite edits and audits to increase the accuracy of IRIS data.

CMS will take precautionary measures (see item IV. above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure of identifiable data from the modified system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–0524

SYSTEM NAME:

''Intern and Resident Information System (IRIS),'' HHS/CMS/OFM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interns and residents (IRs) in programs approved under 42 CFR

413.85, working in all areas of the hospital complex, or other freestanding providers, as well as non-hospital or non-provider settings on or after July 1, 1985.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes the following information for each IR: name, social security number, name of medical, osteopathic, or podiatric school graduated from and date of graduation, type of dental degree and date of graduation, type of residency program for the medical specialty, number of years completed in all types of residency programs, foreign medical school graduation date and certification date, name of employer (e.g., hospital, university, corporation) paying the salary, the percentage of time spent working in either the inpatient areas of the hospital subject to PPS or in the outpatient areas of the hospital or in a non-hospital setting under agreement with the hospital for IME, the percentage of time spent working in any area of the hospital complex or in a non-provider setting under agreement with the hospital for GME, the start and end dates assigned to the hospital and any hospital-based providers (assignment periods) during the hospital's cost reporting period, the start and end dates assigned to any non-hospital or non-provider setting in connection with approved residency programs (assignment periods) during the hospital's cost reporting period, and the full-time or part-time percentage during each assignment period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system is given under the provisions of §§ 1886(d)(5)(B) and 1886 (h) of (the Act) (42 U.S.C. 195ww(d)(5)(B) and 1395ww (h).

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to ensure that no IRs is counted by the Medicare program as more than one FTE employee in the calculation of payments for the costs of direct GME and IME. Information retrieved from this system of records will also be disclosed to: providers and suppliers of services, third-party contacts where necessary to establish or verify information, support regulatory, reimbursement, and policy functions performed within the Agency or by a contractor or consultant, another Federal or state agency to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, support constituent requests made to a congressional representative, support litigation involving the Agency, and combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the IRIS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We have provided a brief explanation of the routine uses we are proposing to establish or modify for disclosures of information maintained in the system:

1. To Agency contractors, or consultants who have been engaged by the Agency to assist in accomplishment of a CMS function relating to the purposes for this system of records and who need to have access to the records in order to assist CMS.

2. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of Title XVIII.

3. To third-party contacts where necessary to establish or verify information provided on or by IRs.

4. To another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent:

a. To contribute to the accuracy of CMS's proper payment of Medicare benefits, and/or

b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds.

5. To a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

6. To the Department of Justice (DOJ), court or adjudicatory body when

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

7. To a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Computer diskette and on magnetic storage media.

RETRIEVABILITY

Information can be retrieved by name and social security number of the IR.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the IRIS. For computerized records, safeguards have been established in accordance with the Department of Health and Human Services (HHS) standards and National Institute of Standards and Technology guidelines, e.g., security codes will be used, limiting access to authorized personnel. Systems securities are established in accordance with the Department of Health and Human Services (HHS), Information Resource Management Circular #10, Automated Information Systems Security Program; CMS Automated Information Systems Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs three years from the last action on the hospital's cost report, and should be coordinated with disposal of the reports.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Financial Integrity, Office of Financial Management, CMS, 7500 Security Boulevard, C3–14–00, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the systems manager who will require the system name, SSN, address, date of birth, sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Data for this system is collected from IRIS diskettes as transmitted by the hospitals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–18169 Filed 7–22–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0055]

Agency Information Collection Activities; Announcement of OMB Approval; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Infant Formula Recall Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 6, 2002 (67 FR 39011), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0188. The approval expires on July 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: July 17, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–18557 Filed 7–22–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Treating Cancer in Humans Using IL–21

Patrick Hwu, M.D. and Gang Wang, Ph.D. (NCI)

U.S. Patent Application No. 60/368,438 filed on March 27, 2002

Licensing Contact: Jonathan Dixon; 301/496–7056 ext. 270; e-mail: *dixonj@od.nih.gov*

The present invention discloses the use of IL–21 for cancer therapy and/or cancer prevention. When compared to similar cytokines, IL–21 has shown substantial anticancer activity and reduced toxicity in murine models.

IL–21 belongs to the class I family of cytokines and is closely related to IL–2 and IL–15. Some cancer patients have shown significant response to administration of IL–2. However, IL–2 has also been associated with severe toxicity leading to a variety of undesirable side effects. This invention attempts to resolve the toxicity concerns and presents a new therapy for cancer prevention and treatment.

Amine Modified Random Primers for Microarray Detection

Charles Xiang and Michael J. Brownstein (NIMH)

DHHS Reference No. E–098–01/1 filed 11 Apr 2002

Licensing Contact: Cristina Thalhammer-Reyero; 301/496–7056 ext. 263; e-mail: *thalhamc@od.nih.gov*

The present invention relates to a new method for preparing fluorescence-labeled cDNA probes for DNA microarray studies, which only uses about 1/20th as much input RNA as the conventional methods require. The method allows making high quality probes from as little as 1 ug of total RNA without RNA or signal amplification. It is based on priming cDNA synthesis with random hexamers to the 5′ ends of which amino allyl modified bases have been added. Coupling of the fluorescent dye to the amine residues is performed after the cDNA is reverse transcribed. The method can be used in tandem with RNA amplification (and/or signal amplification) to label probes from 10 or fewer cells.

Furthermore, the invention also relates to a novel method to amplify RNA derived from single cells using T3-random 9mers and a new lysing method, which allow probe-labeling capabilities that are approaching the single cell level.

DNA Microarray technology has become one of the most important tools for high throughput studies in medical research with applications in the areas of gene discovery, gene expression and mapping. The suitability of DNA Microarray for profiling diseases and for identifying disease-related genes has also been also well documented. Companies like Affimatrix, Incyte and others have commercialized DNA microarrays, printed for a variety of applications. Most studies using DNA arrays involve preparation of fluorescent-labeled cDNA from the mRNA of the studied organism. The cDNA probes are then allowed to hybridize to the DNA fragments printed on the array, and the array is scanned and the data analyzed. Good results depend on a number of factors including high quality arrays and well-labeled probes. In order to achieve adequate sensitivity and reproducibility, probes have had to be prepared from rather large amounts of RNA using other methods.

Use of Lipoxygenase Inhibitors and PPAR Ligands as Anti-Cancer Therapeutic and Intervention Agents

James L. Mulshine (NCI) and Marti Jett
DHHS Reference No. E–069–01/0 filed 29 Jun 2001
Licensing Contact: Catherine Joyce; 301/496–7056 ext. 258; e-mail: *joycec@od.nih.gov*

This technology pertains to the use of inhibitors of the 5-lipoxygenase (5–LO) pathway for treating cancer. The use of 5–LO inhibitors for cancer growth inhibition has been previously described. The advancements in the technology that lead to the instant invention are the further characterization of the role of the 5–LO pathway in breast cancer growth as follows:

1. Growth stimulation of breast cancer cells with 5–HETE, a metabolite from the 5–LO pathway;
2. The upregulation of peroxisome proliferator-activated receptors, alpha and gamma (PPARα and PPARγ), in response to 5–LO inhibitors, and growth reduction of breast cancer cells with each of four PPAR ligands.

Therefore, the instant invention relates to a method of treating an epithelial derived cancer by administering an inhibitor to an enzyme that metabolizes arachidonic acid and a PPAR ligand, or derivative thereof.

The above-mentioned invention is available for licensing on an exclusive or non-exclusive basis.

Dated: July 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–18511 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

RF Ablation Needle Tracked With Magnetic Position Sensing

Bradford J. Wood (CC), Filip Banovac, Kevin Cleary
DHHS Reference No. E–348–01/0 filed 01 Mar 2002
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*

The invention is a method for using a newly developed position sensing device to determine the three-dimensional position of a needle for precision placement in interventional procedures. The method can be applied to accurate placement of a radiofrequency ablation probe for percutaneous treatment of neoplasms in the liver, kidney, or other solid organs, nodules or lymph nodes. The method incorporates a magnetic field based position sensing device that can track coils of only 0.9 mm diameter by 8 mm in length. These coils can be embedded in needles and other instruments to directly track the tip of these instruments. Based on a pre-operative CT scan, the position of these instruments relative to the anatomy can be displayed on a graphical user interface along with targeting assistance for the physician.

Direct Cell Target Analysis

Michael R. Emmert-Buck (NCI)
DHHS Reference No. E–100–01/0 filed 26 Apr 2002
Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: *berkleyd@od.nih.gov*

The invention is a novel, non-mechanical method for studying the molecular content of specific normal and/or diseased cell populations in a heterogeneous biological tissue section. Since the procedure is based on biomolecular targeting, it requires minimal effort on the part of the investigator, and can be easily and rapidly applied to a large number of cells. The invention can be applied in one of two ways. In the first scenario, a biological probe (i.e., antibody or oligonucleotide) is allowed to bind to a unique protein or mRNA expressed in the targeted cells. The probe is linked to an enzyme (such as reverse transcriptase or lactoperoxidase) that will specifically label the biomolecules in the targeted cell population. For example, if lactoperoxidase is utilized, the proteins in the targeted cells will subsequently be labeled with I-125, whereas, the proteins in the non-targeted cells will not be labeled and will be ''invisible'' in

the subsequent analysis step. The entire tissue section(s) is then quickly scraped into a tube containing lysis buffer and the sample is ready for analysis. As an example, the protein lysate could be applied to a two-dimensional polyacrylamide gel (2D-PAGE) to examine the proteomic profile of the targeted cells. In the second scenario, the biological probe is attached to a ''moiety'' that will activate an LCM (Laser Capture Microdissection) film, either by generating heat in the presence of an enzyme or absorbing laser light at the correct wavelength by virtue of an appropriate dye. In this approach, the probe is hybridized to the targeted cells in the tissue section, which is then covered by the LCM film. The entire tissue section is then exposed to the laser, thereby activating the moiety such that the LCM film is focally melted only above the targeted cell types. The LCM film is then removed and all of the targeted cells are procured on the film for subsequent molecular analysis. Overall, the invention is an alternative to the classical mechanical methods of microdissection, and offers several advantages with respect to specificity, selectivity, speed, and ease of use.

Cloning and Mutational Analysis of the Hyperparathyroidism-Jaw Tumor Syndrome (HPT-JT) Gene

Carpten et al. (NHGRI)
DHHS Reference No. E–004–02/0 filed 13 May 2002
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*

Hyperparathyroidism is a key feature of some hereditary endocrine neoplasias and the autosomal dominant disorder HPT-JT, all of which are characterized by the presence of tumors in endocrine tissues. The current invention identifies a series of mutations in chromosome 1 open reading frame 28 (C10RF28)—the HPT-JT gene. Linkage analysis and physical mapping studies of clinical samples from multiple families with HPT-JT syndrome were used to identify these mutations. These genomic changes are predicted to result in truncated gene products.

This new technology might be useful for: (1) Diagnosis of HPT-JT and/or a predisposition to HPT-JT; (2) development of a treatment for HPT-JT; and (3) determination of the effectiveness of various potential HPT-JT therapies.

Methods of Diagnosing Potential for Developing Hepatocellular Carcinoma or Metastasis and of Identifying Therapeutic Agents

Xin Wei Wang et al. (NCI)
DHHS Reference No. E–125–02/0 filed 05 Apr 2002
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: *rodrigur@od.nih.gov*

Expression of nearly 10,000 genes was analyzed in hepatocellular carcinoma (HCC) tumors, and a molecular signature was identified that targets genes that are most likely relevant to the prediction outcome of metastases, including patient survival. A specific therapeutic target protein was also identified, and antibodies against this protein prevent invasion of metastatic HCC cells in vitro. These data identify this target protein both as a diagnostic marker and a therapeutic target for metastatic HCC.

This invention may be useful in diagnosing HCC and HCC metastatic tumors, evaluating risk for development of HCC and HCC metastatic tumors, and identifying HCC therapeutic targets. This invention also identifies a specific therapeutic target protein, and identifies methods of identifying antagonists to this protein, which might be useful in developing a variety of HCC therapeutics.

Dated: July 11, 2002.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 02–18512 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Ocular Albinism RFA.

Date: August 1, 2002.

Time: 10 am to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. 301–451–2020.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18502 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 5, 2002.

Open: 8 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate to review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892. 301/435–0260.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18499 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Hypoxia Program Project Grants.

Date: October 8, 2002.

Time: 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, PhD, Chief, DEA, NHLBI, NIH, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. (301) 435–0270. *clarka@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18500 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Atherogenic Program Project Grants.

Date: October 8, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne P. Clark, PhD, Chief, DEA, NHLBI, NIH, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. (301) 435–0270. *clarka@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18501 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Clinical trial planning grant.

Date: August 6, 2002.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892. 301–435–6908.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18503 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Community Based Mental Health.

Date: August 8, 2002.

Time: 11 am to 4 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18504 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, July 23, 2002, 8 a.m. to July 24, 2002, 5 p.m., Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on June 26, 2002, V. 67, 123, 43134.

The meeting will be held 07/23–24/2002 at the Double Tree Hotel, for RFA AA02–004, New Approaches to Developing Pharmacotherapy for Alcoholism not RFA AA02–006. The meeting is closed to the public.

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18505 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, July 18, 2002, 8 a.m. to July 18, 2002, 5 p.m, Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, 20852 which was published in the **Federal Register** on July 5, 2002, V. 67; 129, Pg 44860.

RFA–02–006 to be reviewed on 07/18/2002, at the Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD, not the Double Tree Hotel as previously announced (FR 07/05/2002, Vol. 67, No. 129, Pg. 44860). The meeting is closed to the public.

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18506 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, July 18, 2002, 8 AM to July 18, 2002, 4 PM, Marriott Marina-San Diego, 333 West Harbor Drive, San Diego, CA 92101–7700, which was published in the **Federal Register** on July 1, 2002, 67 FR 02–16433.

The meeting will be held at the Wyndham San Diego at Emerald Plaza; 400 West Broadway, San Diego, California 92101. The meeting is closed to the public.

Dated: July 15, 2002.

LaVerne Y. Stringfield,

Director Office of Federal Advisory Committee Policy.

[FR Doc. 02–18507 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclosed confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Review of Contracts Dealing with Synthesis of Toxicological Compounds Involved in the Treatment of Common Diseases.

Dates: August 6, 2002.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Ramesh Vemuri, PhD, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Contract Evaluations on Synthesizing New Therapeutic Drugs.

Date: August 7, 2002.

Time: 8 AM to 5 PM.

Agenda: To reive and evaluate contract proposals.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892. (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, aging Research, National Institute of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18508 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, International Malaria Research Training Program Award.

Date: August 14, 2002.

Time: 10 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Anthony Macaluso, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, Bethesda, MD 20892–7616, 301–496–2550. *amacaluso@niaid.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18509 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 26, 2002.

Time: 3 PM to 5: 30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room: 4202, MSC: 7812, Bethesda, MD 20892. 301–435–1220. *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 4(05) Neurosciences.

Date: July 29, 2002.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel E. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 4(06) Neurosciences.

Date: July 31, 2002.

Time: 12 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel E. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Integrative, Functional and Cognitive Neuroscience.

Date: August 1, 2002.

Time: 12 PM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Daniel E. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2002.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892. 301–435–8367. *atreyap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP (02): Global Health Research Initiative Program.

Date: August 5–6, 2002.

Time: 8:30 AM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator,

Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892. 301–435–1019.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 5, 2002.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Stephen M. Nigida, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892. (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–1FCNS–02: Member Conflict Panel: Learning and Memory.
Date: August 5, 2002.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: John Bishop, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892. (301) 435–1250.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP To Review R21 Applications Responsive to PA–02–046 & PA–02–073.
Date: August 5–7, 2002.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.
Contact Person: Ranga V. Srinivas, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Dental and Craniofacial SBIR/STTR Panel.
Date: August 6, 2002.
Time: 10 AM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, Phd, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 6, 2002.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Cathleen L. Cooper, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566. *cooper@scr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities.
Date: August 6, 2002.
Time: 2 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Cheri Wiggs, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue/Fibromyalgia Special Emphasis Panel.
Date: August 7, 2002.
Time: 10 AM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, Phd, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 7, 2002.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892. (301) 435–1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue/Fibromyalgia SBIR/STTR Special Emphasis Panel.
Date: August 7, 2002.
Time: 2:30 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892. 301/435–1781. *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2002.
Time: 8 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel & Suites, 2033 M Street, NW, Washington, DC 20036.
Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 435–1025. *addisonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2002.
Time: 11:30 AM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel & Suites, 2033 M Street, NW, Washington, DC 20036.
Contact Person: Randolph Addison, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892. (301) 435–1025. *addisonr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 8, 2002.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892. (301) 435–3565.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Children with Disabilities.
Date: August 8, 2002.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892. (301) 451–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 9, 2002.
Time: 1 PM to 2 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178

MSC 7844, Bethesda, MD 20892. (301) 435–1249.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Language Acquisition.

Date: August 9, 2002.

Time: 1:30 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Thomas A. Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7848, Bethesda, MD 20892. (301) 594–6836. *tathamt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2002.

Time: 2 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892. (301) 435–1038. *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 15, 2002.

Time: 2 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892. (301) 435–3566. *cooperc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–18510 Filed 7–22–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for American Indian/Alaskan Native and Rural Community Planning Program.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *American Indian/Alaskan Native and Rural Community Planning Program (TI 03–004),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
American Indian/Alaskan Native and Rural Community Planning Program.	Sept. 10, 2002	$1.5 million	6	Up to 18 Months.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is authorized under Section 509 of the Public Heather Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment announces the availability of FY 2003 funds for grants to support community-based planning, resulting in the development of a local substance abuse treatment system plan, for American Indian and Alaskan Native and rural communities.

Eligibility: Eligible applicants are public and domestic private non-profit entities such as community based organizations, Tribes, Tribal governments, or other tribal authorities, colleges and universities (including Tribal colleges and universities), faith-based organizations, provider and consumer groups and health care organizations.

Applicants must propose to serve:

- Rural communities, or
- American Indian or Alaska Native communities (including urban tribal communities).

The funds available under this program are to develop and strengthen local infrastructure and capabilities in communities that have not previously received CSAT grants. Therefore, approximately 75% of funds available will be set aside for applicants that have not previously had a CSAT grant.

For the purpose of this announcement, a rural community is defined as any location outside of an urbanized area (e.g., a central city or cities of more than 50,000 population and a population density exceeding 1000 people per square mile).

In addition, in compliance with the legislative authority for this program (Sec. 509 of the Public Health Service

Act), for-profit organizations are not eligible.

Availability of Funds: It is expected that approximately $1,500,000 will be available in FY 2003 to support approximately 6 grants. Applicants may request up to but not more than $250,000 in total project costs (direct and indirect) for the entire project period. Actual funding levels will depend on the availability of funds to SAMHSA. Grants will be awarded for a project period of up to 18 months.

Period of Support: An award may be requested for a project period of up to 18 months.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Maria E. Burns, Division of Practice and Systems Development, CSAT/SAMHSA, Rockwall II Building, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–7611, E-Mail: *mburns@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 17, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18595 Filed 7–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Recovery Community Services Program (RCSP II).

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreement for Recovery Community Services Program (RCSP II) (TI 03–005),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
Cooperative Agreement for Recovery Community Services Program (RCSP II).	Sept. 10, 2002	$3.0 million	8–9	4 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under Section 509 of the Public Health Service Act. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov (Click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for FY 2003 grants to implement the Recovery Community Services Program (RCSP II). The goal of the Recovery Community Services Program (RCSP II) is to develop, design, deliver, and document peer-driven recovery support services that help prevent relapse and promote long-term recovery from alcohol and drug use disorders.

Eligibility: Applicants may be domestic public and private nonprofit organizations, such as community-based organizations, faith-based organizations, universities, or units of State or local governments or Indian Tribes and tribal organizations. Consortia comprised of various types of eligible organizations are permitted; however, a single organization representing the consortium must be the applicant, the recipient of any award, and the entity responsible for satisfying the grant requirements. If proposing a consortia, a recovery community organization or members of the recovery community, including people in recovery and families/significant others, must have a lead role in the consortium and in the project.

Organizations that were funded under the 2001 Recovery Community Support Program Guidance Applications (TI–01–003) are not eligible to apply for funds in Fiscal Year (FY) 2003.

Availability of Funds: Approximately $3 million will be available for FY 2003. Approximately 8–9 awards will be made in total costs (direct and indirect) of up to $325,000 per year. The total funds available and actual funding levels will depend on the receipt of an appropriation. Annual continuation of the award depends on the availability of funds and progress achieved. Organizations that were funded under the 2001 Recovery Community Support Program Guidance for Applicants (TI–01–003) are not eligible to apply for funds in Fiscal Year (FY) 2003.

Period of Support: An award may be requested for a project period of up to 4 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Catherine Nugent, Recovery Community Services Program, Division of State and Community Assistance, CSAT/SAMHSA, Rockwall II Building, Suite 800, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2662, E-Mail: *cnugent@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2003 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine

education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 17, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18593 Filed 7–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Years (FY) 2003 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for Cooperative Agreements for Strengthening Communities in the Development of Comprehensive Drug and Alcohol Treatment Systems for Youth.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2003 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, *Cooperative Agreements for Strengthening Communities in the Development of Comprehensive Drug and Alcohol Treatment Systems for Youth (TI 03–002),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2003	Est. number of awards	Project period
Cooperative Agreements for Strengthening Communities in the Development of Comprehensive Drug and Alcohol Treatment Systems for youth.	September 10, 2002	$2.0 million	3–4	5 years.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. This program is being announced prior to the annual appropriation for FY 2003 for SAMHSA's programs. Applications are invited based on the assumption that sufficient funds will be appropriated for FY 2003 to permit funding of a reasonable number of applications being hereby solicited. This program is being announced in order to allow applicants sufficient time to plan and prepare applications. Solicitation of applications in advance of a final appropriation will also enable the award of appropriated grant funds in an expeditious manner and thus allow prompt implementation and evaluation of promising practices. All applicants are reminded, however, that we cannot guarantee sufficient funds will be appropriated to permit SAMHSA to fund any applications. This program is authorized under the authority of section 514 of the Public Health Service Act, as amended, and subject to the availability of funds. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the grant announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on ''Grant Opportunities'').

When requesting an application kit, the applicant must specify the particular announcement number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is accepting applications for fiscal year (FY) 2003 funds to assist communities to strengthen their drug and alcohol identification, referral and treatment systems for youth.

Eligibility: Public and domestic private non-profit entities such as units of State and local governments; Native Alaskan entities, Indian tribes and tribal organizations; and community-based organizations, including faith-based organizations are eligible to apply.

While the applicant agency does not have to be a direct provider of substance abuse treatment services, substance abuse treatment providers must be involved in the proposed project. SAMHSA believes that only existing experienced and appropriately credentialed providers with demonstrated infrastructure and expertise will be able to provide services and to address emerging and unmet needs of youth and their families in a timely fashion, with state-of-the-art treatment interventions.

The applicant agency and all direct providers of substance abuse treatment services involved in the proposed system of care must be in compliance with all local, city, county and State licensing and accreditation/certification requirements. Licensure/Accreditation/Certification documentation (or documentation supporting why the local/State government does not require Licensure/Accreditation/Certification) must be provided in Appendix 1 of the application.

The applicant agency, if providing substance abuse treatment services directly, and any direct providers of substance abuse treatment services involved in the proposed system of care, must have been providing substance abuse treatment services for a minimum of two years prior to the date of this application. A list of the substance abuse treatment providers and two-year experience documentation must be provided in Appendix 1 of the application.

Applications will be screened by SAMHSA prior to review. Applications that do not meet the following requirements and provide supporting documentation in Appendix 1 will not be reviewed:

- Non-profit status documentation (e.g., articles of incorporation). [This requirement does not apply to public entities.]
- Licensure/Accreditation/Certification documentation.
- Two years of experience in providing substance abuse treatment services documentation.

Availability of Funds: Approximately $2.0 million will be available to fund 3 to 4 cooperative agreements for FY 2003. The average award is expected to range from $500,000 to $750,000 per year in total costs (direct and indirect). Annual awards will be made subject to continued availability of funds to SAMHSA/CSAT and progress achieved by the grantee.

Period of Support: Cooperative Agreements will be awarded for a period of up to 5 years.

Criteria for Review and Funding: General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criterion. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Randolph Muck, M.Ed., Team Leader/Public Health Advisor, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6574, E-Mail: *rmuck@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Divisions of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

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Executive Order 12372: Applications submitted in response to the FY 2003 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials or on SAMHSA's website under ''Assistance with Grant Applications''. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: July 17, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–18594 Filed 7–22–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4739–N–32]

Notice of Proposed Information Collection: Comment Requested; Mortagee's Request for Extension of Time

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 800a, Washington, DC 20410. E-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Charlene Weaver, Mortgage Servicing Specialist, HUFA, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Charlene r. weaver@hud.gov,* telephone (202) 708–1672 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Request for Extension.

OMB Control Number, if applicable: 2502–0436.

Description of the need for the information and proposed use: In the event of default and foreclosure of an insured mortgage, the mortgagee is entitled to receive insurance benefits plus interest on such benefits from the date of default to the date of payment of the insurance benefits. HUD regulations require that the mortgagee take certain actions within specific time limitations. Failure to meet such limitations may result in curtailment of interest payments. Information collected here allows the Department to evaluate requests for extension of the regulatory time limits within which specific foreclosure processing steps must be taken, as respond to these requests.

Agency form numbers, if applicable: HUD–50012.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is, 3,000, number of respondents is 2000, frequency of response is on occasion, and the hours per response is .15.

Status of the proposed information collection: Reinstatement with change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 16, 2002.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 02–18599 Filed 7–22–02; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4737–N–05]

Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability and Application Kit for the Hispanic Serving Institutions Assisting Communities Program (HSIAC)

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below with be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Susan Brunson, 202–708–3061, ext. 3852 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability and Application Kit for the Hispanic Serving Institution Assisting Communities (HSIAC) Program.

OMB Control Number: 2528–0198 (exp. 09/30/02).

Description of the Need for the Information and Proposed Use: The information is being collected to select applicants for award in this statutorily created competitive grant program and to monitor performance of grantees to ensure they meet statutory and program goals and requirements.

Agency Form Number: HUD–424, HUD–424–B, HUD–424–D, HUD–2880, HUD–2990, HUD–2991, HUD–2992, HUD–2993, HUD–2994, HUD–3004, HUD–50070, and HUD–50071.

Members of the Affected Public: Hispanic Serving Institutions (HSI) of higher education that meet the statutory definition of an HSI in Title V of the 1998 Amendments to the Higher Education Act of 1965 (Pub. L. 105–244).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information pursuant to grant award will be submitted once a year. The following charts details the respondent burden on an annual and semi-annual basis:

	Number of respondents	Total annual responses	Hours per response	Total hours
Applicants	40	40	40	1600
Semi-Annual Reports	15	30	6	180
Final Reports	15	15	8	120
Recordkeeping	15	15	5	75
Total			59	1975

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 16, 2002.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 02–18600 Filed 7–22–02; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Science Advisory Board; Renewal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Science Advisory Board—notice of renewal.

SUMMARY: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior has renewed the Science Advisory Board (Board).

The purpose of the Board is to advise and assist the Director of the Bureau of Land Management on issues pertaining to science and the application of scientific information in the management of public lands and their resources. The Board is comprised of up to nine members from among the following categories: Natural Resource Management, Energy and Minerals, Forestry and Rangeland Management, Biology, Ecology, and Social and Political Science.

FOR FURTHER INFORMATION, CONTACT: Lee Barkow, Bureau of Land Management, Denver Federal Center, Building 50, P.O. Box 25047, Denver, Colorado 80225–0047, telephone 303–236–1142.

Certification

I hereby certify that the renewal of the Science Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the public lands and resources administered by the Bureau of Land Management.

Date Signed: July 11, 2002.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 02–18495 Filed 7–22–02; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 223R]

Controlled Substances: Proposed Revised Aggregate Production Quotas for 2002

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed revised 2002 aggregate production quotas.

SUMMARY: This notice proposes revised 2002 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections must be received on or before August 22, 2002.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On December 13, 2001, DEA published a notice of established initial 2002 aggregate production quotas for certain controlled substances in Schedules I and II (66 FR 64456). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 2002 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

The proposed revised 2002 aggregate production quotas represent those quantities of controlled substances in Schedules I and II that may be produced in the United States in 2002 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export

requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

The proposed revisions are based on a review of 2001 year-end inventories, 2001 disposition data submitted by quota applicants, estimates of the medical needs of the United States, and other information available to the DEA.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes the following revised 2002 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base:

Basic Class	Previously established initial 2002 quotas	Proposed revised 2002 quotas
Schedule I		
2,5-Dimethoxyamphetamine	12,501,000	12,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	4	4
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	15	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	15	15
3,4-Methylenedioxymethamphetamine (MDMA)	15	15
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2	2
4-Methoxyamphetamine	7	7
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	2
Allylprodine	2	2
Alphacetylmethadol	7	7
Alpha-ethyltryptamine	2	2
Alphameprodine	2	2
Alphamethadol	2	2
Alpha-methylfentanyl	2	2
Alpha-methylthiofentanyl	2	2
Aminorex	7	7
Benzylmorphine	2	2
Betacetylmethadol	2	2
Beta-hydroxy-3-methylfentanyl	2	2
Beta-hydroxyfentanyl	2	2
Betameprodine	2	2
Betamethadol	2	2
Betaprodine	2	2
Bufotenine	2	2
Cathinone	9	9
Codeine-N-oxide	52	95
Diethyltryptamine	2	2
Difenoxin	9,000	9,000
Dihydromorphine	1,101,000	1,101,000
Dimethyltryptamine	3	3
Gamma-hydroxybutyric acid	7	7
Heroin	9	9
Hydromorphinol	0	2
Hydroxypethidine	2	2
Lysergic acid diethylamide (LSD)	46	46
Marihuana	840,000	840,000
Mescaline	7	7
Methaqualone	9	9
Methcathinone	9	9
Methyldihydromorphine	0	2
Morphine-N-oxide	52	201
N,N-Dimethylamphetamine	7	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5	5
N-Ethylamphetamine	7	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2	2
Noracymethadol	2	2
Norlevorphanol	52	52
Normethadone	7	7
Normorphine	57	57
Para-fluorofentanyl	2	2
Phenomorphan	0	2

Basic Class	Previously established initial 2002 quotas	Proposed revised 2002 quotas
Pholcodine	2	2
Propiram	415,000	415,000
Psilocybin	2	2
Psilocyn	2	2
Tetrahydrocannabinols	131,000	131,000
Thiofentanyl	2	2
Trimeperidine	2	2
Schedule II		
1-Phenylcyclohexylamine	12	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10	10
Alfentanil	902	902
Alphaprodine	2	2
Amobarbital	451,000	451,000
Amphetamine	13,964,000	13,964,000
Carfentanil	120	120
Cocaine	251,000	251,000
Codeine (for sale)	43,494,000	43,494,000
Codeine (for conversion)	59,051,000	59,051,000
Dextropropoxyphene	136,696,000	136,696,000
Dihydrocodeine	534,000	534,000
Diphenoxylate	708,000	708,000
Ecgonine	51,000	51,000
Ethylmorphine	12	12
Fentanyl	440,000	657,000
Glutethimide	2	2
Hydrocodone (for sale)	23,825,000	25,702,000
Hydrocodone (for conversion)	13,500,000	10,000,000
Hydromorphone	1,409,000	1,409,000
Isomethadone	12	12
Levo-alphacetylmethadol (LAAM)	12	12
Levomethorphan	2	2
Levorphanol	37,000	37,000
Meperidine	10,037,000	9,583,000
Metazocine	1	1
Methadone (for sale)	12,705,000	12,705,000
Methadone Intermediate	19,081,000	19,081,000
Methamphetamine	2,315,000	2,244,000
[275,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 1,950,000 grams for methamphetamine for conversion to a Schedule III product; and 19,000 grams for methamphetamine (for sale)]		
Methylphenidate	17,618,000	20,967,000
Morphine (for sale)	17,533,000	17,533,000
Morphine (for conversion)	110,774,000	110,774,000
Nabilone	2	2
Noroxymorphone (for sale)	25,000	25,000
Noroxymorphone (for conversion)	6,000,000	6,000,000
Opium	700,000	700,000
Oxycodone (for sale)	40,109,000	30,156,000
Oxycodone (for conversion)	700,000	1,100,000
Oxymorphone	454,000	454,000
Pentobarbital	27,728,000	27,728,000
Phencyclidine	21	21
Phenmetrazine	2	2
Phenylacetone	10,218,000	10,218,000
Secobarbital	1,002	1,002
Sufentanil	2,100	2,100
Thebaine	59,090,000	47,419,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations remain at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a

public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing as per 21 CFR 1303.13(c) and 1303.32.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

The DEA makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

Dated: July 16, 2002.

John B. Brown III,

Deputy Administrator.

[FR Doc. 02–18468 Filed 7–22–02; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review; Employment Eligibility Verification; Form I–9.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 23, 2002.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–9. Immigration Services Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 responses at 9 minutes (.15 hours) per response and 20,000,000 record keepers at 4 minutes (0.66 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Room 1600, Washington, DC 20530.

Dated: July 15, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–18488 Filed 7–22–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission which started at approximately 11:30 a.m. on Tuesday, July 16, 2002, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four appeals from the National Commissioners' decisions pursuant to 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward R. Reilly, Jr., Michael J. Gaines, and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 17, 2002.

Edward F. Reilly, Jr.,

Chairman, Parole Commission.

[FR Doc. 02–18670 Filed 7–19–02; 9:47 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use of a voluntary, electronic survey for the Information Security Oversight Office to determine general patterns of compliance, program strengths, and systematic weaknesses in the National Industrial Security Program (NISP). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before August 12, 2002, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: 2002 National Industrial Security Program (NIPS) Survey.

OMB number: 3095–NEW.

Agency form number: N/A.

Type of review: Emergency.

Affected public: Business or other for-profit.

Estimated number of respondents: 5,000.

Estimated time per response: 45 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3,750 hours.

Abstract: Executive Order 12829, ''National Industrial Security Program,'' requires the Information Security Oversight Office (ISOO) to exercise policy oversight on behalf of the National Security Council (NSC). ISOO's responsibilities include implementing and monitoring the National Industrial Security Program (NISP) and overseeing agency, contractor, licensee, and grantee actions in order to ensure that they comply with Executive Order 12829. This survey will enable ISOO to fulfill its responsibilities to report to the President regarding the status of the NISP.

Dated: July 16, 2002.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 02–18532 Filed 7–22–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel—Notice of Change

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the time of the open session of the Combined Arts Advisory Panel, Multidisciplinary Section (Organizational Capacity category) has been changed. This session will be held from 3:45 p.m. to 4:45 p.m., rather than 4:30 p.m. to 5:30 p.m., on August 6, 2002, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Dated: July 17, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–18605 Filed 7–22–02; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Dominion Nuclear Connecticut, Inc., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering

issuance of an amendment to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 for Facility Operating License No. NPF–49 issued to Dominion Nuclear Connecticut, Inc. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3), located in Waterford, Connecticut. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Final Safety Analysis Report (FSAR) description of the Supplementary Leakage Collection and Release System (SLCRS) operation after a postulated accident. As a result, this revision modifies the licensing basis for the post-accident operation of the SLCRS.

The proposed action is in accordance with the licensee's application dated June 6, 1998, as supplemented by letters dated April 5, 1999; April 7, April 19, July 31, and September 28, 2000; March 19, June 11, September 21, and December 20, 2001.

The Need for the Proposed Action

The proposed action is necessary because the SLCRS is used to maintain a negative pressure relative to atmospheric in the secondary containment by collecting air from the enclosure building and connecting areas, filtering it to remove iodine, and discharging the filtered air to the atmosphere. The licensee has identified potential release pathways from secondary containment to the environment that could bypass the SLCRS filter following a design-basis accident due to non-nuclear safety-grade (NNS) exhaust fan operation after the accident. These additional pathways are not included in the current design-basis accident dose analyses as documented in the MP3 FSAR, therefore making them non-conservative. The proposed action would include the additional pathway in the current design-basis accident dose analyses.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that issuance of the proposed amendment would not have a significant environmental impact. The proposed changes to the FSAR provide documentation of a combination of events not previously included in the FSAR. Based on the licensee's use of acceptable methodologies and assumptions, and staff confirmation of the licensee's dose results, the staff has determined that the licensee's revised design-basis accident radiological consequences analyses for the Loss of Coolant Accident (LOCA) and rod ejection accident, which take into account additional SLCRS bypass release pathways, are acceptable. The analyses show that the radiological consequences of a postulated design-basis LOCA are within 10 CFR part 100 dose limits for offsite doses and 10 CFR part 50, appendix A, General Design Criterion 19, dose limits with regard to control room habitability.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for MP3, dated December 1984.

Agencies and Persons Consulted

On June 12, 2002, the staff consulted with the Connecticut State official, Mr. Michael Firsick of the Connecticut Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated June 6, 1998, as supplemented by letters dated April 5, 1999; April 7, April 19, July 31, and September 28, 2000; March 19, June 11, September 21, and December 20, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of July 2002.

For the Nuclear Regulatory Commission

Victor Nerses,

Sr. Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18521 Filed 7–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 22, 29, August 5, 12, 19, 26, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 22, 2002

There are no meetings scheduled for the Week of July 22, 2002.

Week of July 29, 2002—Tentative

There are no meetings scheduled for the Week of July 29, 2002.

Week of August 5, 2002—Tentative

There are no meetings scheduled for the Week of August 5, 2002.

Week of August 12, 2002—Tentative

Tuesday, August 13, 2002

9:30 a.m. Briefing on Special Review Group Response to the Differing Professional Opinion/Differing Professional View (DPO/DPV) Review (Public Meeting) (Contact: John Craig, 301–415–1703).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of August 19, 2002—Tentative

Wednesday, August 21, 2002

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Janice Dunn Lee, 301–415–1780).

This meeting will be webcast live at the Web address—http://*www.nrc.gov.*

2 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308).

This meeting will be webcast live at the Web address—http://*www.nrc.gov.*

Week of August 26, 2002—Tentative

There are no meetings scheduled for the Week of August 26, 2002.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni (301) 415–1651.

* * * * *

ADDITIONAL INFORMATION: By a vote of 4–0 on July 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental Issues (Closed—Ex. 9)'' be held on July 12, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://*www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 18, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–18727 Filed 7–14–02; 1:16 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 28, 2002, through July 11, 2002. The last biweekly notice was published on July 9, 2002 (67 FR 45560).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 22, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714,[1]

[1] The most recent version of Title 10 of the Code of Federal Regulations, published January 1, 2002,

Continued

which is available at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

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inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. Those provisions are extant and still applicable to petitions to intervene. Those provisions are as follows: ''In all other circumstances, such ruling body or officer shall, in ruling on—

(1) A petition for leave to intervene or a request for hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.''

Dominion Nuclear Connecticut, Inc., Docket No. 50–245, Millstone Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 13, 2002.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 1 (MP1) Permanently Defueled Technical Specifications (TSs) to change selected MP1 radiological related TSs. These changes are due to the revision to part 20 of Title 10 of the Code of Federal Regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

It is proposed to revise the Occupational Radiation Exposure Report, Radioactive Effluent Controls Program, and High Radiation Area Specifications in accordance with TSTF [Technical Specification Task Force] travelers 152, 258 and 308, to reflect changes due to the revision to 10 CFR part 20.

These changes do not have an impact on the acceptance criteria for any design basis accident described in the Unit No. 1 Defueled Safety Analysis Report (DSAR).

The changes have no impact on plant equipment operation. Since the changes are administrative or editorial in nature they cannot affect the likelihood or consequences of accidents. Therefore, the proposed changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revisions to the Occupational Radiation Exposure Report, Radioactive Effluent Controls Program, and High Radiation Area Specifications in accordance with TSTF travelers 152, 258 and 308 will have no effect on plant operation. Since the proposed changes are solely administrative or editorial in nature, they do not affect plant operation in any way.

The proposed changes do not involve a physical alteration of the plant or change the plant configuration (no new or different type of equipment will be installed). The proposed changes do not require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Since the proposed changes are solely administrative or editorial changes to the TS, they do not affect plant operation in any way. The proposed changes to each unit's technical specifications will revise them to reflect the requirements of the current 10 CFR Part 20, standardize terminology, provide clearer guidance, clarify inconsistencies, remove extraneous information, and result in minor format changes that will not result in any technical changes to current requirements.

The proposed changes have no effect on any safety analyses assumptions and therefore [do] not impact any margins of safety. The proposed changes do not impact any acceptance criteria for the design basis accidents described in the Unit No. 1 DSAR and [do] not impact the consequences of accidents previously evaluated. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, CT 06385.

NRC Section Chief: Stephen Dembek.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 9, 2002.

Description of amendment request: The amendments would revise the licensing basis Steam Generator Tube Rupture sequences for Catawba Nuclear Station, Units 1 and 2. Specifically, it is requested that a certain single failure scenario potentially leading to steam generator overfill be excluded from the design basis steam generator tube rupture analysis using the guidance of Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This proposed amendment requests that steam generator tube rupture sequences involving a failure of 125 VDC Distribution Center EDE [or EDF] be excluded from consideration in the analysis of the design basis steam generator tube rupture event. These sequences involve a single failure that potentially degrades the ability to terminate auxiliary feedwater flow into a ruptured steam generator following a steam generator tube rupture. The inability to terminate auxiliary feedwater flow in a timely manner following a steam generator tube rupture could result in steam generator overfill.

The sequences to be excluded do not involve equipment that can be considered an accident initiator. Implementation of this amendment does not involve any physical changes to the facility. It does not affect basic operation of the facility. The probability of occurrence of a steam generator tube rupture or any other accident previously evaluated will not change following implementation of this amendment.

Elimination of certain sequences from the design basis steam generator tube rupture analysis does not adversely affect the ability to cool the reactor core and prevent core damage following a steam generator tube rupture. The Departure from Nucleate Boiling ratio is not adversely impacted.

The ability to maintain a secondary heat sink and provide water to the Reactor Coolant System for makeup, cooling of the core, and shutdown margin following a design basis steam generator tube rupture is not affected by the changes proposed in this license amendment. Neither fuel damage nor clad damage is expected to occur for the steam generator tube rupture sequences to be eliminated.

Should the ruptured steam generator overfill following a design basis steam generator tube rupture in one of the sequences to be excluded, radioactivity could be released to the environment in increased amounts and over a longer time span than predicted in the safety analysis. The frequency of occurrence of these steam generator tube rupture sequences is low. Should such an event occur, the radiological consequences are expected to be below the guidelines of 10 CFR 100 and General Design Criteria 19. Under nominal conditions, (e.g., nominal atmospheric dispersion factors, nominal levels of radioactivity in the Reactor Coolant System, etc.), radiological consequences of a steam generator tube rupture would be small compared to even the guideline values of the Standard Review Plan, Section 15.6.3. There is no significant adverse effect on the mitigation of consequences following a steam generator tube rupture.

In summary, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment involves elimination of certain sequences from the

design basis steam generator tube rupture analysis. No physical changes to the facility are associated with the proposed amendment.

The sequences to be eliminated involve single failures that could adversely affect the ability to terminate auxiliary feedwater flow to a ruptured steam generator. The failures associated with these sequences are not accident sequence precursors and do not have an adverse impact on any accident initiator.

No new failure modes are created due to implementation of the change proposed in this License Amendment Request. Therefore, operation of the facility in accordance with the changes proposed in this License Amendment Request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in a margin of safety?

No. One of the standards by which the consequences of the design basis steam generator tube rupture are evaluated is that the Departure from Nucleate Boiling Ratio (DNBR) is greater than the limit value. Should one of the steam generator tube rupture sequences to be excluded occur, the effects relative to steam generator overfill would not be manifested until the Control Room operators attempt to stop the flow of auxiliary feedwater to the ruptured steam generator which is well into the event. The minimum DNBR would occur within seconds after reactor trip. Therefore, the criterion concerning DNBR is met.

The risk evaluation demonstrates that the frequency of steam generator overfill associated with the steam generator tube rupture sequences to be excluded is low (approximately 3.7 E–11 per reactor year per Class 1E Train). Additionally, the frequency of a large early release is shown to be very low (approximately 3.7 E–15 per reactor year per Class 1E Train).

It is concluded that removal of certain steam generator tube rupture sequences from the plant licensing basis as proposed does not constitute a significant reduction in a margin of safety.

Based on this evaluation, it is concluded that operation of the facility in accordance with the proposed amendment constitutes no significant hazard to the public.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendments would revise the Updated Final Safety Analysis Report to eliminate credit for the flow path from the spent fuel pool to high pressure injection pump as one source of primary system makeup following a tornado. The proposed amendments would also credit the Standby Shutdown Facility as the assured means of achieving safe shutdown for all three Oconee units following a tornado.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes being requested in this amendment request involve (1) the elimination of the Spent Fuel Pool (SFP) as a suction source to a High Pressure Injection [HPI] pump for primary system make-up, and (2) to fully credit the Standby Shutdown Facility (SSF) as the primary assured means of achieving safe shutdown of all three units following a tornado. Following the modification to fully tornado protect the SSF, this facility becomes the station's assured flow path for both primary make-up and secondary decay heat removal for all three units.

Although the probability of a severe tornado strike at the station does not change, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than the current strategy that is based on risk insights and diversity for achieving safe shutdown. This effort has resulted in an overall reduction in tornado risk at the station and consequently, would not result in a significant increase in the consequences of an accident previously evaluated.

Other than the fortification of walls of existing structures to harden them against tornado damage, there are no physical changes to the plant structures, systems, or components (SSCs) or operating procedures, nor are there any changes to safety limits or set points. Also, no new radiological release pathways are created.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed in this amendment request do not create the possibility of a new or different kind of accident from any accident previously evaluated. The initial placement of the SFP-HPI flow path into the LB (Licensing Bases) was based on 1989 risk analyses that showed a potential need for primary make-up due to inventory losses from a reactor coolant pump (RCP) seal loss-of-cooling accident (LOCA). The upgrade of the RCP seals has significantly reduced the probability of a seal LOCA and subsequently, alleviated the initial reliance on the SFP–HPI flow path for primary make-up. If multi-unit primary make-up and decay heat removal are required following an event, the tornado protected SSF RB[C]MU (Reactor Coolant Makeup) or SSF ASW (Auxiliary Service Water) pumps have the capabilities to perform these functions for all three units.

Other than the fortification of walls of existing structures to harden them against tornado damage, there are no physical changes to the plant SSCs or operating procedures. There are no new hazardous materials or potential missiles. It does not introduce the possibility of any new or different malfunctions. No safety limits or set points are changed.

3. Involve a significant reduction in a margin or safety.

As mentioned previously, new tornado insights gained from a review of the current external event risk analysis have resulted in an enhanced risk model that more accurately characterizes station tornado damage risk. The proposed changes are part of the revised tornado mitigation strategy that provides for an assured, deterministic success path rather than a strategy that is based on risk insights and diversity for achieving safe shutdown.

There are no safety limit, set point, design parameters, or operating procedure changes required. The integrity of the fuel cladding, reactor coolant system, and containment are preserved. Thus, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 14, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from

the current limit of ''* * * up to 24 hours to permit the completion of the surveillance when the allowable outage time limits of the ACTION requirements are less than 24 hours'' to ''* * * up to 24 hours or up to the limit of the specified interval, whichever is greater.'' In addition, the following requirement would be added to SR 4.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated May 14, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO (Limiting Condition for Operation) is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 12, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated June 12, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a

standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: May 31, 2001.

Description of amendment request: The proposed amendments would change Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the proposed change modifies TS Surveillance Requirement (SR) 3.6.1.3.8 to reduce to number of excess flow check valves (EFCVs) required to be tested every 24 months. The proposed SR will require that a representative sample of reactor instrumentation line EFCVs actuate to the isolation position on an actual or simulated instrumentation line break signal every 24 months. All reactor instrumentation line EFCVs will be tested at least once every 10 years (nominal). The proposed change implements Technical Specification Task Force Traveler 334 (TSTF–334), ''Relaxed Surveillance Frequency for Excess Flow Check Valve Testing,'' Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to LaSalle County Station, Unit 1 and Unit 2 Technical Specifications (TS) modifies TS Surveillance Requirement (SR) 3.6.1.3.8 to reduce the number of excess flow check valves (EFCVs) required to be tested every 24 months. The proposed SR will require that a representative sample of reactor instrumentation line EFCVs actuate to the isolation position on an actual or simulated instrumentation line break signal every 24 months. All reactor instrumentation line EFCVs will be tested at least once every 10 years (nominal).

The performance of EFCV surveillance testing is not a precursor to any accident previously evaluated and is not related to the frequency of instrument line failures. Thus, the proposed change to modify the test frequency associated with EFCV surveillance does not have any effect on the probability of an accident previously evaluated.

The performance of the EFCV surveillance testing does provide assurance that the EFCV will perform as designed. The LaSalle County Station radiological dose assessment for an instrument line break is documented in the LaSalle County Station UFSAR Table 15.6–4, ''Instrument Line Break Radiological Effects.'' The assessment does not credit performance of the EFCV to limit instrument line flows during an assumed break. These estimated doses are significantly below the regulatory dose limits listed in 10 CFR 100, ''Reactor Site Criteria.'' The proposed change does not change the assumptions or the estimated doses associated with a LaSalle County Station instrument line break. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change modifies TS SR 3.6.1.3.8 to reduce the number of excess flow check valves (EFCVs) required to be tested every 24 months while requiring all EFCVs to be tested at least once every 10 years (nominal). The proposed change does not affect the performance of any LaSalle County Station structure, system, or component credited with mitigating any accident previously evaluated. The proposed change to modify the surveillance will not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed change for LaSalle County Station, Units 1 and 2, implements Technical Specification Task Force Traveler 334 (TSTF–334), ''Relaxed Surveillance Frequency for Excess Flow Check Valve Testing,'' Revision 2. TSTF–334 notes that its implementation is only allowed for plants for which General Electric Nuclear Energy Topical Report NEDO–32977–A, ''Excess Flow Check Valve Testing Relaxation,'' is applicable. In addition, an EFCV performance criteria and basis must be developed to ensure that the corrective action program can provide meaningful feedback for appropriate corrective actions.

LaSalle County Station, in accordance with Topical Report NEDO–32977–A, has performed a plant-specific radiological dose assessment for an instrument line break, EFCV failure rate analysis, release frequency initiated by an instrument line break analysis and has proposed a corrective action program

to ensure continued EFCV performance. The result of the assessment and analyses meets the overall requirements to allow implementation TSTF–334, Revision 2.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: June 28, 2002.

Description of amendment request: The proposed amendment would revise the Unit 1 Operating License and Technical Specifications to increase the licensed power level to 3304 megawatts thermal (MWt), or 1.66 percent greater than the current licensed power level of 3250 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated—In support of this measurement uncertainty recapture power uprate, a comprehensive evaluation was performed for nuclear steam supply system (NSSS) and balance of plant (BOP) components and analyses that could be affected by this change. A power calorimetric uncertainty calculation was performed, and the effect of increasing plant power by 1.66 percent on the plant's design and licensing basis was evaluated. The result of these evaluations is that all plant components will continue to be capable of performing their design function at an uprated core power of 3304 megawatts thermal (MWt). In addition, an evaluation of the accident analyses demonstrates that applicable analysis acceptance criteria continue to be met. No accident initiators are affected by this uprate and no challenges to any plant safety barriers are created by this change.

Consequences of an Accident Previously Evaluated—This change does not affect the release paths, the frequency of release, or the source term for release for any accidents previously evaluated in the Updated Final Safety Analysis Report. Structures, systems, and components (SSC) required to mitigate transients remain capable of performing their design functions, and thus were found acceptable. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at a core power of 3304 MWt. Analyses performed to assess the effects of mass and energy remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the uprated condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed changes. The installation of the Caldon Leading Edge Flow Meter (LEFM) CheckPlus™ system has been analyzed, and failures of this system will have no adverse effect on any safety-related system or any SSCs required for transient mitigation. SSCs previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

This change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at a core power level of 3304 MWt does not create any new accident initiators or precursors. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met, to support operation at a core power of 3304 MWt. Credible malfunctions continue to be bounded by the current accident analysis of record or re-analysis demonstrates that applicable acceptance criteria continue to be met.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with this Measurement Uncertainty Recapture Uprate Program are those pertaining to core power. This includes those associated with the fuel cladding, Reactor Coolant System (RCS) pressure boundary, and containment barriers. A comprehensive engineering review was performed to evaluate the 1.66 percent increase in the licensed core power from 3250 MWt to 3304 MWt. The 1.66 percent increase required that revised NSSS design thermal and hydraulic parameters be established, which then served as the basis for all of the NSSS analyses and evaluations. This engineering review concluded that no design transient modifications are required to accommodate the revised NSSS design conditions. NSSS systems and components were evaluated and it was concluded that the NSSS equipment has sufficient margin to accommodate the 1.66 percent power uprate. NSSS accident analyses were either evaluated or revised for the 1.66 percent power uprate. In all cases the evaluations and re-analyses demonstrate that the applicable analyses acceptance criteria continue to be met. As such, the margins of safety continue to be bounded by the current analyses of record for this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: June 28, 2002.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) and, as applicable, other elements of the licensing bases to maintain a Post-Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to, or included in, the TSs for nuclear power reactors currently licensed to operate. However, lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained

through other means, or is of little use in the assessment and mitigation of accident conditions.

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on December 27, 2001 (66 FR 66949) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the NSHC determination in its application dated June 28, 2002. The NSHC determination is restated below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in [a] margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 7, 2002.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant Technical Specification (TS) Sections for administrative changes: (1) Section 1—''Definitions,'' (2) Section 2—''Safety Limits and Limiting Safety System Settings,'' (3) Section 5—''Design Features,'' and (4) Section 6—''Administrative Controls.'' The administrative changes include capitalizing defined words, formatting section titles, renumbering pages and correcting miscellaneous grammar and punctuation errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not alter the intent of the TS. Reformatting the TS sections and correcting typographical, grammatical and format inconsistencies are administrative in nature. There is no impact on accident initiators or plant equipment, and therefore does not affect the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a change to the physical plant or operations. Since these are administrative changes they do not contribute to accident initiation. Therefore, the proposed changes do not produce a new accident scenario or produce a new type of equipment malfunction.

3. Involve a significant reduction in the margin of safety.

Since these are administrative changes, they do not involve a significant reduction in the margin of safety. The proposed changes do not affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: June 27, 2002.

Description of amendment request: SCE&G is proposing a revision to the Technical Specifications (TS) for the Virgil C. Summer Nuclear Station (VCSNS) to add an Allowed Outage Time (AOT) to Table 3.3–3, Engineered Safety Features Actuation System (ESFAS) instrumentation, Action Statement 16.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

South Carolina Electric & Gas Company (SCE&G) has evaluated the proposed changes to the VCSNS TS described above against the Significant Hazards Criteria of 10 CFR 50.92 and has determined that the changes do not involve any significant hazard. The following is provided in support of this conclusion.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of an ACTION STATEMENT and the addition of an AOT (and its associated actions if not met) for a TS action statement are neither an accident initiator or precursor. The ESFAS actuates in response to an accident and has a mitigating function. Increasing the TS requirements for specific TS instrument loops provides additional assurance that the channels will be capable of performing their design function in the event of a DBA [design-basis accident]. The ability of the operations staff to respond to an evaluated accident or plant transient will not be hampered. This change provides conservative requirements to assure that the design basis of the plant is maintained.

Addition of conservative changes to the Engineered Safety Feature Actuation System Instrumentation [does] not contribute to the initiation of any accident evaluated in the FSAR [Final Safety Analysis Report]. Supporting factors are as follows:

—The changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–1431, Rev. 2.

There are no deletions from the Technical Specifications made by these changes, nor relaxation in any applicability, action, or surveillance requirements.

—Overall plant performance and operation [are] not altered by the proposed changes. There are to be no plant hardware changes as a result of this proposed change and only minimal procedural changes.

Therefore, since the Engineered Safety Feature Actuation System Instrumentation [is] treated more conservatively, the probability of occurrence or consequences of an accident evaluated in the VCSNS FSAR will be no greater than the original design basis of the plant.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. Additionally, the addition of an ACTION STATEMENT and an AOT with conservative requirements are intended to assure that the plant is in a safe configuration and can meet accident analyses assumptions. These changes are conservative and consistent with the Improved Technical Specifications, NUREG–1431, Rev. 2. No new accident initiator mechanisms are introduced since:

—No physical changes to the Engineered Safety Feature Actuation System Instrumentation are made.

—No deletions from the Technical Specifications are made.

—No relaxation in any applicability, action, or surveillance requirements [is] made.

Since the safety and design requirements continue to be met and the integrity of the reactor coolant system pressure boundary is not challenged, no new accident scenarios have been created. Therefore, the types of accidents defined in the FSAR continue to represent the credible spectrum of events to be analyzed [that] determine safe plant operation.

3. Does this change involve a significant reduction in margin of safety?

The proposed change requires that an instrument channel for an Engineered Safety Feature [remains] operable or be restored to operability within a reasonable time period, otherwise a controlled shutdown is required. This conforms to the safety analysis where the plant and its systems, structures and components must be capable of performing the safety function while a DBA is occurring, in the presence of a worst case single failure.

This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

The proposed changes provide consistency between Tables 3.3–2, 3.3–3, and 4.3–2, resulting in a one-for-one correlation between the functional units in those tables. These changes are conservative and consistent with the Standard Technical Specifications, NUREG–0452, Rev. 5.

The proposed changes impose more restrictive operating limitations, and their use provides increased assurance that the Engineered Safety Feature Actuation System Instrumentation remains operable. Since the changes are conservative additions, it is concluded that the changes do not involve a significant reduction in the margin of safety. This is not a reduction in a margin of safety, since it restores the margin that was designed into the plant.

Pursuant to 10 CFR 50.91, the preceding analyses [provide] a determination that the proposed Technical Specifications change poses no significant hazard as delineated by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: John A. Nakoski.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (VEGP), Units 1 and 2, Burke County, Georgia

Date of amendment request: May 8, 2002.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) Figure 2.1.1–1, ''Reactor Core Safety Limits;'' Table 3.3.1–1, ''Reactor Trip System Instrumentation;'' and the associated Bases B 2.1.1 and B 3.3.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change can be implemented without adverse impact to the safety analyses and plant systems. Implementation of the revised VEGP OTΔT [Overtemperature Delta Temperature] and OPΔT [Overpower Delta temperature] reactor trip setpoints will continue to ensure that fuel melt and departure from nucleate boiling (DNB) criteria are met. In addition, the setpoint changes will improve operating margin to the OTΔT and OPΔT reactor trip setpoints. The setpoints provide reactor protection and are not event initiators and therefore do not affect the probability of occurrence of an accident previously evaluated.

There is no change in the radiological consequences of any accident since the fuel clad, the reactor coolant system pressure boundary, and the containment are not changed, nor will the integrity of these physical barriers be challenged. In addition, the proposed change will not change, degrade, or prevent any reactor trip system actuations.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change can be implemented without adverse impact to the safety analyses and plant systems. Implementation of the revised VEGP OTΔT and OPΔT reactor trip setpoints will continue to ensure that fuel melt and departure from nucleate boiling (DNB) criteria are met. In addition, the setpoint changes will improve operating margin to the OTΔT and OPΔT reactor trip setpoints. The revised OTΔT and OPΔT reactor trip setpoints would not create any new transients nor would they invalidate the OTΔT and OPΔT design bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change can be implemented without adverse impact to the safety analyses and plant systems. Implementation of the revised VEGP OTΔT and OPΔT reactor trip setpoints will continue to ensure that fuel melt and departure from nucleate boiling (DNB) criteria are met. In addition, the setpoint changes will improve operating margin to the OTΔT and OPΔT reactor trip setpoints. The margin of safety provided by the Technical Specifications is not significantly affected because the proposed changes are based on the same accident acceptance limits, i.e., the OTΔT and OPΔT design bases continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: John A. Nakoski.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 17, 2002. This application supercedes the December 6, 2001, application that was noticed in the Federal Register on February 5, 2002 (67 FR 5340).

Description of amendment request: The proposed amendment would revise the following Technical Specifications (TSs): (1) TS 3.3.6, ''Containment Purge Isolation Instrumentation;'' (2) TS 3.3.7, ''Control Room Emergency Ventilation System (CREVS) Instrumentation;'' (3) TS 3.3.8, ''Emergency Exhaust System (EES) Actuation Instrumentation;'' and (4) TS 3.9.4, ''Containment Penetrations.'' The revisions to the TSs affect limiting conditions for operation (LCOs), the required actions for LCOs, surveillance requirements, and tables specifying requirements on instrumentation. The revisions to the TSs are to allow the equipment hatch and the emergency air lock to be open in refueling outages during core alterations and/or movement of irradiated fuel within containment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will allow the containment equipment hatch [and the emergency air lock] to be open during CORE ALTERATIONS and movement of irradiated fuel assemblies inside containment. The status of the containment equipment hatch or the emergency air lock during refueling operations has no [e]ffect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the consequences of a fuel handling accident inside containment with an open containment hatch [or emergency air lock] are bounded by the current analysis described in the FSAR [Final Safety Analysis Report] and the probability of an accident is not affected by the status of the containment equipment hatch [or emergency air lock], the proposed change[s] [do] not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create any new failure modes for any system or component, nor do they adversely affect plant operation. No new equipment will be added and no new limiting single failures will be created. The plant will continue to be operated within the envelope of the existing safety analysis.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The previously determined radiological dose consequences for a fuel handling accident inside containment with the [equipment hatch or the] air lock doors open remain bounding for the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR 100 and they meet the acceptance criteria of SRP [NRC Standard Review Plan] section 15.7.4 and GDC [NRC General Design Criterion] 19.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 17, 2002.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' by adding Surveillance Requirement (SR) 3.3.1.16 to Function 3 of TS Table 3.3.1–1. The amendment would add a requirement to verify the reactor trip system response times are within limits every 18 months on a staggered test basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes.

The design of the RTS instrumentation, specifically the positive flux rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change imposes additional surveillance requirements to assure safety-related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the PFRT function.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges

imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [final safety analysis report].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance requirements. These additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed. The imposition of additional surveillance requirements increases the margin of safety by assuring that the affected safety analysis assumptions on equipment response time are verified on a periodic frequency.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 27, 2002. This application revises the application of September 27, 2001, that was originally noticed in the **Federal Register** on October 17, 2001 (66 FR 52805).

Description of amendment request: The proposed amendment would revise Section 5.3.1.1 of the Technical Specifications to state new education and experience eligibility requirements for operator license applicants.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. [The change conforms] to the current requirements of 10 CFR 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. WCNOC's [Wolf Creek Nuclear Operating Corporation's] licensed operator training program is accredited by INPO [Institute for Nuclear Power Operations] and is based on a systems approach to training. The proposed TS change takes credit for the INPO accreditation of the licensed operator training program. The TS requirements for all other unit staff qualifications remain unchanged.

Therefore, the proposed change does not involve a signification increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program and to conform to the revised 10 CFR 55.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised [10 CFR 55] rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and based on a systems approach to training. As previously noted, WCNOC's licensed operator training program is accredited by INPO and is based on a systems approach to training. The proposed TS change takes credit for the INPO accreditation of the licensed operator training program. The TS requirements for all other unit staff qualifications remain unchanged.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator training program. This change is consistent with the requirements of 10 CFR 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 [rule], determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, WCNOC's licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO accredited, systems approach based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conform with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO accredited licensed operator training program.

In addition, the NRC has recently published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''to familiarize addresses with the NRC's current guidelines for the qualification and training

of reactor operator (RO) and senior operator (SO) license applicants.'' This document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.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.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: August 24, 2001, as supplemented June 11, 2002.

Brief description of amendment: The amendment revises the control room emergency filtration system requirements in Technical Specification 3.7.3, ''Control Room Emergency Filtration (CREF) System,'' based on NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Traveler TSTF–287, Revision 5, ''Ventilation System Envelope Allowed Outage Times.''

Date of issuance: June 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 149.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36929). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.5.b to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits.

Date of issuance: July 2, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 199 and 192.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10010). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 2, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specification 5.6.5.b to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits.

Date of issuance: July 10, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 203 and 184.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2921). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 20, 2001.

Brief description of amendments: The amendments revised the Technical Specifications 5.6.5.b to eliminate the revision number and dates from the list of topical reports that contain the analytical methods used to determine the core operating limits.

Date of Issuance: July 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 326, 326 and 327.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10011).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 2002.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 6, 2002, as supplemented by letter dated June 7, 2002.

Brief description of amendment: The amendment relocates the requirements for Main Steam Isolation Valve isolations on certain area temperatures from Technical Specification Section 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' to the Technical Requirements Manual.

Date of issuance: July 11, 2002.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 124.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12601). The June 7, 2002, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 11, 2002.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 31, 1999, as supplemented by letters dated June 1, July 14, and October 14, 1999, February 11, April 4 and 13, June 30, July 31, September 12 and 13, and October 23, 2000, May 31, October 18, 2001, and February 6, March 27, April 26, and June 11 and 12, 2002 (two letters).

Brief description of amendment: The amendment provides for the full conversion of the Current Technical Specifications to the Improved Technical Specifications.

Date of issuance: July 3, 2002.

Effective date: As of the date of issuance to be implemented within 120 days.

Amendment No.: 274.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 8, 1999, (64 FR 60584), December 13, 1999, (64 FR 69574) and November 28, 2001 (66 FR 59595). The letters subsequent to the November 28, 2001, **Federal Register** notice did not change the technical content of the **Federal Register** notices, and did not change the scope of the proposed action. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 3, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant (KNPP), Kewaunee County, Wisconsin

Date of application for amendment: April 17, 2002.

Brief description of amendment: The amendment revises the KNPP Technical Specification (TS) 6.3, ''Plant Staff Qualifications,'' to change the title of the Superintendent Plant Radiation Protection to the Radiation Protection Manager. In addition, the licensee informed the Nuclear Regulatory Commission staff of its intention to reformat TS 6.3 using MicroSoft Word format.

Date of issuance: June 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 161.

Facility Operating License No. DPR–43: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36932). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: August 7, 2001, as supplemented December 14, 2001 and April 1, 2002.

Brief description of amendment: Revised the Technical Specifications (TSs) to add a new condition and associated actions to Limiting Condition for Operation 3.8.1, ''AC Sources Operating,'' to allow one diesel generator to be out of service for 14 days.

Date of issuance: July 1, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 39.

Facility Operating License No. NPF–90: Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 19, 2001 (66 FR 48292). The supplemental letters provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 12th of July, 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18242 Filed 7–22–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Correction

The July 9, 2002, **Federal Register** contained a ''Biweekly Notice; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.'' This notice corrects the notice published on July 9, 2002, (67 FR 45560). The last paragraph on page 45560 reads as follows: ''By July 25, 2002, the licensee may file a request for a hearing with * * *''. It should read, ''By August 8, 2002, the licensee may file a request for a hearing with * * *'' to correct the hearing date to 30 days.

Dated at Rockville, Maryland, this 17th day of July 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–18522 Filed 7–22–02; 8:45 am]

BILLING CODE 7590–01–P

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, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 17f–5, SEC File No. 270–259,

OMB Control No. 3235–0269
Rule 17f–7, SEC File No. 270–470, OMB Control No. 3235–0529
Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229
Rule 18f–1 and Form N–18F–1, SEC File No. 270–187, OMB Control No. 3235–0211
Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') requests for extension of the previously approved collections of information discussed below.

Rule 17f–5 under the Investment Company Act of 1940s [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'') governs the custody of the assets of registered management investment companies (''funds'') with custodians outside the United States. The Commission amended the rule in 1997 to modernize its conditions. In 1998, representatives of funds and bank custodians informed the Commission that some conditions of the rule presented serious problems for the use of foreign securities depositories. They asserted that many funds had been unable to establish foreign custody arrangements under the amendments because of significant unforeseen problems with the evaluation and use of depositories.

In 1999, the Commission proposed a new rule 17f–7 and amendments to rule 17f–5, which together would permit funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories.[1] Rule 17f–7, adopted in 2000, established new provisions for the use of foreign depositories.[2] The amendments to rule 17f–5, adopted in 1999, removed custody arrangements with foreign securities depositories from rule 17f–5.[3] The amendments did not substantively change the requirements of the rule, including requirements that call for the ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501—3502]. These requirements continue to apply when a registered management investment company maintains its assets with a foreign bank custodian. In general, the amendments to rule 17f–5 reduced its information collection burdens by removing depository arrangements from its scope, while new rule 17f–7 added new burdens.

The requirements of amended rule 17f–5 that may call for the collection of information are substantially the same as under the rule prior to the amendments. The fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[4] and is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

The Commission's staff estimates that each year, approximately 160 registrants[5] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule would be up to approximately 320 hours (160 registrants × 2 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[6] would be required to make an average of 5 responses per custodian concerning the use of foreign custodians other than depositories, requiring approximately 1000 total hours annually per custodian.[7] The total annual burden associated with these requirements of the rule would be approximately 15,000 hours (15 global custodians × 1000 hours per global custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 15,320 hours (320 + 15,000). The total annual cost of burden hours is estimated to be $910,000 (320 hours × $500/hour for director time, plus 15,000 hours × $50/hour of professional time).

In 1999, the Commission proposed a new rule 17f–7 and amendments to rule 17f–5, which together would permit funds to maintain their assets in foreign

[1] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) [64 FR 24489 (May 6, 1999)] (''Proposing Release'').

[2] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–24424 (April 27, 2000) [65 FR 25630 (May 3, 2000)] (''Adopting Release'').

[3] *Id.*

[4] See section 17(f) of the Investment Company Act [15 U.S.C. 80a–17(f)].

[5] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2001 on Form N–1A and Form N–2 [17 CFR 274.101]. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[6] This estimate is the same used in connection with the adoption of the amendments to rule 17f–5 and of rule 17f–7 in 1999, based on staff review of custody contracts and other research. The number of global custodians has not changed significantly since 1999.

[7] These estimates are based on a survey of global custodians.

securities depositories based on conditions that reflect the operations and role of these depositories.[8] Rule 17f–7, adopted in 2000, established new provisions for the use of foreign depositories.[9] The amendments to rule 17f–5, adopted in 1999, removed custody arrangements with foreign securities depositories from rule 17f–5.[10] The amendments did not substantively change the requirements of the rule, including requirements that call for the ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995. These requirements continue to apply when a registered management investment company maintains its assets with a foreign bank custodian. In general, the amendments to rule 17f–5 reduced its information collection burdens by removing depository arrangements from its scope, while new rule 17f–7 added new burdens.

Rule 17f–7 contains some ''collection of information'' requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement also must meet certain conditions. The fund or its adviser must receive from the primary custodian (or its agent) an initial risk analysis of the depository arrangements, and the fund's contract with its primary custodian must state that the custodian will monitor risks and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the fund or its adviser must receive from the primary custodian (or its agent) an initial risk analysis of the depository arrangements, and the fund's contract with its primary custodian must state that the custodian will monitor risks and promptly notify the fund or its adviser of material changes in risks, is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care.

The staff estimates that approximately 900 investment advisers[11] would make an average of 5 responses annually per adviser under the rule, requiring a total of approximately 20 hours for each adviser. Each of these ''responses'' by an adviser may address depository compliance with the minimum requirements of the rule, and require the adviser to review risk analyses or notifications of material changes in the risks related to a depository. The total annual burden associated with these requirements of the rule would be approximately 18,000 hours (900 advisers × 20 hours per adviser). The staff further estimates that during each year, approximately 15 global custodians would make an average of 5 responses per custodian under the rule, requiring approximately 1000 hours annually per custodian.[12] The total annual burden associated with these requirements of the rule would be approximately 15,000 hours (15 custodians × 1000 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 33,000 hours (18,000 + 15,000). The total annual cost of burden hours is estimated to be $1,650,000 (33,000 hours ×num; $50/hour of professional time).

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule's permission for funds to maintain their assets in foreign custodians.

Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act authorizes the Commission to adopt rules that protect investment companies and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act [17 CFR 270.17d–1] prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Subparagraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''investments'') made by a small business investment company (''SBIC'') and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 [17 CFR 270.17d–2] designates Form N–17D–1 as the form for reports required by rule 17d–1(3).

SBIC's and their affiliated banks use form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons at the expense of shareholders.

Form N–17D–1 requires SBIC's and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report must include, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of the affiliated person of the SBIC or the affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to seven SBIC's may file the form in any year.[13] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. The

[8] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–23815 (April 29, 1999) [64 FR 24489 (May 6, 1999)] (''Proposing Release'').

[9] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. IC–24424 (April 27, 2000) [65 FR 25630 (May 3, 2000)] (''Adopting Release'').

[10] Id.

[11] This figure is based on an estimate by the staff that there are approximately 3,650 registered funds within approximately 900 fund complexes. A fund complex is a group of funds with the same adviser.

[12] These estimates are based on a survey of global custodians.

[13] As of December 31, 2001, seven SBICs were registered with the Commission.

total annual burden of filling out the form is one hour and the total annual cost is approximately $38.[14] The Commission will not keep responses on Form N–17D–1 confidential.

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act [15 U.S.C. 80a–18(f)]. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 70 funds file Form N–18F–1 annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 70 hours.

The collection of information required by rule 18f–1 is necessary to obtain the benefits of the rule. Responses to the collection of information will not be kept confidential.

Rule 19b–1 is entitled ''Frequency of Distribution of Capital Gains.'' The rule prohibits registered investment companies from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts (''UITs'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if (i) the capital gains distribution falls within one of several categories specified in the rule [rule 19b–1(c)(1)] and (ii) the distribution is accompanied by a report to the unit holder that clearly describes the distribution as a capital gains distribution [rule 19b–1(c)(2)] (the ''notice requirement''). The purpose of this notice requirement is to ensure that unit holders understand that the source of the distribution is long-term capital gains.

Rule 19b–1(e) permits a fund to apply for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application. The Commission uses the information required by rule 19b–1(e) to facilitate the processing of requests from funds for authorization to make a distribution that would not otherwise be permitted by the rule.

The Commission staff estimates that the time required to prepare an application under rule 19b–1(e) is approximately four hours. The staff estimates that on average one fund files one application per year under this rule. Based on these estimates, the total paperwork burden is 4 hours for paragraph (e) of rule 19b–1. The Commission staff estimates that there is no hour burden associated with rule 19b–1(c).

There is, however, a cost burden associated with rule 19b–1(c). The staff estimates that there are approximately 8,800 fixed-income UITs, which may rely on rule 19b–1(c) to make capital gains distributions. We estimate that on average each of these UITs relies on rule 19b–1(c) once a year to make a capital gains distribution.[15] We estimate that a UIT incurs a cost of $50, which is encompassed within the fee the UIT pays its trustee, to prepare a notice for a capital gains distribution under rule 19b–1(c)(2). Because the notices are mailed with the capital gains distribution, there is no separate mailing cost. Thus, the staff estimates that the notice requirement imposes an annual cost on UITs of approximately $440,000.

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 8,801 (8,800 UIT portfolios + 1 fund filing an application under rule 19b–1(e)), the total hour burden is estimated to be 4 hours, and the total cost burden is estimated to be $440,000.

The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential.

These estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, 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, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18565 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[14] Commission staff estimate that the annual burden would be incurred by accounting professionals with an average hourly wage rate of $37.50 per hour. *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry—2000* (2000) (reporting median salary paid to senior accountants outside New York).

[15] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25665 ; 812–12748]

MassMutual Institutional Funds, et al.; Notice of Application

July 17, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') to amend a prior order that granted an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to amend a prior order (''Prior Order'') that permits them to enter into and materially amend sub-advisory agreements without shareholder approval.[1] The amended order would exempt applicants from certain disclosure requirements.

APPLICANTS: MassMutual Institutional Funds (''MMIF''), MML Series Investment Fund (''MML Series,'' and together with MMIF, the ''Trusts'') and Massachusetts Mutual Life Insurance Company (the ''Manager'').

FILING DATES: The application was filed on December 17, 2001, and amended on July 11, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on

[1] MassMutual Institutional Funds, *et al.,* Investment Company Act Release Nos. 25211 (Oct. 16, 2001) (notice) and 25260 (Nov. 9, 2001) (order).

August 12, 2002, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, 1295 State Street, B379, Springfield, MA 01111–0001.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634 or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies and are comprised of multiple series (each a ''Fund'' and together the ''Funds'').[2] The Manager serves as the investment manager to each Fund pursuant to separate investment management agreements between each Trust and the Manager (''Management Agreements'') that were approved by the board of trustees of the relevant Trust (each, the ''Board,'' and collectively, the ''Boards''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Independent Trustees'') and each Fund's shareholders. Under the terms of the Management Agreements, the Manager provides investment management services to each Fund while delegating the day-to-day portfolio management for each Fund to one or more sub-advisers (''Sub-Advisers'') pursuant to separate investment sub-advisory agreements (''Sub-Advisory Agreements'').[3] The Prior Order permits the Manager, subject to approval by the respective Board, to enter into and materially amend Sub-Advisory Agreements without seeking shareholder approval. The Prior Order does not extend to a Sub-Advisory Agreement with any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Manager (other than by reason of serving as a Sub-Adviser to a Fund) (''Affiliated Sub-Adviser'').

2. Applicants request an order that would amend the Prior Order to exempt the Funds from the various disclosure provisions described below. These provisions may require the Funds to disclose the fees paid by the Manager to each Sub-Adviser. An exemption is requested to permit the Funds to disclose (as both a dollar amount and as a percentage of a Fund's net assets): (a) Aggregate fees paid to the Manager and Affiliated Sub-Advisers; and (b) aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (''Aggregate Fee Disclosure''). If a Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

2. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of ''the terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

3. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that many Sub-Advisers charge their customers for advisory services according to a ''posted'' rate schedule. Applicants state that while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisers to negotiate lower fees with the Manager, the benefits of which are likely to be passed on to a Fund's shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the conditions contained in the Prior Order and the following additional conditions:

1. With respect to the Funds relying on the requested relief, the Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

2. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the relevant Board with information showing the expected impact on the Manager's profitability.

3. Each Trust will disclose in its registration statement the Aggregate Fee Disclosure.

4. Independent counsel knowledgeable about the Act and the

[2] Applicants also request relief with respect to future series of the Trusts and all future registered open-end management investment companies or series thereof that (a) are advised by the Manager or any entity controlling, controlled by, or under common control with the Manager; (b) use the multi-manager structure described in the application; and (c) comply with the terms and conditions in the application and the Prior Order (''Future Funds,'' and together with the Funds, the ''Funds''). The Trusts are the only existing investment companies that currently intend to rely on the requested order.

[3] If the name of any Fund contains the name of a Sub-Adviser, the name of the Fund also will contain the name of the Manager (or an acronym of the name of the Manager), or the name of the entity controlling, controlled by, or under common control with the Manager to the Funds, which will appear before the name of the Sub-Adviser.

duties of Independent Trustees will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18564 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 22, 2002:

Closed Meetings will be held on Monday, July 22, 2002, at 2:30 p.m. and Tuesday, July 23, 2002, at 2:30 p.m., and an Open Meeting will be held on Wednesday, July 24, 2002, at 2:30 p.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Monday, July 22, 2002, will be:

Formal orders of investigation;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the Closed Meeting scheduled for Tuesday, July 23, 2002, will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Amici participation; and
Opinion.

The subject matter of the Open Meeting scheduled for Wednesday, July 24, 2002, will be:

1. The Commission will consider whether to adopt rules governing customer margin for security futures. The rules would be adopted jointly with the Commodity Futures Trading Commission pursuant to section 7(c)(2) of the Securities Exchange Act of 1934 (''Exchange Act''), which, among other things, requires that the customer margin requirements for security futures be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of the Exchange Act and provide for initial and maintenance margin levels that are not lower than the lowest level of margin, exclusive of premium, required for comparable exchange-traded options.

2. The Commission will consider whether to propose a new rule that would require analysts to provide certifications regarding research reports and to provide disclosures regarding their compensation related to those reports.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 19, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18696 Filed 7–19–02; 11:48 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46210; File No. SR–Amex–2001–08]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the American Stock Exchange LLC To Relax Certain Restrictions on Specialist Affiliates

July 16, 2002.

I. Introduction

On February 14, 2001, the American Stock Exchange LLC (''Amex'' 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 proposal to provide an exemption to the general rule against a specialist affiliate serving as an officer or director of a company for which that specialist is registered. On March 14, 2001, the Commission published the proposed rule change in the **Federal Register**.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Amex and the New York Stock Exchange (''NYSE'') each have a general rule that prohibits a director of an issuer from being an approved person of a member organization that specializes in that issuer's securities.[4] The exchanges differ, however, in that the NYSE's rules allow for exemptions to this general prohibition,[5] but Amex's rules do not. Amex has stated that, since investment banks frequently have personnel serving as directors of private and public companies, the absence of an exemption from Amex Rules 186(a) and 950(i) may create a disincentive for investment banks to establish or maintain a specialist affiliate on the Exchange. Amex, accordingly, has proposed to provide an exemption from Amex Rules 186(a) and 950(i) for specialist affiliates that establish Exchange-approved information barriers.

The Exchange also has proposed a technical correction to Amex Rule 193 to clarify that one of the exemptions provided for by that rule applies to options specialists as well as equity specialists. Currently, Amex Rule 193(c) explicitly provides an exemption to the restrictions in Amex Rule 170 only for approved persons of equity specialists, although the rule implicitly extends this exemption to options specialists.[6] The proposed rule change would explicitly do so.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44048 (March 7, 2001), 66 FR 14945.

[4] *See* NYSE Rule 460(b) (''No member or his member organization or any other member, allied member, or approved person in such member organization or officer or employee of the member organization shall be a director of a company if such member specializes in the stock of that company''); Amex Rule 186(a) (''No specialist or any member in his member organization, officer, employee or approved person therein shall be an officer or director of a corporation which has a security admitted to trading on the Exchange in which security the specialist is registered''). *See also* Amex Rule 950(i) (extending the provisions of Amex Rule 186 to the trading of option contracts).

[5] *See* NYSE Rule 98, Guidelines for Approved Persons Associated with a Specialist's Member Organization.

[6] Amex Rule 170(e) provides that no approved person who is affiliated with a specialist may purchase or sell any security in which such specialist is registered for any account in which that the approved person has a direct or indirect interest. Amex Rule 950(n) states that Amex Rule 170 (and Commentaries .03 and .04 thereto) apply to option transactions on the Exchange.

the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest.

In 1986, the Commission approved Amex Rule 193 and NYSE Rule 98, which allow an approved person of a specialist organization to be exempt from a number of exchange restrictions, provided there are exchange-approved informational firewalls between that person and the affiliated specialist.[9] In 1993, the Commission approved an additional exemption under NYSE Rule 98 which allows an approved person of a specialist organization to serve as an officer or director of an issuer in whose securities the specialist is registered, provided the firewall requirement is met.[10] Amex now proposes to adopt the same exemption for which the NYSE received approval in 1993.

In its 1993 approval order, the Commission stated that the exemption which allows an approved person to serve as a director or officer is ''appropriate * * * so as not to place insurmountable restrictions on full-service member organizations.''[11] The Commission continues to believe that such an exemption is appropriate and consistent with the requirements of the Act. The informational firewalls, which must be approved by the Exchange, are a reasonable means of ensuring that approved persons do not misuse their informational advantage and, thus, help protect investors and the public interest.[12]

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 23768 (November 3, 1986), 51 FR 41183 (November 13, 1986).

[10] *See* Securities Exchange Act Release No. 33080 (October 20, 1993), 58 FR 57654 (October 26, 1993).

[11] :58 FR at 57655.

[12] Amex has provided the Commission with a letter describing the means by which it would surveil these informational firewalls. *See* Letter from Bill Floyd-Jones, Assistant General Counsel, Amex, to Alton Harvey, Office Head, Office of Market Watch, Commission, dated January 14, 2002. The Commission's Office of Compliance Inspections and Examinations intends to review these surveillance procedures during its next inspection of Amex.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2001–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18491 Filed 7–22–02; 8:45 am]

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[13] :15 U.S.C. 78s(b)(2).

[14] :17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46218; File No. SR–Amex–2002–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Amex Listing Agreement

July 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Listing Agreement for issuers listing under Sections 106 (*Currency and Index Warrants*) and section 107 (*Other Securities*) of the Amex Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application;* Trust Issued Receipts) to provide that the issuer cannot implead, cross-claim against, or sue the Exchange and its affiliates as a result of third party claims against the issuer. The text of the proposed rule change follows. Proposed new language is in italics; proposed deletions are in brackets.

Listing Agreement

_____ (the ''Company''), in consideration of the listing of its securities, hereby agrees, with the American Stock Exchange LLC (the ''Exchange'') that:

* * * * *

(4) In order to publicize the Company's listing on the Exchange, the Company authorizes the Exchange to use the Company's corporate logos, Web site address (URS):_____, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, Web site address, trade names, and trade/service marks and with any subsequent changes. Questions regarding logo usage should be directed to _____at ( ) _____—_____.

The Company indemnifies the Exchange and holds it harmless from any third party rights and/or claims arising out of use of the Exchange or any affiliate (''Corporations'') of the Company's corporate logos, Web site address, trade names, trade/service marks, and/or trading symbol used by the Company.

In the event that any claim of any kind is brought by a third party against the Company arising out of the listing and/or trading on the Exchange of the listed securities, the Company agrees that it will not implead, cross-claim against or commence a separate action against any of the Corporations or otherwise attempt to obtain contribution, indemnification or any other form of recovery from any of the Corporations relating to such third party claim.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Issuers of structured products, exchange-traded funds, trust issued receipts and other novel securities products have found that the Exchange is extremely receptive to accommodating product innovation in our marketplace. New products, however, can pose some measure of added litigation risk as a result of third party claims of infringement of property rights, or for other reasons.

As part of its effort to reduce the Exchange's potential legal exposure in this area, the Exchange proposes to amend the Amex Listing Agreement to provide that issuers of such products agree, in connection with their execution of the Listing Agreement, that, in the event they are sued by a third party for any reason regarding an Amex-listed security, they will not implead, cross-claim against or sue the Amex or its affiliates. This would include, for example, claims of patent infringement or any other intellectual property rights.

The proposed amendments to the Exchange Listing Agreement will be applicable to issuers of securities listed under section 106 (*Currency and Index Warrants*) and 107 (*Other Securities*) of the Company Guide; and Rules 1000 (*Portfolio Depositary Receipts*), 1000A (*Index Fund Shares*) and 1200 (*Rules of General Application;* Trust Issued Receipts). The Listing Agreement for these issuers, therefore, would differ from that for common stock issuers. The proposed amended Listing Agreement would apply to (1) new issuers, and (2) new series of securities listed under Rules 1000, 1000A or 1200 or sections 106 and 107 of the Company Guide by issuers that currently list securities under those provisions.

2. Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the proposed rule change and amendments will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–46 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18561 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46213; File No. SR–Amex–2002–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments Nos. 1, 2, 3 and 4 Thereto by the American Stock Exchange LLC to Permit Limited Side-by-Side Trading and Integrated Market Making

July 16, 2002.

I. Introduction

On March 18, 2002, 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 amend Exchange Rules 174, 175, 193, 900, and 958 to (1) permit affiliates of Amex specialists in securities admitted to dealings on an unlisted basis to act as a specialist, Registered Options Trader (''ROT'') or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Exchange Rule 193, and (2) provide that specified Exchange-Traded Fund Shares (''ETFs'') or Trust Issued Receipts (''TIRs'') and their related options may be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions. The Exchange filed Amendment No. 1 to the proposed rule change on March 22, 2002.[3] The Exchange filed Amendment No. 2 to the proposed rule change on March 27, 2002.[4] The Exchange filed Amendment No. 3 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 22, 2002, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] On March 27, 2002, the Exchange filed a second amended Form 19b–4 (''Amendment No. 2'').

proposed rule change on April 5, 2002.[5] The Exchange filed Amendment No. 4 to the proposed rule change on June 4, 2002.[6] The proposed rule change, as amended by Amendments Nos. 1, 2, 3, and 4, was published for comment in the **Federal Register** on June 12, 2002.[7] The Commission received one comment letter on the proposed rule change.[8] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to permit limited side-by-side trading[9] and integrated market making[10] for certain securities. Specifically, Amex proposes to permit limited integrated market making of securities admitted to dealings on an unlisted trading privileges (''UTP'') basis and their related options so long as information barriers are established, approved and maintained. In addition, Amex proposes to permit side-by-side trading and integrated market making of certain ETFs, TIRs, and options overlying such ETFs and TIRs. These proposals are discussed more fully below.

A. Securities Admitted to Dealings on an Unlisted Basis

Currently, Amex Rule 175(c) prohibits approved persons[11] and other affiliates (''specialist affiliates'') of an Amex equity specialist from acting as an options specialist or functioning in any capacity involving market making responsibilities in any option as to which the underlying security is a stock in which the specialist is registered as such. The Amex proposes to amend Exchange Rule 175 to permit Amex specialists in stocks admitted to dealings on an unlisted basis to act as options specialists, ROTs and registered market makers with respect to the related options provided there are Exchange-approved procedures restricting the flow of material, non-public corporate or market information established pursuant to Amex Rule 193. In addition, stocks admitted to dealings on an unlisted basis and their related options would be traded in areas of the Exchange Floor that are separated from each other so that no side-by-side trading would be permitted.[12]

B. ETFs and TIRs

The Exchange proposes to amend Amex Rules 174, 175, 900, and 958 to allow side-by-side trading and integrated market making of certain ETFs and TIRs and their related options so long as the ETF or TIR meets the criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.[13] Specifically, the Exchange proposes to amend Amex Rule 175(c) to permit specialists registered in ETFs or TIRs that meet the criteria in Commentary .03(a) of Amex Rule 1000 or Commentary .02(a) of Amex Rule 1000A to also act as specialists, ROTs or other registered market makers in the related options without information barriers or physical barriers. In addition, the Exchange proposes to amend Amex Rule 175(c) to provide that specialists of these ETFs and TIRs, their member organizations, and their approved persons may trade the related options without the limitations of Amex Rule 175(b) and the Guidelines to Amex Rule 175.[14] The Exchange also proposes to amend Amex Rule 958 to permit ETF and TIR specialists to act as ROTs.

The Exchange also proposes to amend Amex Rule 174 to require an ETF or TIR specialist that is also the specialist in the related option in a side-by-side environment to disclose on request to participants in the ETF, TIR, and option trading crowds information about aggregate buying and selling interest at different price points represented by limit orders on the ETF, TIR or option limit order books.

Finally, the Exchange proposes to amend the definition of ''Paired Security'' in Amex Rule 900 to provide that ETFs and TIRs that meet the criteria of Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A may trade side-by-side with their related options.

III. Summary of Comments

The Commission received one comment letter on the proposed rule change.[15] In general, CBOE supported Amex's proposal to permit integrated market making of securities admitted to dealings on an unlisted basis and the related options as long as information barriers are established. CBOE did, however, raise concerns about the sufficiency of Amex's Rule 193 information barriers and whether they are as comprehensive as those required by the New York Stock Exchange, Inc. (''NYSE'') under NYSE Rule 98. As discussed further below, the Commission believes that the information barriers required under Amex Rule 193 are sufficient to prevent the flow of material non-public information between affiliates engaged in integrated market making.

In addition, CBOE expressed concerns about Amex's proposal to permit side-by-side trading and integrated market making in certain ETFs and TIRs and their related options without any information or physical barriers or other restrictions. As discussed further below, the Commission believes that Amex has limited its proposal to address regulatory concerns.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the

[5] On April 5, 2002, the Exchange filed a third amended Form 19b–4 (''Amendment No. 3'').

[6] On June 4, 2002, the Exchange filed a fourth amended Form 19b–4 (''Amendment No. 4'').

[7] *See* Securities Exchange Act Release No. 46036 (June 5, 2002), 67 FR 40357.

[8] *See* letter to Jonathan Katz, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc. (''CBOE''), dated July 11, 2002 (''CBOE Letter'').

[9] ''Side-by-side trading'' refers to the trading of securities and related derivative products at the same location, though not necessarily by the same specialist.

[10] ''Integrated market making'' refers to the trading of securities and related derivative products by the same specialist and/or specialist firm.

[11] The Exchange defines an ''approved person'' as an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is under common control with, or controlled by, a member or member organization or which is the owner of a membership held subject to a special transfer agreement. *See* Article I, Section 3(g) of the Exchange Constitution. The term ''control'' is defined in Exchange Definitional Rule 13.

[12] *See* Amex Rules 900(b)(38), (40) and (41). *See also* Amex Rule 958(f), which prohibits an ROT from executing a trade in an option if he or she has been in the ''Designated Stock Area'' for the related option within the previous 60 minutes.

[13] The criteria set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A is as follows:

- Component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million.
- The component securities representing 90% of the weight of the portfolio each have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.
- The most heavily weighted component security cannot exceed 25% of the weight of the portfolio and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio.
- The underlying portfolio must include a minimum of 13 securities.
- All securities in the portfolio must be listed on a national securities exchange or the Nasdaq Stock Market.

[14] Generally, Amex Rule 175(b) only permits a specialist to trade options on its specialty stock for the purpose of offsetting the risk of making a market in the underlying specialty security. The Guidelines to Amex Rule 175 provide the conditions for opening options transactions to hedge existing specialty stock positions.

[15] *See* CBOE Letter, *supra* note 8.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's

Continued

Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

When considering a side-by-side trading or integrated market making proposal, the Commission must balance the potential improvements in the quality of the markets for the stocks and their related options against the competitive, regulatory, and surveillance concerns.[18] In this regard, the Commission must consider whether a side-by-side trading or integrated market making proposal would permit market participants to possess undetectable, material non-public market information, which could give certain market participants a trading advantage over other market participants. Thus, the Commission must evaluate the extent of the proposed side-by-side trading or integrated market making, as well as the characteristics of the market center putting forth the proposal.

Historically, the Commission has had concerns regarding side-by-side trading and integrated market making.[19] The Commission staff also discussed the regulatory issues raised by side-by-side trading and integrated market making in the Options Study. More specifically, the Commission staff noted that side-by-side trading and integrated market making raise the concern that participants engaging in such trading practices could unfairly use non-public market information to their advantage because such participants have access to non-public market information about both a stock and its related option. In addition, side-by-side trading and integrated market making could result in certain market participants gaining an unfair competitive advantage over other market participants because of their access to and ability to use non-public market information. For example, in a side-by-side trading environment or integrated market making environment on a single exchange floor, floor members, by virtue of their positions on the floor of an exchange, are able to react instantaneously to market information by executing orders before the information is publicly disseminated. Similarly, because an integrated entity that operates on two different floors may also have access to non-public market information regarding a stock and its related option, it too could execute orders before information is publicly disseminated. Accordingly, in evaluating whether Amex's proposal is consistent with the Act, the Commission considered the extent to which additional non-public market information and competitive advantages would accrue to stock and options market makers on the Exchange, and their affiliates off the exchange.

In addition, in the Options Study, the staff expressed concerns about the potential for manipulation and other improper trading practices that could result from side-by-side trading and integrated market making, and that such improper conduct would be hard, if not impossible, to surveil.[20] For example, much of the market information that may be used in a side-by-side trading or integrated market making environment may never be publicly disseminated, and thus may never be available for surveillance purposes. In addition, a side-by-side trading environment may increase a specialist's or market maker's ability to observe and utilize information regarding orders, transactions, and patterns of trading and quoting and may permit such specialist or market maker to continuously and accurately assess risks that could be associated with improper trading conduct. For example, in the Options Study, the staff noted that manipulations of stock prices to benefit options positions may be undertaken with greater precision if a market participant on an exchange floor is able to evaluate accurately the supply of, and demand for, a security by observing the buying and selling interest in the crowd, the depth of orders in the book and the trading patterns of market participants at the trading post. This concern may be present in an integrated market making situation when a firm acts as a specialist in a stock on one exchange and as a specialist in the option on another exchange because of its ability to observe transactions, order flow, and trading and quoting patterns on both floors.

Finally, the Commission staff noted concerns about the potential conflicts of interest that may arise when an integrated entity, whether on the same or different exchange floors, has an obligation to make markets in both an option and its underlying equity.

A. Securities Admitted to Dealings on an Unlisted Basis and Related Options

Amex proposes to permit limited integrated market making by allowing affiliates of Amex specialists registered as such in securities admitted to dealings on an unlisted basis to act as a specialist, ROT or other registered market maker in the related options provided there are Exchange-approved information barriers between the stock specialist and the options specialist, ROT or other registered options market maker established pursuant to Amex Rule 193. These information barriers must be approved by the Amex and are subject to annual review by the Amex. By requiring strict information barriers designed to prevent the flow of non-public information, the Amex seeks to limit the concerns raised by integrated market making.

Specifically, the related entities must establish procedures that are sufficient to restrict the flow of non-public information. The Guidelines to Amex Rule 193 set forth the conditions to be met by the related entities in order to satisfy this requirement. For example, Guideline (b)(i) requires organizational separation of the specialist and approved person such that each entity is a separate and distinct organization. Guideline (b)(i) further requires that while the affiliates may be under common management, the management of the approved person may not exercise influence over or control the stock specialist's conduct or vice versa. In addition, any general management oversight must not conflict or compromise in any way the specialist's market making responsibilities. Guideline (b)(ii) requires the establishment of procedures to preserve confidentiality of trading information of both the specialist and the affiliate. Specifically, Guideline (b)(ii) requires the establishment of procedures to prevent the use of material, non-public corporate or market information in the possession of the affiliate to influence the specialist's conduct and avoid the misuse of the specialist's market information to influence the affiliate's

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985). *See also* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, H.R. Rep. No. IFC 3, 96th Cong. 1st sess. (Comm. Print 1978) (''Options Study'').

[19] *See, e.g.,* Securities Exchange Act Release Nos. 22026, *supra* note 18; 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985)(approving SR–NYSE–84–3 and SR–NYSE–84–10); 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988)(approving SR–Amex–88–16); and 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990)(approving SR–CBOE–90–08).

[20] The Commission staff noted that substantial profits could be made from options positions as a result of small movements in the price of the underlying stock. Further, the staff noted the relative ease by which the price of the underlying security could be moved and the difficulty in detecting improprieties associated with small price movements. *See* Options Study, *supra* note 18.

conduct. These procedures must also include means to prevent the disclosure of trading positions and each specialist's book. Finally, the Guidelines require that the specialist and approved person maintain, among other things, separate books and records, financial accounting and capital requirements.

The Commission believes that these procedures set forth in the Guidelines address the regulatory issues raised by the proposed rule change regarding integrated market making of securities admitted to dealings on an unlisted basis and their related options.[21] The requirement of clearly separate and distinct organizations, along with the other informational barriers and restrictions, should prevent Exchange specialists and their related options specialists or market makers from sharing restricted, non-public market information. Further, Amex Rule 193 requires the Exchange to review and approve the organizational structure and information barriers of the integrated entities. The Commission notes that the Exchange has had extensive experience reviewing its Rule 193's organizational requirements and information barriers and thus should be able to ensure that the integrated entities do not improperly use their affiliations. In addition, organizational separation and information barriers must be established and maintained between an Exchange specialist, any approved person of the specialist that acts as a specialist, ROT, or registered market maker in an option based on the specialist's specialty stock, and any other persons affiliated with them.

The Commission expects the Exchange to assess, as it gains experience with integrated market making, whether any other informational barriers are necessary to prevent the flow of market information between the related entities. Of course, any new information barriers proposed would have to be submitted to the Commission for approval. The Commission also expects that the Exchange will surveil the integrated entities to ensure that the information barriers and organizational structure prevent the flow of non-public market information.

In conclusion, the Commission believes that the Exchange has sufficiently minimized the potential for manipulative and improper trading conduct by requiring strict organizational separation and information barriers.[22] Therefore, the Commission believes that the potential improvements to liquidity and quality of the markets by the Amex's proposal outweigh the regulatory concerns.

B. ETFs, TIRs and Related Options

In addition, the Exchange proposes to permit specified ETFs and TIRs and their related options to be traded by the same specialist, specialist firm, and the approved persons of such specialist or specialist firm without information or physical barriers or other restrictions, *i.e.*, side-by-side trading and integrated market making. The Commission believes that Amex's side-by-side trading and integrated market making proposal regarding certain ETFs, TIRs and their related options is consistent with the Act and is sufficiently limited to address regulatory concerns.[23] Specifically, the Commission notes that ETFs and TIRs are securities that are based on groups of stocks. ETF and TIR prices are based on the prices of their component securities. Accordingly, the Commission believes that a market participant's ability to manipulate the price of the ETF, TIR or related option is limited.

In addition, Amex has limited its proposal to permit side-by-side trading and integrated market making only in broad-based ETFs and TIRs. Specifically, each ETF and TIR must have a minimum of 13 securities in its underlying portfolio, the most heavily weighted component securities cannot exceed 25% of the weight of the portfolio, and the five most heavily weighted component securities cannot exceed 65% of the weight of the portfolio. By limiting the proposal to broad-based ETFs and TIRs, concerns regarding informational advantages about individual securities are lessened.

In addition, Amex has sought to ensure that the ETFs and TIRs that may be traded side-by-side or by integrated market makers are composed of highly capitalized and liquid component securities and that the component securities are listed on an exchange or the Nasdaq Stock Market. For example, the component securities that in the aggregate account for at least 90% of the weight of the portfolio must have a minimum market value of at least $75 million. In addition, the component securities representing 90% of the weight of the portfolio each must have a minimum trading volume during each of the last six month of at least 250,000 shares. The Commission believes that these capitalization and liquidity requirements should reduce the likelihood that any market participant has an unfair information advantage about the ETF, TIR, its related options, or its component securities, or that a market participant would not be able to manipulate the prices of the ETFs, TIRs, or their related options.

Moreover, to mitigate the potential information advantages, Amex has proposed to require integrated specialists in a side-by-side trading environment to disclose trading interest in both the ETF or TIR and related options limit order books upon request. By providing all market participants with market information in the limit order books, no market participant should have an unfair competitive advantage over others in the crowd.

Finally, Amex has proposed to permit specialists in ETFs and TIRs and approved persons of such specialists to trade options on such ETFs and TIRs without the limitations set forth in Amex Rule 175(b). Generally, Amex Rule 175(b) only permits a specialist to trade options on its specialty stock for the purpose of offsetting the risk of making a market in the underlying security. The Commission believes that it is consistent with the Act to permit ETF and TIR specialists to trade options based on their specialty ETF or TIR because integrated specialists in ETFs and TIRs would not be able to perform their market making responsibilities in the related options if they were limited to only executing hedging transactions.

The Commission expects the Exchange to assess its surveillance procedures to determine whether they are adequate for the new trading arrangements to ensure that market participants do not engage in manipulative or improper trading practices. Further, the Commission expects Amex to consider whether any additional surveillance procedures or trading restrictions are necessary to prevent manipulative or other improper trading practices. Of course, any new trading restrictions proposed would have to be submitted to the Commission for approval.

The Commission believes that trading efficiencies may be realized as a result of these new trading arrangements for

[21] The Commission notes that it approved a similar NYSE proposal to permit NYSE specialists to be affiliated with specialists and primary market makers in options related to the NYSE specialist's specialty stock so long as information barriers are established, approved, and maintained. *See* Securities Exchange Act Release No. 45454 (February 15, 2002), 67 FR 8567 (February 25, 2002).

[22] The Commission notes that side-by-side trading of UTP stocks and their related options will not be permitted. Accordingly, the UTP stocks and their related options must trade at physically separate trading locations on the Exchange's floor. *See* Amex Rule 900(b)(38), (40), and (41).

[23] The Commission notes that it has previously approved side-by-side trading and integrated market making of related derivative products. *See* Securities Exchange Act Release No. 27383 (October 26, 1989), 54 FR 45846 (October 31, 1989).

ETFs and TIRs and their related options. For example, operational efficiencies may be realized because orders in ETFs and TIRs and their related options may receive faster executions. In addition, combination orders may be executed in a more efficient and timely fashion. Therefore, the Commission believes that the potential improvements to liquidity and quality of the markets in ETFs and TIRs and their related options by the Amex's proposal outweigh the regulatory concerns.

For these reasons, the Commission finds that the proposed rule change permitting side-by-side trading and integrated market making of certain ETFs and TIRs and their related options is consistent with section 6(b)(5) of the Act.[24]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–Amex–2002–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18562 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46220; File No. SR–BSE–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Boston Stock Exchange, Inc. To Extend its Specialist Performance Evaluation Program on a Pilot Basis

July 17, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2002, the Boston Stock Exchange (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its Specialist Performance Evaluation Program until September 30, 2002. Below is the text of the proposed rule change. Proposed new language is italicized. Proposed deleted language is in brackets.

* * * * *

Chapter XV

Specialists

Specialist Performance Evaluation Program

Sec. 17 (a)–(e) no change.

(f) This program will expire on [June 30, 2002] September 30, 2002, unless further action is taken by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend its Specialist Performance Evaluation Program (''SPEP'') pilot, until September 30, 2002. Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvement, depth, and added depth. Generally, any specialist who receives a deficient score in one or more measures may be required to attend a meeting with the Performance Improvement Action Committee, or the Market Performance Committee.

While the Exchange believes that the SPEP program has been a very successful and effective tool for measuring specialist performance, it realizes that modifications are necessitated as a result of recent changes in the industry, particularly decimalization. Accordingly, the Exchange is seeking to extend the pilot period of this program so that evaluation and modification can be undertaken before permanent approval is requested.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Exchange Act,[3] in that the proposed rule change is 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 is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder[5] because the proposal (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from June 25, 2002, the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; and BSE has provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time the Commission may designate. At any time within 60 days of the filing of such proposed rule

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided to waive the five day notice and designates that the proposal become operative on June 30, 2002, because it is consistent with the protection of investors and the public interest to continue the pilot program uninterrupted and permit the Exchange to continue to evaluate the pilot program in light of changes to the marketplace.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR–BSE–2002–08 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18563 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46097A; File No. SR–NASD–2002–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Posting of Margin Disclosure and Day-Trading Risk Disclosure Statements on Web Sites; Correction

July 15, 2002.

In FR document No. 02–16257 beginning on page 43364 in the issue of Thursday, June 27, 2002, the title described the filing incorrectly. The title is corrected to read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18559 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46221; File No. SR–NASD–2002–15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Situations in Which a Suspended, Terminated, or Otherwise Defunct Member or Associated Person Fails To Answer or Participate in an Arbitration Proceeding

July 17, 2002.

I. Introduction

On February 1, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), 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 amend Rule 10314 of the NASD Code of Arbitration Procedure (''Code'') to provide default procedures for situations in which a suspended, terminated, or otherwise defunct member or associated person (collectively referred to in this order as ''defunct'') fails to answer or participate in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. The proposed rule change was published for comment in the **Federal Register** on May 1, 2002.[3] The Commission received one comment letter regarding the proposal.[4] NASD Dispute Resolution filed a response to the comment letter with the Commission on July 3, 2002.[5] This order approves the proposed rule change.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10314 of the Code to provide an expedited default procedure for certain cases in which a respondent is an associated person whose registration is terminated, revoked, or suspended; a member whose membership has been terminated, suspended, canceled, or revoked; a member that has been expelled from the NASD; or a member that is otherwise defunct. NASD Dispute Resolution represents that the procedures are designed to make it easier for claimants to obtain an award against a defunct party. This award can then be enforced in court. NASD Dispute Resolution states that the proposed rule change would address some concerns discussed in a United States General Accounting Office (''GAO'') report that was issued in June 2000.[7]

Under the proposed rule change, if a defunct respondent fails to answer the claim in a timely manner, the claimant may elect to proceed under optional default procedures as to that respondent. If there are several claimants, all must agree to use default procedures. The default procedures may be used against one or more defunct respondents while the rest of the initial

[3] *See* Securities and Exchange Act Release No. 45818 (April 24, 2002), 67 FR 21789.

[4] *See* letter from Barbara Black, Professor, and Jill I. Gross, Visiting Professor, Pace Law School, to Secretary, Commission, dated May 21, 2002 (''Pace Letter'').

[5] *See* letter from Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated July 3, 2002 (''NASD Letter'').

[6] The NASD Dispute Resolution represents that the proposal will be effective by October 15, 2002. Telephone conversation between Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, and Cyndi Nguyen, Attorney, Division, Commission, on July 8, 2002.

[7] The report is entitled ''Securities Arbitration: Actions Needed to Address Problems of Unpaid Awards,'' Report No. GAO/GGD–00–115 (June 15, 2000) (''GAO Report''). The report is available online at *http://www.gao.gov.*

arbitration proceeds against any remaining respondents.[8]

If the claimant opts to use default procedures, the case would proceed with a single arbitrator without a hearing. Under the default procedures, the arbitrator would make an award based upon the Statement of Claim and any other material submitted by the claimant. The arbitrator may request additional information from the claimant before rendering an award. In keeping with the streamlined nature of the procedures, neither the claimant nor the single arbitrator would have the option to ask that two additional arbitrators be appointed to decide the case (as is sometimes done in other single-arbitrator cases).

NASD Dispute Resolution states that the procedures have several provisions to safeguard the integrity of the process, such as:

- The claimant may not amend the claim to increase the relief requested after the staff has notified the parties that the claim will proceed under default procedures.
- An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor.
- The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim and may not award any other relief that was not requested in the Statement of Claim.

The proposed rule provides, however, that the default award would have no effect on the non-defaulting parties. The proposed rule would apply to all types of claimants, such as customers, associated persons, or member firms, that are bringing a claim against a suspended or terminated member or associated person.

Finally, if a respondent thought to be defunct belatedly files an answer or otherwise begins to participate after the staff has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the default procedures would be suspended, and the case would proceed under the regular procedures.[9]

III. Summary of Comments and NASD Dispute Resolution's Response

As noted above, the Commission received one comment letter regarding the original proposal.[10] NASD Dispute Resolution filed a response to address concerns raised by the comment letter.[11]

The commenters supported the proposed rule change as beneficial to customers and stated that the default procedures set forth in proposed NASD Rule 10314(e) would provide an alternative so that claimants can expeditiously obtain an award without the necessity of a hearing. However, the commenters proposed two substantive changes to the rule.[12]

First, the commenters questioned the fairness of paragraph (e)(7) of the proposed rule, which provides that the default procedures are terminated if the respondent files an answer anytime before an award has been rendered. The commenters believe that respondents who do not file an answer until late in the process should not have an absolute right to terminate the default procedure. They suggested that the decision to terminate the default procedure and resume the case under regular procedures should be granted at the discretion of the arbitrator, after giving the claimant an opportunity to respond to the request.[13]

NASD Dispute Resolution responds that it is appropriate to allow the defaulting respondent to appear and automatically terminate default procedures. NASD Dispute Resolution states that to deny the respondent the right to rejoin the regular proceedings due to a late answer could result in court challenges that might delay the proceeding to the claimant's detriment.[14] The NASD Dispute Resolution also states that a respondent is unlikely to abuse this provision to fail deliberately to appear and then make a sudden untimely appearance because the respondent would have to rejoin the case where the respondent finds it.[15]

Furthermore, NASD Dispute Resolution states that NASD Rule 10314(b)(2)(C) would provide sufficient deterrent from such abuse because it provides that a respondent who fails to file an answer within 45 calendar days from receipt of service of a claim, unless the time to answer has been extended, ''may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing.''

Second, the commenters criticized the proposed rule for not addressing the situation where after filing an answer, the respondent ceases to participate in the hearing because of one of the events described in proposed NASD Rule 10314(e)(1). The commenters suggested that, in this event, the claimant should have the option to convert the proceedings to a default procedure.[16]

In response, NASD Dispute Resolution states its intention to draft a rule that would cover the majority of situations involving defunct respondents without making it unduly complicated. If it should happen that, after filing an answer, a respondent becomes defunct as defined in proposed NASD Rule 10314(e)(1), the claimant would put on its case, and the panel issue an award. If there are no other respondents, NASD Dispute Resolution states that the matter could be concluded expeditiously and that it may not even be necessary to hold an in-person hearing, which would further reduce hearing session costs to the claimant.[17]

Although NASD Dispute Resolution does not feel that an amendment to the proposed rule is currently necessary, it states that it would monitor the operation of the rule and consider any further enhancements that may be warranted.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[18] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[19] in that it is designed to

[8] If a case is to be a bifurcated and handled under two different procedures, regular and default, each proceeding will be assigned a separate case number to avoid confusion. Proposed NASD Rule 10314(e) provides that the default award will have no effect on any non-defaulting part.

[9] *See* NASD Letter, *supra* note 5.

[10] *See* Pace Letter, *supra* note 4.

[11] *See* NASD Letter, *supra* note 5.

[12] *See* Pace Letter, *supra* note 4.

[13] The commenters suggest that, in making the decision, the arbitrator should take into account the reasons given by the respondent for not filing sooner and the hardship to the claimant of being required to go forward with a hearing. *See* Pace Letter, *supra* note 4.

[14] NASD Dispute Resolution made reference to Rule 55(c) of the Federal Rules of Civil Procedure that provides that, for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). *See* NASD Letter, *supra* note 5.

[15] For example, if a single arbitrator or the panel has already been selected, the respondent would have to accept that choice without input into the selection, subject only to a challenge for cause. Additionally, in multi-party cases, if a prehearing conference or hearing session has been held, the late-appearing respondent is subject to previous determinations unless the respondent successfully moves for relief. *See* NASD Letter, *supra* note 5.

[16] *See* Pace Letter, *supra* note 4.

[17] *See* NASD Letter, *supra* note 5.

[18] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78*o*–3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Specifically, the Commission finds that NASD Dispute Resolution's proposal is designed to protect investors and the public interest by making it faster and less costly for investors and other claimants to proceed and obtain awards against defunct members and associated persons while also providing safeguards to all parties. The Commission also believes that the proposed rule change implements the recommendations in the GAO report concerning unpaid arbitration awards issued in arbitration proceedings in securities industry arbitration forums.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NASD–2002–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18566 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–M

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46212; File No. SR–Phlx–2002–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Fees Applicable to Competing Specialists

July 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to increase from $0.30 to $0.35 its equity option transaction charge on members for off-floor broker-dealer transactions.[3] The Exchange intends to implement this fee on transactions settling on or after July 1, 2002.[4]

Currently, the Exchange imposes a fee on its members for off-floor broker-dealer transactions.[5] This category includes registered options traders (''ROTs'') who trade from off-floor and broker-dealers who route orders through firm, customer or market maker accounts carried by a member clearing firm that are executed on the Exchange trading floor, but not firm/proprietary orders.[6] All other equity option transaction charges will remain unchanged.[7]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

[3] The Exchange is also amending the accompanying footnote in the Summary of Equity Options Charges on the Exchange's schedule of dues, fees and charges to make it more precise.

[4] This fee will continue to be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues, charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[5] *See* Securities Exchange Act Release No. 45942 (May 16, 2002), 67 FR 36060 (May 22, 2002) (SR–Phlx–2002–32).

[6] A firm/proprietary transaction or comparison charge applies to members for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35 percent of its annual, gross revenues from commissions and principal transactions with customers. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[7] For purposes of the equity option transaction charge, the broker-dealer option equity transaction charge is currently defined in a footnote in the Summary of Equity Options Charges on the Exchange's schedule of dues, fees and charges, as a charge that is applied to members for orders *entered* from other than the floor of the Exchange for any account (i) in which the holder of beneficial interest is a member or non-member broker-dealer or (ii) in which the holder of beneficial interest is a person associated with or employed by a member or non-member broker-dealer. This includes orders for the account of an ROT entered from off-floor. The Exchange proposes to replace the word ''entered'' with the word ''received'' to make the definition more precise.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to generate additional revenue for the Exchange by increasing the fee imposed on members for off-floor broker-dealer transactions. Thus, the broker-dealer equity option transaction charge will be increased from $0.30 to $0.35.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(4) of the Act,[9] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among its members. The Exchange believes the proposal is equitable and reasonable because the proposed broker-dealer equity option transaction charge represents a modest increase intended to generate additional revenue.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–36 and should be submitted by August 13, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18560 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3433]

Territory of Guam

As a result of the President's major disaster declaration for Public Assistance on July 5, 2002, and Amendment 1 adding Individual Assistance on July 12, 2002, I find that the Territory Of Guam constitutes a disaster area due to damages caused by Typhoon Chata'an occurring on July 5–6, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September10, 2002 and for economic injury until the close of business on April 10, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without, credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343308 and for economic injury the number is 9Q5600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 16, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–18518 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3422]

State Of Indiana, Amendment # 2

In accordance with a notice received from the Federal Emergency Management Agency, dated July 9, 2002, the above numbered declaration is hereby amended to include Sullivan County in the State of Indiana as a disaster area due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

All contiguous counties have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 16, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–18519 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3431]

Commonwealth of Pennsylvania; and Contiguous Counties in the State of West Virginia

Washington County and the contiguous counties of Allegheny, Beaver, Fayette, Greene and Westmoreland in the Commonwealth of Pennsylvania; and Brooke, Hancock, Marshall and Ohio counties in the State of West Virginia constitute a disaster area due to damages caused by flooding and mudslides that occurred on June 13, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 16, 2002 and for economic injury until the close of business on April 16, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343106 for Pennsylvania and 343206 for West Virginia. For economic injury, the numbers are 9Q5400 for Pennsylvania and 9Q5500 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 16, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–18516 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3434]

State of Vermont

As a result of the President's major disaster declaration on July 12, 2002, I find that Caledonia, Franklin, Lamoille and Orleans Counties in the State of Vermont constitute a disaster area due to damages caused by severe storms and flooding occurring on June 5, 2002 through June 13, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 10, 2002 and for economic injury until the close of business on April 10, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Chittenden, Essex, Grand Isle, Orange and Washington Counties in the State of Vermont; and Grafton County in the State of New Hampshire.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 343411. For economic injury the number is 9Q5700 for Vermont; and 9Q5800 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 16, 2002.

Herbert L. Mitchell,

Associate Administrator, for Disaster Assistance.

[FR Doc. 02–18517 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, August 4, 2002, from 11 a.m. to 5 p.m. EST in the Berkshire Room at the Clarion Hotel and Conference Center in Northampton, Massachusetts to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

Anyone wishing to make an oral presentation to the Board must contact Chancy Lyford, in writing by letter or fax no later than August 2, 2002 in order to be included on the agenda. For further information, please write or call Mr. Chancy Lyford, Designated Federal Officer, U.S. Small Business Administration, 409 Third Street., SW., Sixth Floor, Washington, DC 20416. Telephone number (202) 205–7159, FAX (202) 205–7727.

Kim Mace,

Committee Management Specialist.

[FR Doc. 02–18520 Filed 7–22–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4038]

United States International Telecommunication Advisory Committee; Preparations for International Telecommunications Union Telecommunication Development Sector and Telecommunication Standardization; Notice of Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet electronically from July 29 to August 2 to consider two Normal Contributions to ITU–T Study Group 13. The documents are available at the following sites: *ftp://ftp.t1.org/T1A1/T1A1.0/2a100530.doc* and *ftp://ftp.t1.org/T1A1/T1A1.0/2a100540.doc.* Comments on the documents must be posted to *SGB–13@almsntsa.lmlist.state.gov* by July 29, responses will be posted by August 1, and final action will be posted by the Department of State on August 2. People not already members of the ''SGB–13'' reflector may join by contacting *marciegeissinger@msn.com* by email.

The ITAC will meet from 10 to noon on July 30 in room 5533 and 10 to noon on August 13 and August 27 in room 1105, at the Department of State. The agenda for these meetings is preparations for the meetings of the ITU Telecommunication Development (ITU–D) Sector Study Groups will be in September, 2002.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled. People intending to attend the meeting should send their clearance data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202 647–2592 or email to *worsleydm@state.gov.*

Dated: July 15, 2002.

Doreen McGirr,

Director, Telecommunication Development, Department of State.

[FR Doc. 02–18607 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 4041]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Wednesday, July

31, 2002, to consider the draft instrument on the International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in determining the U.S. views for the second session of the UNCITRAL Working Group on this draft instrument, to be held in Vienna, Austria from September 16 to 20, 2002.

The draft text prepared by the Comiteé Maritime International (CMI) at the request of UNCITRAL and the report of the first meeting of the UNCITRAL Working Group on this subject will constitute the basic working document of the UNCITRAL Working Group. These documents are available on UNCITRAL's Website, www.uncitral.org. (The documents are numbered A/CN.9/WGIII/WP.21 and A/CN.9/510, respectively.)

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., est, Monday through Friday, except Federal holidays. An electronic version of this document, along with all documents entered into this docket, is available on the World Wide Web at *http://dms.dot.gov.*

For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@ms.state.gov.*

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 02–18604 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice No. 4042]

Secretary of State's Advisory Committee on Private International Law: Study Group on Reciprocal Enforcement of Child Support Obligations: Notice of Meetings

There will be two public meetings of a Study Group of the Secretary of State's Advisory Committee on Private International Law, one on Wednesday, August 7 in New Orleans, Louisiana and the other on Saturday, August 10 in Washington, DC. Additional information about the times and locations are provided below.

The purpose of these meetings is to assist the Department of State in preparing for the upcoming negotiation, under the auspices of the Hague Conference on Private International Law, of a new international convention on the international recovery of child support and other forms of family maintenance. The first session of this negotiation is scheduled for the spring of 2003 in The Hague. The Permanent Bureau of the Hague Conference is preparing for this negotiation, including by distributing to all Hague Conference member countries and other interested countries an information note and questionnaire. This and other documents relevant to this project can be found on the web site of the Hague Conference (*http://www.hcch.net*). Officials of the Permanent Bureau are expected to attend the Study Group meetings, as are officials of the Office of Child Support Enforcement of the U.S. Department of Health and Human Services.

The two Study Group meetings are being planned to coincide with the annual meetings of the National Child Support Enforcement Association (NCSEA) and the American Bar Association (ABA).

The Wednesday, August 7 meeting will take place, in conjunction with NCSEA's conference, from 1:30 p.m. to 5 p.m. in the Eglinton Winton Room, 2nd floor, Hilton New Orleans Riverside Hotel, 2 Poydras Street, New Orleans, Louisiana.

The Saturday, August 10 meeting will take place, in conjunction with the ABA conference, from 3 p.m. to 5 p.m. at Hale & Dorr, LLP, 1455 Pennsylvania Avenue, NW., Washington, DC, Suite 1000. (This is adjacent to the Willard Inter-Continental Hotel, where meetings of the ABA Section of International Law and Practice will take place earlier that day.)

The Study Group meetings are open to the public up to the capacity of the meeting rooms. Interested persons are invited to attend and to express their views. Persons who wish to have their views considered are encouraged, but not required, to submit written comments in advance of the meeting. Written comments should be submitted by e-mail to Mary Helen Carlson at *carlsonmh@ms.state.gov*. All comments will be made available to the public by request to Ms. Carlson via e-mail or by phone (202–776–8420).

Mary Helen Carlson,

Attorney-Adviser, Office of the Legal Adviser for Private International Law, Department of State.

[FR Doc. 02–18608 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4068]

Bureau of Political-Military Affairs; Use of Exemption at Section 123.17 of the ITAR for Zimbabwe

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the license exemptions at section 123.17 of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) are authorized for use in connection with certain exports of firearms and ammunition to Zimbabwe.

EFFECTIVE DATE: July 17, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Sweeney, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State, Telephone (202) 663–2700 or FAX (202) 261–8199.

SUPPLEMENTARY INFORMATION: Due to the Government of Zimbabwe subverting the democratic process through a badly flawed presidential election, orchestrating a campaign of violence and intimidation against its political opposition, and having a blatant disregard for the rule of law and serious human rights abuses, effective April 17, 2002, the Department suspended all licenses and approvals to export or otherwise transfer defense articles and defense services to Zimbabwe. The Department also instituted a policy of denial for new applications for licenses and other approvals to export or otherwise transfer defense articles and defense services to Zimbabwe (67 FR 18978). Also, the denial policy precluded the use of any exemption from licensing or other approval requirements in the ITAR. This notice modifies the denial policy by authorizing the use of the license exemptions at section 123.17 of the

ITAR for exports of firearms and ammunition to Zimbabwe when for personal use by individuals (not for resale or retransfer, including to the Government of Zimbabwe) and the firearms will be returned to the United States.

This action has been taken pursuant to section 38 of the AECA (22 U.S.C. 2778) and relevant provisions of the ITAR in furtherance of the foreign policy of the United States.

Dated: July 17, 2002.

Gregory M. Suchan,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 02–18606 Filed 7–22–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending July 12, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–12778.

Date Filed: July 11, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0140 dated 9 July 2002, TC2 Europe-Middle East Expedited Resolution 002ii, Special Passenger Amending Resolution r1–r6, Intended effective date: 15 August 2002.

Docket Number: OST–2002–12779.

Date Filed: July 11, 2002.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0575 dated 12 July 2002, Mail Vote 224—Resolution 010w, TC3 between Japan/Korea and South East Asia, Special Passenger Amending Resolution between China, (excluding Hong Kong SAR and Macau SAR) and Japan, Intended effective date: 28 August 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–18476 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–11843]

National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions

AGENCY: Coast Guard, DOT.

ACTION: Notice of final agency policy.

SUMMARY: The Coast Guard revised its list of agency actions that we have determined do not individually or cumulatively have a significant effect on the human environment and, thus, are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA). Consistent with the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA, the Coast Guard periodically reviews its NEPA implementing procedures and determines whether it is necessary to clarify some existing categorical exclusions (CEs) to prevent misinterpretation and to create new CEs to reduce excessive and needless paperwork for actions that have proven to have no potential for significant impacts. The purpose of this notice is to provide the public our final list of new and revised categorical exclusions.

DATES: The new and revised categorical exclusions are effective as of July 23, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Any comments and material received from the public, as well as this notice, and our April 8, 2002 notice requesting comments, are part of this docket (USCG–2002–11843) and available for inspection or copying at 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. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Kebby Kelley, Office of Civil Engineering, Environmental Management Division, U.S. Coast Guard, Headquarters, 202–267–6034 or via email at kkelley@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) established the Council on Environmental Quality (CEQ). NEPA and CEQ regulations (40 CFR parts 1500–1508) establish a broad national policy which encourages and promotes productive harmony between man and his environment and provides policies and goals to ensure that environmental considerations and associated public concerns are given careful weight in all decisions of the Federal government.

Section 102 of NEPA (42 USCS 4332) and 40 CFR 1507.3 require Federal agencies to develop and, as needed, revise implementing procedures consistent with NEPA and the CEQ regulations. Additionally, 40 CFR 1500.4 and 1500.5 require Federal agencies to use categorical exclusions (CEs) to reduce excessive paperwork and reduce delay.

To determine whether improvements are needed in its list of agency actions that we have determined are categorically excluded from further NEPA environmental impact analysis, the Coast Guard periodically reviews its list. This list of CEs is contained in section 2.B.2, figure 2–1, of the ''Coast Guard National Environmental Policy Act (NEPA) Implementing Procedures and Policy for Considering Environmental Impacts,'' (Commandant Instruction M16475.1D).

During the most recent review, NEPA-related information in our project administrative records was examined to determine whether the current CEs were being applied consistently and appropriately. Areas of confusion or misinterpretation were identified for further evaluation. Also, the Coast Guard evaluated whether new CEs would be appropriate to further reduce needless paperwork and delay.

Where areas of confusion or misinterpretation with the existing CEs were identified, the Coast Guard evaluated whether the situation could be resolved through improvements in internal guidance, modifications to the existing CEs, or the development of new CEs. Evaluations in these cases included both an examination of the administrative record, as well as, experiences of expert staff in working with the existing CEs. Modifications of existing CEs and new CEs were done where appropriate to resolve areas of confusion or misinterpretation of the existing CE list.

The need for other new CEs was identified by examination of Environmental Assessments (EAs), and associated Findings of No Significant Impact (FONSIs) for similar or like actions. Where it was found that EAs with FONSIs existed for many similar or like actions, a new CE was created. The working group also received input from other Coast Guard staff as to actions that

were not currently categorically excluded but should be based on their experience that such projects normally had no significant environmental impacts.

The working group determined that new CEs were needed for several categories of Coast Guard personal and real property actions. The working group then benchmarked the CEs against those of the General Services Administration (GSA) as the expert agency in terms of personal and real property management for the Federal government. Since other new CEs involved Coast Guard operations, the working group used the Department of the Navy as a benchmark because many of the Navy's actions are similar operationally, albeit at a much larger scale. Coast Guard CEs were then developed to address Coast Guard actions.

Finally, one new and one revised CE for regulatory actions were created. The new regulatory CE was created for regulatory actions mandated by Congress for the improvement or protection of the environment. The working group found that the Coast Guard had multiple EAs with FONSIs for regulations of this type, and, after reviewing the regulations and their environmental aspects, they determined that these types of actions do not normally have significant effects either individually or cumulatively on the human environment.

The recommended list of new and modified CEs developed by the working group was then extensively reviewed within the Coast Guard. This draft list of proposed changes was then also reviewed by, and discussed with, CEQ. Further revisions were made based on CEQ comments.

Discussion of Response to Request for Comments

The resulting list of proposed changes was published in the **Federal Register** on April 8, 2002 (67 FR 16787) with a request for comments to be submitted by May 8, 2002. The Coast Guard received no comments on the draft list; therefore, the draft list has now become our final list of new and revised CEs. The final list was sent to DOT and CEQ for final review and approval. No additional substantive revisions were made by either DOT or CEQ. The final list of new and revised CEs is now available in the appendix to this notice and will also be available in the docket (as indicated under **ADDRESSES**).

Proposed Changes Adopted as Final

In our April 2002 notice we described changes we proposed to make. These changes have now been adopted as final.

Our revisions to Section 2.B.2, Figure 2–1, of M16475.1D, entitled, ''Coast Guard Categorical Exclusions'' consist of three related parts. The first part is a non-substantive administrative reorganization of the Coast Guard's CEs to group CEs for like actions together under an appropriate general heading. The second part is a revision requiring that a written Categorical Exclusion Determination (CED) be prepared for the administrative record whenever a CE calls for the preparation of a written environmental checklist (checklist). The third part is a substantive addition of new and modified CEs.

A CED is a 1- or 2-page Coast Guard document that states the Coast Guard project being proposed and the CE that is applicable. Our administrative procedures (contained in the Commandant Instruction M16475.1 series) require that the applicability of each CE be examined for extraordinary circumstances for each specific action. The checklist is a tool that is designed to assist us in determining whether there are any extraordinary circumstances that might require preparation of an Environmental Impact Statement (EIS) or an EA.

The CEQ regulations implementing NEPA require agencies to consider extraordinary circumstances and to define categories of agency actions that do not have the potential for significant impacts (that is, categorically excluded actions); however, they do not require that such consideration of extraordinary circumstances or agency use of CEs be documented. Thus, both, the CED and the checklist are internal Coast Guard administrative requirements to ensure that the potential for impacts on the human environment are given adequate consideration in proposed Coast Guard actions and are not required by NEPA law or regulation.

We are requiring that a CED be prepared whenever a checklist is required for a Coast Guard CE. Currently, checklists are required for those CEs covering actions which experience has shown could be likely to occasionally involve unusual circumstances that might make the CE inappropriate in certain instances.

Our CE revision also consists of new and modified CEs, the majority of which address real and personal property actions. A few additional modifications and new CEs were created for certain Coast Guard operations, specific Coast Guard environmental studies, and two types of Coast Guard regulatory actions.

These new and modified CEs represent actions that, based on our past experience with similar actions, do not normally require an EA or EIS because they do not individually or cumulatively have a significant effect on the human environment. We now have CEs for certain situations in which the Coast Guard acquires, or arranges for permitted use of, property. At the time of acquisition or arrangement for permitted use of the property, we will use our Environmental Analysis Checklist to determine whether a CE is appropriate or if an EIS or EA is required. If a CE is appropriate, the Coast Guard will prepare a written CED.

If, in the future, the Coast Guard determines the need to change the use of the property, we will conduct the appropriate NEPA analysis and prepare the documentation—either another CE, an environmental assessment, or an environmental impact statement on the proposed new use. The earlier acquisition or permit use arrangement for the property will not influence the subsequent environmental analysis and documentation, including the need to use the property for the proposed new use, the consideration of alternatives, or selection of the preferred alternative.

Synopsis of Changes

The general changes we have made to the Coast Guard CEs are that the CEs will now be reorganized by action type as: Administrative Actions, Real and Personal Property Actions, Training Actions, Operational Actions, Special Studies, Bridge Administration Actions, and Regulatory Actions. Additionally, all CEs requiring a checklist will also now require a CED.

The final new or amended CEs are listed in the appendix to this notice. Previously existing Coast Guard CEs that remain unchanged are not included in the appendix.

Dated: July 15, 2002.

J.A. Kinghorn,

Rear Admiral, Coast Guard, Assistant Commandant for Systems.

Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy.*

1. Administrative Actions

a. Personnel and other administrative actions associated with consolidations, reorganizations, or reductions in force resulting from identified inefficiencies, reduced personnel or funding levels, skill imbalances, or other similar causes. (Checklist and CED required.)

b. Approval of recreational activities or events (such as a Coast Guard unit picnic) at a location developed or created for that type of activity.

2. *Real and Personal Property Related Actions* (where the term ''real property'' is

used throughout this section, it means real and any related personal property—and the term ''related personal property'' means personal property that is an integral part of the subject real property and removal of the personal property would significantly diminish the economic value of the subject real property).

a. The initial lease of, or grant of an easement interest in, Coast Guard-controlled real property to a non-Federal party or the amendment, renewal, or termination of such lease or easement interest where the reasonably foreseeable real property use will not change significantly and is similar to existing uses. (Checklist and CED required.)

b. The grant of a license to a non-Federal party to perform specified acts upon Coast Guard-controlled real property or the amendment, renewal, or termination of such license where the proposed real property use is similar to existing uses. (Checklist and CED required.)

c. Allowing another Federal agency to use Coast Guard-controlled real property under a permit, use agreement, or similar arrangement or the amendment, renewal, or termination of such permit or agreement where real property use is similar to existing uses. (Checklist and CED required.)

d. The lease of a Coast Guard-controlled historic lighthouse property to a non-Federal party as outlined in the Programmatic Memorandum of Agreement between the Coast Guard, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. (Checklist and CED required.)

e. Acquisition of real property (including fee simple estates, leaseholds, and easements) improved or unimproved, and related personal property from a non-Federal party by purchase, lease, donation, or exchange where the proposed real property use is similar to existing uses for the foreseeable future (acquisition through condemnation not covered). (Checklist and CED required.)

f. Acquisition of real property and related personal property through transfer of administrative control from another Department of Transportation (DOT) component or another Federal agency to the Coast Guard where title to the property remains with the United States including transfers made pursuant to the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, as amended, (10 U.S.C. 2687 note) and where the proposed Coast Guard real property use is similar to existing uses. (Checklist and CED required.)

g. Coast Guard use of real property under the administrative control of another DOT component or another Federal agency through a permit, use agreement, or similar arrangement where the proposed real property use is similar to existing uses. (Checklist and CED required.)

h. Coast Guard new construction upon, or improvement of, land where all of the following conditions are met (Checklist and CED required.):

- The structure and proposed use are substantially in compliance with prevailing local planning and zoning standards.
- The site is on heavily developed property and/or located on a previously disturbed site in a developed area.
- The proposed use will not substantially increase the number of motor vehicles at the facility.
- The site and scale of construction are consistent with those of existing, adjacent, or nearby buildings.

i. Real property inspections for compliance with deed or easement restrictions.

j. Transfer of administrative control over real property from the Coast Guard to another Department of Transportation (DOT) component or another Federal agency (title to the property remains with the United States) that results in no immediate change in use of the property. (Checklist and CED required.)

k. Determination by the Coast Guard that real property is excess to its needs, pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the subsequent reporting of such determination to the Administrator of the General Services Administration or the subsequent filing of a notice of intent to relinquish lands withdrawn or reserved from the public domain with the Bureau of Land Management, Department of Interior, in accordance with 43 CFR part 2370. (Checklist and CED required.)

l. Congressionally mandated conveyance of Coast Guard controlled real property to another Federal agency or non-Federal entity. (Checklist and CED required.)

m. Relocation of Coast Guard personnel into existing Federally owned or leased space where use does not change substantially and any attendant modifications to the facility would be minor.

n. Decisions to temporarily or permanently decommission, disestablish, or close Coast Guard shore facilities including any follow-on connected protection and maintenance needed to maintain the property until it is no longer under Coast Guard control. (Checklist and CED required.)

o. Demolition of buildings, structures, or fixtures and disposal of subsequent building, structure, or fixture waste materials. (Checklist and CED required.)

p. Determination by the Coast Guard that Coast Guard controlled personal property, including vessels and aircraft, is ''excess property,'' as that term is defined in the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(e)), and any subsequent transfer of such property to another Federal agency's administrative control or conveyance of the United States' title in such property to a non-Federal entity. (Checklist and CED required.)

q. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in functional use of the real property, (*e.g.,* realigning interior spaces of an existing building, extending an existing roadway in a developed area a short distance, installing a small antenna on an already existing antenna tower, adding a small storage shed to an existing building, etc.) (Checklist and CED required.)

r. Installation of devices to protect human or animal life such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, and fencing and grating to prevent accidental entry to hazardous areas. (Checklist and CED required.)

3. Training

a. Defense preparedness training and exercises conducted on Coast Guard-controlled property that do not involve undeveloped property or increased noise levels over adjacent property and involve a limited number of personnel, such as exercises involving primarily electronic simulation or command post personnel. (Checklist and CED required.)

4. Operational Actions

a. Realignment or initial homeporting of mobile assets, including vessels and aircraft, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new homeports or for repair and overhaul.

Note: If the realignment or homeporting would result in more than a one for one replacement of assets at an existing facility, then the checklist required for this CE must specifically address whether such an increase in assets could trigger the potential for significant impacts to protected species or habitats before use of the CE can be approved. (Checklist and CED required.)

5. Special Studies

a. Environmental site characterization studies and environmental monitoring including: Siting, constructing, operating, and dismantling or closing of characterization and monitoring devices. Such activities include but are not limited to the following:

- Conducting geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks.
- Installing and operating field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools.
- Drilling wells for sampling or monitoring of groundwater, well logging, and installation of water-level recording devices in wells.
- Conducting aquifer response testing.
- Installing and operating ambient air monitoring equipment.
- Sampling and characterizing water, soil, rock, or contaminants.
- Sampling and characterizing water effluents, air emissions, or solid waste streams.
- Sampling flora or fauna.
- Conducting archeological, historic, and cultural resource identification and evaluation studies in compliance with 36 CFR part 800 and 43 CFR part 7.
- Gathering data and information and conducting studies that involve no physical change to the environment. Examples include topographic surveys, bird counts, wetland mapping, and other inventories.

6. Regulatory Actions

a. Regulations concerning vessel operation safety standards (*e.g.,* regulations requiring:

certain boaters to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as personal flotation devices (PFDs), and/or stricter blood alcohol concentration (BAC) standards for recreational boaters, etc.), equipment approval, and/or equipment carriage requirements (*e.g.,* personal flotation devices (PFDs) and visual distress signals (VDS's)).

b. Congressionally mandated regulations designed to improve or protect the environment (*e.g.,* regulations implementing the requirements of the Oil Pollution Act of 1990, such as those requiring vessels to have the capability to transmit and receive on radio channels that would allow them to receive critical safety and navigation warnings in U.S. waters, regulations to increase civil penalties against persons responsible for the discharge of oil or hazardous substances into U.S. waters, etc.). (Checklist and CED required.)

*** Note to Appendix:** The final new or amended CEs are listed in the appendix to this notice. Previously existing Coast Guard CEs that remain unchanged are not included in the appendix.

[FR Doc. 02–18475 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Turbine Engine Continued Rotation and Rotor Locking

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability and request for comments of draft Advisory Circular (AC), No. 33.74/92–1A, Turbine Engine Continued Rotation and Rotor Locking.

DATES: Comments must be received on or before September 23, 2002.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–100, at the above address, telephone (781) 238–7120, fax (781) 238–7199. If you have access to the Internet, you may also obtain further information by writing to the following address: *''marc.bouthillier@faa.gov.''*

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT**, or Internet users may obtain a copy at the following address: *''http://www.airweb.faa.gov/rgl.''* Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This draft advisory circular (AC) would provide guidance and acceptable methods, but not the only methods that may be used to demonstrate compliance with the continued rotation and rotor locking requirements. This AC would combine §§ 33.74 and 33.92.

This advisory circular would be published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, and would provide guidance for the requirements in 14 CFR part 33.

Issued in Burlington Massachusetts on June 28, 2002.

Francis Favara,

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

[FR Doc. 02–18473 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Approval of the Record of Decision for the Final Environmental Impact Statement for FAA Site Approval and Land Acquisition by the State of Illinois for a Proposed South Suburban Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of approval of the Record of Decision.

SUMMARY: The FAA is announcing the approval of the Record of Decision (ROD) for the Final Environmental Impact Statement for FAA Site Approval and Land Acquisition by the State of Illinois for a Proposed South Suburban Airport. The ROD provides final agency determinations and approvals for site approval.

FOR FURTHER INFORMATION CONTACT: Denis R. Rewerts, Capacity Officer, Federal Aviation Administration, Chicago Airports District Office, Room 312, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Mr. Rewerts can be contacted at (847) 294–7195 (voice), (847) 294–7046 (facsimile) or by e-mail at *9–AGL–SSA–EIS–PROJECT@faa.gov.*

SUPPLEMENTARY INFORMATION: At the request of the State of Illinois, the FAA has prepared the first tier of a tiered Environmental Impact Statement (EIS) to assess impacts relative to FAA site approval and the associated land acquisition by the State for a potential future supplemental air carrier airport to serve the greater Chicago region. The Tier 1 EIS does not consider the site-specific planning, construction, funding, or operation of a potential new supplemental air carrier airport. Subsequent tiered EISs or other environmental documentation as needed, may be prepared and considered in the future to assess the potential impacts that may result from the planning, construction, funding and operation of a potential, supplemental air carrier airport in the south suburban area of Chicago and/or development of existing airports to satisfy future aviation needs in the region.

This Record of Decision provides final agency determinations and approvals for Federal actions by the Federal Aviation Administration (FAA) related to the selection of Will County for a potential South Suburban Airport. These actions are necessary to preserve the option of developing a potential, future air carrier airport to serve the greater Chicago region as determined necessary and appropriate to meet future aviation capacity needs in the region. At a later date, it will be determined how regional aviation capacity needs will be met. The FAA's site approval is based upon the continuing need to protect the airspace and preserve a technically and environmentally feasible site from encroachment from suburban development and provide for continued protection of the airspace. The proposed site, known as the Will County site, commonly known as the Peotone site, is located in Will County, Illinois and is approximately 35 miles south of the Chicago Central Business District. The ultimate site encompasses approximately 24,000 acres.

This ROD approves the Will County, Illinois site to preserve the option for a potential future air carrier airport for the greater Chicago region. The Federal action is described in detail in the Final Environmental Impact Statement (FEIS),

South Suburban Airport dated April 2002. The agency's decision is based on the information contained in the FEIS and all other applicable documents available to the agency and considered by it, which constitutes the administrative record.

The FAA's determinations are discussed in the ROD, which was approved on July 12, 2002.

ADDRESSES: The ROD is available for review at the following locations:

1. Chicago Airports District Office, Room 312, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Individuals who would like to review the ROD at this office must contact Mr. Denis Rewerts at (847) 294–7195 to make prior arrangements.

2. Governors State University Library, Governors State University, University Park, Illinois 60466.

3. Joliet Public Library, 150 North Ottawa Street, Joliet, Illinois 60432.

4. Northwestern University Library, 1935 Sheridan Road, Evanston, Illinois 60202.

5. Harold Washington Public Library, 400 South State Street, Chicago, Illinois 60605.

6. Kankakee Public Library, 304 South Indiana, Kankakee, Illinois 60901.

7. Matteson Public Library, 801 South School Avenue, Matteson, Illinois 60443.

8. Orland Park Public Library, 14760 Park Lane, Orland Park, Illinois 60462.

9. Crete Public Library, 1177 North Main Street, Crete, Illinois 60417.

10. Indiana University Northwest Library, 3400 Broadway, Gary, Indiana 46408.

11. Purdue University, Calumet Campus Library, 2200 169th Street, Hammond, Indiana 46323.

12. College of DuPage, Learning Resources Center (Library), 425 Second Street, Glen Ellyn, Illinois 60137.

13. Illinois Department of Transportation, 310 South Michigan Avenue, Chicago, Illinois 60604.

14. Illinois Department of Transportation, Illinois Division of Aeronautics, One Langhorne Bond Drive/Capital Airport, Springfield, Illinois 62707.

15. Illinois Department of Transportation, South Suburban Airport Program Office, 4749 Lincoln Mall Drive, Suite 501, Matteson, Illinois 60443.

16. Web site: *http://www.faa.gov/arp/app600/5054a/rodidx.htm* or *http://www.southsuburbanairport.com*

Issued in Des Plaines, Illinois.

Philip M. Smithmeyer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 02–18616 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–45]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 12, 2002.

ADDRESSES: Send comments on the petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12352 at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Boylon (425–227–1152), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 17, 2002.

Richard D. McCurdy,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12352.

Petitioner: Instone Air Services.

Section of 14 CFR Affected: 14 CFR 25.857(e), 25.855(a), 25.807(d)(1), and 25.1147(c)(1).

Description of Relief Sought: To permit carriage of supernumeraries (animal handlers) on the main deck of a Boeing Model 747 freighter and the use of portable oxygen bottles in place of standard emergency oxygen systems.

[FR Doc. 02–18474 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–15–C–00–BDL to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Kenneth Robert, A.A.E., Aviation Administrator of the Connecticut Department of Transportation, Bureau of Aviation and Ports at the following address: P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Connecticut Department of Transportation, Bureau of Aviation and Ports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Connecticut Department of Transportation, Bureau of Aviation and Ports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 20, 2002.

The following is a brief overview of the application.

Proposed charge effective date: May 1, 2015.

Proposed charge expiration date: September 1, 2015.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $3,050,000.

Brief description of proposed project(s): Security Improvements and Training System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-Demand Air Taxi Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut.

Issued in Burlington, Massachusetts on July 10, 2002.

Vincent A. Scarano,

Manager, Airports Division.

[FR Doc. 02–18469 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 02–14–C–00–BDL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 22, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kenneth Robert, A.A.E., Aviation Administrator of the Connecticut Department of Transportation, Bureau of Aviation and Ports at the following address: P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Connecticut Department of Transportation, Bureau of Aviation and Ports under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bradley International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 27, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Connecticut Department of Transportation, Bureau of Aviation and Ports was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 20, 2002.

The following is a brief overview of the application.

Proposed charge effective date: March 1, 2015.

Proposed charge expiration date: May 1, 2015.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $1,102,000.

Brief description of proposed project(s): Acquire Aircraft Rescue and Fire Fighting Truck.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-Demand Air Taxi Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut.

Issued in Burlington, Massachusetts on July 10, 2002.

Vincent A. Scarano,

Manager, Airports Division.

[FR Doc. 02–18470 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City & County of Denver, CO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the City and County of Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Shaun Cutting, Senior Operations Engineer, FHWA Colorado, 555 Zang Street, Suite 250, Lakewood, CO 80228,

telephone: (303) 969–6730 or Mr. Tony Gross, Project Engineer, Colorado Department of Transportation-Region 6, 2000 South Holly Street, Denver, Colorado 80222, Telephone: (303) 972–9112.

SUPPLEMENTARY INFORMATION: the FHWA, in cooperation with the Colorado Department of Transportation (CDOT), hereby give notice of intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal to improve I–25 and US 6 in Denver, Colorado. The proposed improvements involve the reconstruction of the existing I–25 between Logan Street and US 6 of a distance of about 2.5 miles and US 6 interchange improvements for Bryant Street and Federal Boulevard.

Improvements to this existing National Highway System (NHS) corridor are considered necessary to provide for the existing and projected traffic demand. Included in this proposal are the reconstruction, reconfiguration, and rehabilitation of an aging substandard highway corridor with operational, safety and geometric deficiencies. Past studies along this portion of I–25 and US 6 have indicated several roadway deficiencies such as structural integrity problems with viaducts, ramp configurations, current vehicle capacity, system linkage and public safety.

Alternatives under consideration include but are not limited to (1) taking no action; (2) reconstruction or realignment of the I–25 and US 6 interchanges/local interchanges to current practices; (3) add lanes to reconfigure I–25 and/or 6th Avenue to achieve lane balance consistent with adjacent projects, and (4) enhance intermodal accessibility to the Denver Regional Transportation District (RTD) transit facilities and consideration of local transportation plans. Incorporated into and to be studied with the various build alternatives will be design variations of grade, alignment and interchange configurations at Broadway/Lincoln, Santa Fe, Alameda, US 6, Bryant Street and Federal Boulevard.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings, including a public scoping meeting will be held in the project area in the fall of 2002. In addition, public hearings will be held after the publication and issuance of the Draft Environmental Impact Statement and the Final Environmental Impact Statement. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statement and Final Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Colorado Department of Transportation at the addresses provided above.

Issued on: July 17, 2002.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Doug Bennett,

Assistant Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

[FR Doc. 02–18515 Filed 7–22–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34229]

The Ohio & Pennsylvania Railroad Company—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc., in Lowellville, OH

The Ohio & Pennsylvania Railroad Company (O&P), a Class III carrier, has filed a notice of exemption under 49 CFR 1150.41 to permit O&P to acquire by purchase from CSX Transportation, Inc. (CSXT), an approximately 0.89-mile rail line located between Valuation Station 3261 + 00 and Valuation Station 3308 + 00, in Lowellville, Mahoning County, OH.

The transaction was expected to be consummated after July 5, 2002, the effective date of the exemption (7 days after the exemption was filed).

The purpose of this transaction is to permit O&P to extend its line [1] and facilitate the re-establishment of an interchange with CSXT at Lowellville. O&P certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class I or a Class II rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed 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. 34229 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 Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our website at *WWW.STB.DOT.GOV.*

Decided: July 15, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–18374 Filed 7–22–02; 8:45 am]

BILLING CODE 4915–00–P

[1] O&P owns approximately 2 miles of rail line between Struthers and Youngstown, OH, but does not currently operate over the line. The Mahoning Valley Railroad and the Central Columbiana and Pennsylvania Railroad (CCPR) operate over portions of O&P's line under trackage rights. O&P expects to resume freight operations in the near future as new traffic opportunities materialize. This transaction is expected to improve the efficiency of CCPR's current operation over O&P's line, and enhance O&P's own operations if it recommences service.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 15, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 22, 2002, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.
Form Number: None.
Type of Review: New collection.

Title: Brand Tracking Survey.

Description: The survey will focus on Treasury Direct marketing issues.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,600.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Other (once).

Estimated Total Reporting Burden Hours: 650 hours.

Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328, (304) 480–6553.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–18569 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 16, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 22, 2002, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1398.

Form Number: IRS Form 9620.

Type of Review: Extension.

Title: Race and National Origin Identification.

Description: Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.

Respondents: Individuals or households, Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: Semi-annually, Annually.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1545–1488.

Regulation Project Number: REG–209837–96 Final.

Type of Review: Extension.

Title: Requirements Respecting the Adoption or Change of Accounting Method; Extensions of Time To Make Elections.

Description: The regulations provide the standards the Commissioner will use to determine whether to grant an extension of time to make certain elections.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 10 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1591.

Regulation Project Number: REG–251701–96 Final.

Type of Review: Extension.

Title: Electing Small Business Trusts.

Description: The regulations provide the rules for an electing small business trust (ESBT), which is a permitted shareholder of an S corporation. With respect to the collections of information, the regulations provide the rules for making an ESBT election, and the rules for converting from a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The regulations allow certain S corporations to reinstate their previous taxable year that was terminated under § 1.444–2T by filing Form 8716.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 7,500.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, Other (once).

Estimated Total Reporting Burden: 7,500 hours.

OMB Number: 1545–1658.

Regulation Project Number: REG–107069–97 Final.

Type of Review: Extension.

Title: Purchase Price Allocations in Deemed Actual Asset Acquisitions.

Description: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (as ''deemed asset acquisition'') when an appropriate election is made.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 34 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545–1784.

Revenue Procedure Number: Revenue Procedure 2002–32.

Type of Review: Extension.

Title: Waiver of 60-month Bar on Reconsolidation After Disaffiliation.

Description: Pursuant to § 1504(a)(3)(B) of the Internal Revenue Code, this procedure grants certain taxpayers a waiver of the general rule of § 1504(a)(3)(A) barring a corporation from filing a consolidated return with a group of which it had ceased to be a member for 60 months following the year of disaffiliation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 02–18570 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5498–MSA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5498–MSA, MSA or Medicare+Choice MSA Information.

DATES: Written comments should be received on or before September 23, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: MSA or Medicare+Choice MSA Information.

OMB Number: 1545–1518.

Form Number: 5498–MSA.

Abstract: This form is used to report contributions to a medical savings account as required by Internal Revenue Code section 220(h).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 41,105.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 6,988.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 17, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–18597 Filed 7–22–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 141

Tuesday, July 23, 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 AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1520

RIN 0551–AA61

Administrative Regulations for the Freedom of Information Act

AGENCY: Foreign Agricultural Service, USDA.

Correction

In rule document 02–17452 beginning on page 45895 in the issue of Thursday, July 11, 2002, make the following correction:

On page 45895, in the first column, the subagency name and the CFR title and part should read as set forth above.

[FR Doc. C2–17452 Filed 7–22–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
July 23, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–7244–1]

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for existing and new facilities that apply surface coatings to large appliances. These final standards implement section 112(d) of the Clean Air Act (CAA) which requires the Administrator to regulate emissions of hazardous air pollutants (HAP) listed in section 112(b) of the CAA. The intent of the standards is to protect the public by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT).

Sources typically emit the following HAP: glycol ethers, methylene diphenyl diisocyanate, methyl ethyl ketone, toluene, and xylene. These compounds account for over 80 percent of the nationwide HAP emissions from this source category. These pollutants can cause reversible or irreversible toxic effects to people following exposure.

EFFECTIVE DATE: This rule is effective July 23, 2002. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of July 23, 2002.

ADDRESSES: *Docket.* Docket No. A–97–41 contains supporting information used in developing the standards for the Large Appliances Coating 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), telephone (202) 260–7548. The docket may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

Background Information Document. A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (C267–01), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Refer to ''Large Appliances Surface Coating Operations—Background Information for Promulgated Standards'' (EPA–453/R–02–004). The promulgation BID contains a summary of changes made to the standards since proposal, public comments made on the proposed standards, and the EPA responses to the comments.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local air pollution control agency representative or the appropriate EPA Regional Office representative. For information concerning the analyses performed in developing these standards, contact Mr. H. Lynn Dail, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–2363; e-mail address: *dail.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. The contents of the docket, including the BID for the proposed and promulgated standards and the EPA responses to significant comments will serve as the record in case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to today's final rule are available for review in the docket, or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials. *Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. If your facility applies surface coatings to large appliance parts or products, you may be a regulated entity. Categories and entities potentially regulated by the final standards are shown in the following table. This table is slightly different from the table contained in the proposal preamble at 65 FR 81135. The changes made to the table between proposal and promulgation are the result of public comments. These changes clarify the types of facilities that will be affected by the promulgated standards.

CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE FINAL STANDARDS

Category	NAICS Code [a]	Regulated Entities [b]
Industry	335221	Household cooking equipment.
	335222	Household refrigerators and freezers.
	335224	Household laundry equipment.
	335228	Other major household appliances.
	333312	Commercial laundry, drycleaning, and pressing equipment.
	333415	Air-conditioners (except motor vehicle), comfort furnaces, and industrial refrigeration units and freezers (except heat transfer coils and large commercial and industrial chillers).
	[c]333319	Other commercial/service industry machinery, e.g., commercial dishwashers, ovens, and ranges, etc.
Federal Government		Not affected.
State/Local/Tribal Government		Not affected.

[a] North American Industry Classification System
[b] Regulated entities means major source facilities that apply surface coatings to these parts or products.
[c] Excluding special industry machinery, industrial and commercial machinery and equipment, and electrical machinery equipment and supplies not elsewhere classified.

As in the proposal, major sources classified under other NAICS codes will be subject to the standards if they perform large appliance surface coating operations and meet the other applicability criteria. Conversely, some facilities listed under these codes may not be affected because some of the codes in the table cover products that are not defined as large appliances for the purposes of the rule.

This table is not intended to be exhaustive, but rather provides a guide for entities likely to be regulated by this action. To determine whether your facility is subject to the rule, you should carefully examine the applicability criteria in § 63.4081 of the rule. If you have questions regarding how this action applies to a particular entity, consult the appropriate EPA Regional Office representative.

Judicial Review. The NESHAP for large appliance surface coating operations was proposed on December 22, 2000 (65 FR 81134). Under section 307(b)(1) of the CAA, judicial review of NESHAP is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 23, 2002. Only those objections to the rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce the requirements.

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 criteria do we use in the development of NESHAP?
II. What changes and clarifications have we made to the proposed standards?
A. Scope of Source Category
B. Definitions
C. Overlap with Other NESHAP Categories
D. Other Changes and Clarifications
III. What are the final standards?
A. What is the source category?
B. What is the affected source?
C. What are the emission limits?
D. What are the testing and initial and continuous compliance requirements?
E. What are the notification, recordkeeping, and reporting requirements?
IV. What are the environmental, energy, cost, and economic impacts?
A. What are the air impacts?
B. What are the non-air health, environmental, and energy impacts?
C. What are the cost and economic impacts?
V. What are the administrative requirements?
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
C. Executive Order 13132, Federalism
D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by the final NESHAP was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Do We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both existing and new major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than the standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any health and environmental impacts, and energy requirements.

II. What Changes and Clarifications Have We Made to the Proposed Standards?

In response to public comments received on the proposed standards, we made several changes in developing the final rule. While some of the changes were designed to make our intentions clearer, other changes had a direct effect on the degree of coverage of the standards. The substantive comments and our responses and rule changes are summarized in the following sections. A more detailed summary can be found in the BID for the final rule which is available from several sources (see **ADDRESSES**).

A. Scope of Source Category

In the proposal, we defined the regulated community for the standards to be facilities that apply surface coatings to large appliances or components of large appliances. In the proposal BID and the table of regulated entities in the proposal preamble (65 FR 81135, December 22, 2000), we stated that the facilities are generally included under the following NAICS codes (and their SIC code equivalents): 335221 (3631) household cooking appliances, 335222 (3632) household refrigerator and home freezer, 335224 (3633) householdlaundry equipment manufacturing, 335228 (3639) other major household appliances, 333415 (3585) air-conditioning and warm air heating equipment and commercial and industrial refrigeration equipment, and 333319 (3589) service appliance. We cautioned that some facilities and products with these codes do not fit under the large appliance category, and similarly, there may be facilities under other codes that do in fact coat large appliances. Thus, these industrial codes were given as a guide but were not intended to be used as the only basis for determining applicability of the rule.

The codes listed above are associated with household cooking equipment, refrigerators/freezers, laundry equipment, and floor vacuums and polishers, and various types of

commercial and industrial heating, ventilation, and refrigeration equipment. Table 2–1 in the proposal BID listed examples of large appliances that are produced by facilities in these categories.

Several commenters stated that the scope of the category as proposed was overly broad and confusing. They felt that we had included several products not normally considered to be large appliances, and that these products should be regulated under the miscellaneous metal parts and products NESHAP currently under development. As an alternative, if EPA decided not to change the mix of products defined to be large appliances, one commenter suggested that we change the name of the source category to better match the product mix being represented.

In addition, commenters asked for clarification on the applicability of the rule to certain coatings such as porcelain enamel, powder coatings, and asphalt interior soundproofing. The final rule clarifies that the aforementioned coatings are considered coatings for the purposes of the rule and will be subject to subpart NNNN. We also clarified that phosphating (a form of pretreatment) and metal plating are excluded as coatings in subpart NNNN.

Our proposed definition of the large appliances source category was formed using the six SIC/NAICS codes as a foundation, and then including the products under those codes that we believed should be included as large appliances. Some commenters expressed confusion when comparing the preamble table to BID Table 2–1. We have clarified the scope of the source category by including definitions for *large appliance product* and *large appliance part* in the final rule. The definitions list the parts and products intended to be regulated under the final rule, and they supercede the listing in Table 2–1 of the proposal BID. We also modified the proposal preamble table and are including it in the BID for the final rule. We have added Commercial Laundry Equipment and have deleted Floor Waxing/Polishing and Motor Vehicle Air-Conditioning, in keeping with our intent at proposal. In addition, we have also deleted heat transfer coils and large commercial and industrial chillers from the table and from coverage by the large appliances NESHAP.

A few commenters stated that the heat transfer coils used to cool fluids in refrigeration and air-conditioning systems typically have unique coating formulation requirements, and suitable coatings are not available in a low-HAP formulation. The need for special coatings arises from the complex geometry of heat transfer coils, as well as exposure requirements in food processing and other special environments. The coating information we collected and used to determine the MACT floor did not contain coatings used specifically for heat transfer coils. The commenters asked that this large appliance component be removed from the large appliances category and regulated under the miscellaneous metal parts and products NESHAP.

We have examined the submitted data and arguments and have concluded that the data analyzed since proposal offer sufficient justification to revise the scope of the source category. Therefore, we have excluded heat transfer coils from coverage under the large appliances NESHAP.

A trade organization and one manufacturer of large commercial and industrial chillers (equipment that produces chilled water for use in a number of industrial processes including heating, ventilating, and air conditioning (HVAC) applications) commented that large chillers are very different from other products included as large appliances. They said that large HVAC products are produced in much lower volumes than white goods and are often custom designed. Furthermore, they are often subjected to outdoor environments requiring that they meet strict performance criteria, and they have a longer expected life. Commercial and industrial chillers are much larger than most other large appliances and are painted after assembly. Therefore, they cannot be put through a baking oven to cure the coatings, which restricts the coatings available for use.

We requested additional supporting data on large chiller equipment coating operations and the available coatings. We also visited one of the few facilities that manufactures that equipment. Our evaluation of the chiller coating operations led us to determine that large commercial and industrial chillers should be excluded from the Large Appliances category for the reasons described by the commenter.

B. Definitions

We have added definitions for *large appliance product* and *large appliance part* to the final rule. These definitions include ''white goods'' appliances, as well as certain HVAC equipment used in commercial and industrial applications. However, specifically excluded from the definition of *large appliance product* are heat transfer coils, large commercial and industrial chillers, and motor vehicle air-conditioning units.

We added several other new definitions in response to comments and to increase the clarity of the rule. Newly defined terms include *adhesive, facility maintenance, heat transfer coil, large commercial and industrial chillers*, and *month*. Clarifying changes were also made to the proposed definitions for *coating operation*, *manufacturer's formulation data*, and *surface preparation*.

C. Overlap With Other NESHAP Categories

Several commenters requested that the final rule provide compliance flexibility for facilities that coat a variety of items in addition to large appliances or large appliance components. Such facilities may be affected by several coating NESHAP, such as the standards for large appliances, miscellaneous metal parts and products, and plastic parts and products. They sought a regulatory approach that would allow facilities to opt specific coating operations or product lines, that are collateral to large appliance coating operations, out of the rule and into either the miscellaneous metal parts and products rule under development or the plastic parts and products rule that is also under development. Commenters also believed that plants coating types of items with a wider use beyond large appliances (such as motors, handles, hinges, etc.) should have the choice of those operations being covered by either the miscellaneous metal or plastic parts rule, even if the specific items are designed to be used on large appliances.

We understand that many facilities may find it beneficial to consolidate their regulatory coverage for a number of different types of coating operations (such as large appliances, miscellaneous metal parts, and plastic parts) into a single NESHAP. Consolidation may reduce the amount of records, reports, or compliance calculations that the facility would have to maintain. To address the issue of multiple regulatory coverage, we are including a new provision in the final rule that allows the consolidation sought by the commenters. Under this approach, as an alternative to complying separately with multiple coating NESHAP, a facility may choose to be subject to the requirements of only one applicable NESHAP, provided it is the most stringent of the applicable subparts. The test for stringency is a demonstration that the facilitywide HAP emissions from all surface coating operations will be less than or equal to the emissions achieved by complying separately with

all applicable subparts of 40 CFR part 63.

There are many facilities that apply surface coatings to a variety of items that may be used on large appliances, but which also have application to other types of products. We agree that such multi-purpose items are not exclusively large appliance parts and may be considered more appropriately miscellaneous metal parts or plastic parts. Therefore, we are excluding these items from coverage under the final rule. However, if a large appliance source prefers to have all its coating operations subject to only one coating NESHAP to consolidate recordkeeping and reporting requirements, the source would have the option described above of complying with only the most stringent applicable NESHAP.

D. Other Changes and Clarifications

A number of commenters found the proposed compliance options confusing and some suggested variations on the way these options should be applied.

One of the commenters believed that the calculations, monthly compliance determinations, and recordkeeping required under the compliant material option should not apply to coating operations that use only powder coatings that contain no HAP. The commenter suggested relevant portions of the proposed requirements that he believed should not be applicable to these powder coating operations.

We have reviewed the proposed calculations, compliance determinations, and recordkeeping requirements for the compliant material option and believe the commenter identified a need to clarify the rule language. The proposed language would have required an affected source choosing the compliant material option and using only powder coatings and non-HAP cleaning materials to determine the mass fraction of organic HAP, the volume fraction of solids, and the density for each coating, and then to determine the ratio of organic HAP to coating solids. Records and certain reports would have had to include such calculations. We did not intend to require this unnecessary calculation for non-HAP coatings at proposal. Clearly, if a coating contains no organic HAP, it is not useful to record and report such calculations since the result is obviously zero kilogram (kg) organic HAP per liter of coating solids. Therefore, we have added a provision in § 63.4141(a) and (d) of the final rule specifying that if the mass fraction of organic HAP in a coating is zero, as determined according to § 63.4141(a) (through test results or manufacturer's formulation data), then the source is not required to determine the volume fraction of coating solids and density or to calculate the organic HAP content. This new provision applies to all types of coatings that contain no organic HAP, not just powder coatings. For such a coating, § 63.4141(d) of the final rule specifies that the organic HAP content equals zero and no calculation is required. The following notification, reporting, and recordkeeping sections of the rule were also revised to fully incorporate this provision: §§ 63.4110(b)(8) and (b)(8)(i), 63.4120(d)(2), and 63.4130(c), (c)(1), (f), and (g). We believe that these changes are responsive to the commenter's concerns, and that they retain only the requirements that are essential for compliance and enforcement purposes.

Some commenters asked whether different compliance options could be combined for the same coating operation in order for sources to gain more flexibility in the way coatings and other materials are used in an operation. We proposed three compliance options: Option 1 when using compliant materials, Option 2 when determining emission rate without add-on controls, and Option 3 when using emission controls. The three proposed compliance options address different situations and were intended to be applied on a one-at-a-time basis (see § 63.4091 introductory language). Both Options 1 and 2 cannot logically be used on one coating operation at the same time. If all coatings meet the limit and all thinners and cleaners are HAP-free, then Option 1 could be used and, thus, there would be no need to combine data elements for multiple coatings, thinners, and cleaning materials to derive an emission rate (required for Option 2). If the coatings, thinners, and cleaning materials do not meet the Option 1 criteria, or if the source owner or operator chooses not to use Option 1, then Option 2 must be used (or Option 3 if an add-on control device is in use). In no case may coatings, thinners, and cleaning materials accounted for under one option be included in the accounting under another option. Because the compliance options are designed to accommodate different situations and, due to the lack of compelling information or justification for the commenter's suggested rule change, the final compliance option provisions are the same as proposed.

Additionally, one commenter believed that a clarification was needed for proposed § 63.4081(a)(3), which excluded certain categories of surface coating from coverage by the rule, such as facility maintenance operations. The commenter wanted the rule to make specific mention of the paint booths that are used for maintaining manufacturing equipment. We agree with the commenter that the rule should not apply to paint booths or to other surface coating equipment used exclusively to coat something other than large appliances. If, however, the paint booth or equipment is sometimes used for large appliance surface coating, it would be subject to the standards during those times and would need to be considered part of the affected source. It also is subject to the standards if it is used for cleaning of equipment used in coating operations, e.g., application equipment, hangers, and racks (see § 63.4081(c)(6) and the definition of coating operation in § 63.4181). To clarify our intent, we have included the following definition of facility maintenance in the final rule: *Facility maintenance* means the routine repair or refurbishing (including surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of a facility or that are necessary for the facility to function in its intended capacity. It does not mean cleaning of equipment that is part of a large appliances coating operation.

One commenter suggested that EPA establish a low-use exemption threshold for military installations where military members could apply coatings at on-base hobby shops and housing areas to repair personally owned appliances. Generally, in hobby shops, the prevailing coating application would involve hand-held, non-refillable aerosol containers. However, individuals using hobby shop facilities may also apply the coatings by methods other than hand-held aerosol cans. In the proposal, we excluded hand-held aerosol container coatings from the rule but did not exclude other coating application methods, specifically those related to hobby shops. However, in considering this comment, we concluded that coating application by individuals who repair, refurbish, or recoat large appliances or other types of products at military hobby shops or base housing areas does not compare to the coating operations conducted at facilities that apply coatings as a step in the production of large appliances. Therefore, these coating activities are not subject to the standards. We believe that expanding the exclusion in § 63.4081(d)(4) to include hobby shops is a more appropriate way to address this issue than creating a low-use exemption that would necessitate coating usage recordkeeping at the hobby shop. Therefore, § 63.4081(d)(4) of the final rule excludes research or

laboratory facilities; janitorial, building, and facility maintenance operations; hobby shops operated for non-commercial purposes; and the use of hand-held, non-refillable aerosol containers.

In addition to the changes described above, we noted several areas of the proposed rule that warrant revision even though commenters did not object to them. The changes are necessary so that the provisions properly reflect our intent and are consistent with other surface coating NESHAP under development. As proposed, § 63.4100(a)(2) indicated that affected sources using the emission rate with add-on controls options would not have to comply with the standards during periods of startup, shutdown, and malfunction. This provision is often found in NESHAP in which compliance with the standards is based solely on the results of a short-term initial performance test and short-term averaging of continuous monitoring results thereafter. After proposal of the large applicances NESHAP, we realized that this provision is not appropriate for the surface coating NESHAP when these short-term test and monitoring results are only one component of a compliance determination that determines emissions over a long period of time, which in this case is a month. For the large appliances NESHAP, the source owner or operator will use the performance test and continuous monitoring results in combination with data on coatings and other materials used over a month's period of time. These components will be combined to calculate a monthly organic HAP emission rate. Since there may be many startups and shutdowns of a coating operation over the course of a month as part of normal operation, it is not appropriate to exempt such periods from compliance with the standards. The rule does require in § 63.4100(d) that you develop and operate according to a startup, shutdown, and malfunction plan, and § 63.6163(h) provides the following: ''Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations according to the provisions in § 63.6(e).'' We believe that this provision along with a month-long compliance period that will accommodate potential short-term higher emission rates that might occur due to startup, shutdown, or malfunction are adequate and that the proposed exemption is not necessary or appropriate. Therefore, it is not included in the final standards.

Another change we made to the rule is intended to simplify the compliance provisions for the emission rate with add-on controls option. We removed § 63.4162, which was proposed to provide explicit instructions for determining compliance with the emission rate with add-on controls option when the coating operation is operated under several different operating conditions. We found after proposal, however, that this section as proposed added unnecessary complexity to the standards, and that the compliance provisions are adequate without it. Therefore, we removed it from the final standards.

To provide consistency with other surface coating NESHAP, we added provisions in § 63.4167(b)(3) and (4) to allow sources an alternative to the proposed operating limits for catalytic oxidizers that require monitoring of inlet and outlet temperature before and after the catalyst bed and the temperature difference across the bed. This alternative allows you to monitor only the temperature before the catalyst bed if you develop and follow an onsite inspection and maintenance plan for the catalytic oxidizer. For some sources, this would be a preferable alternative. Another addition we made to provide consistency is a description of continuous monitoring requirements for concentrators in § 63.4167(e) and (f) and in Table 1 to the subpart. As proposed, a source using a concentrator would have had to seek and obtain approval from the permitting authority for the continuous monitoring it wanted to use to comply with the operating limits since we did not include such monitoring provisions in the proposed standards. Because we have included these provisions in the final standards, a source can comply with them and, therefore, avoid having to apply for and obtain specific approval unless it wishes to monitor something different than what is specified in the new provisions. The concentrator monitoring requirements are the same as those in other surface coating NESHAP under development.

In addition to the revisions described above, we have made clarifying editorial changes throughout the rule to ensure it accurately expresses our intent and to promote consistency with other surface coating NESHAP currently under development. These changes do not affect the stringency of the requirements since they are only clarifications of the proposed provisions.

III. What Are the Final Standards?

A. What Is the Source Category?

The large appliances source category includes facilities that apply coatings to large appliance parts or products. The rule applies to facilities that are a major source, are located at a major source, or are part of a major source of HAP emissions. Large appliances include ''white goods'' such as ovens, refrigerators, freezers, dishwashers, laundry equipment, trash compactors, water heaters, comfort furnaces, and electric heat pumps. Large appliances also include most HVAC equipment intended for any application. However, not included in the source category are motor vehicle air-conditioning units, heat transfer coils, and large commercial and industrial chillers. Other coating operations not included in the source category are: the coating of large appliance parts that have a wider use beyond large appliances (such as handles or fasteners), repair or maintenance painting of large appliance parts or products used by a facility, the surface coating of heat transfer coils or large commercial and industrial chillers, research or laboratory facilities and facility maintenance operations, and hobby shops operated for non-commercial purposes.

B. What Is the Affected Source?

The affected source includes all of the activities that involve coatings, thinners, and cleaning materials used in large appliance coating operations. These activities include: (1) Surface preparation of the large appliance parts or products; (2) preparation of coatings for application; (3) applying the coatings; (4) flash-off, drying, or curing of the coatings; (5) cleaning of coating equipment; (6) storage of coatings, thinners, and cleaning materials; (7) conveying of these materials; and (8) handling and conveying of waste materials generated by the coating operations.

C. What Are the Emission Limits?

The emission limits are different for existing and new sources and have not changed since proposal. For an existing source, you must limit organic HAP emissions to no more than 0.13 kg/liter (1.1 pound (lb)/gallon (gal)) of coating solids used during each compliance

(monthly) period. For a new or reconstructed source, you must limit emissions to no more than 0.022 kg/liter (0.18 lb/gal) of coating solids. These limits apply to the total of all coatings, thinners, and cleaning materials used in coating operations at the affected source.

There are three compliance options available for meeting the emission limits. The compliant material option requires that each coating used in the operation meet the limit, and each thinner and cleaning material must contain no organic HAP. Under the emission rate without add-on controls option, you may average all of the coatings, thinners, and cleaning materials together and demonstrate that the overall emission rate is in compliance with the applicable limit. The emission rate with add-on controls option applies to coating operations for which add-on controls are used to meet the limit. Under this option, you must meet certain operating limits for the capture systems and control devices and follow a work practice plan for your material storage, mixing, conveying, and spills.

D. What Are the Testing and Initial and Continuous Compliance Requirements?

Existing sources will have to be in compliance no later than July 25, 2005. New and reconstructed sources will have to be in compliance by this same date or upon startup, whichever is later. The initial compliance period begins on the compliance date and ends on the last day of the first full month following this date, except that for new or reconstructed sources required to conduct performance tests the initial compliance period ends on the last day of the first full month following the test. Note that ''month'' means a calendar month or a similar pre-specified period in order to accommodate facility accounting periods. The performance test may be conducted up to 180 days after the compliance date.

As discussed earlier, the owner or operator must select one of three compliance options for each coating operation, but may change the approach used for any operation at any time. For the compliant material and emission rate without add-on controls option, you will determine the mass of organic HAP in coatings, thinners, and cleaning materials and the volume fraction of coating solids either from manufacturer's formulation data or from test results using the methods in the final rule. Alternative test methods may be used with EPA's approval, and the test method results will prevail over manufacturer's formulation data for compliance purposes. If you use the emission rate with add-on controls option, you need to determine the mass of organic HAP and volume fraction of coating solids as in the other two options and also the capture and control efficiencies of the add-on controls by means of a performance test. As part of this test, you must establish operating limits that can be used on a continuous basis to demonstrate compliance with the emission limit. The final rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. If the monitoring results indicate no deviations from the operating limits, you would assume the control system is continuing to provide the same control efficiency as demonstrated in the test. If the combination of this efficiency and the total mass of organic HAP in materials used in controlled coating operations continues to be within the applicable emission limit, then continuous compliance is shown for those operations.

E. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you are subject to the standards, you must comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, Notification of Compliance Status, and additional notifications for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports. Records must be kept for at least 5 years with 2 years of that time being at the facility, and they may be kept in electronic form as long as they are readily available for review.

IV. What Are the Environmental, Energy, Cost, and Economic Impacts?

A. What Are the Air Impacts?

We estimate that nationwide organic HAP emissions will be reduced by approximately 1.080 megagrams/year (Mg/yr) (1,191 tpy) from existing sources. This represents a 45 percent reduction from the emissions baseline of 2,394 Mg/yr (2,639 tpy).

For new sources, we are assuming that most will use state-of-the-art coatings (predominantly powder coatings) even in the absence of the standards. These coatings will produce emission levels at or below the requirements of the final standards. Therefore, we are not attributing any emissions reductions from new sources to the final standards.

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

As at proposal, we have found that there are no significant expected non-air health, environmental, or energy impacts associated with the final standards. We reached this conclusion by considering the likely control approaches that will be used by existing and new sources. The use of low-HAP coating technologies will not produce any significant impacts on health, energy requirements, or the environment.

C. What Are the Cost and Economic Impacts?

The costs for facilities to comply with the final standards result from the switch to reformulated (lower-HAP) coatings, thinners, and cleaning materials. There will also be annual costs for meeting the monitoring, recordkeeping, and reporting (MRR) requirements of the rule.

For existing sources, the total nationwide annual cost in the 5th year of the standards is estimated to be $1.63 million. This includes approximately $0.48 million of direct costs associated with materials usage and $1.15 million for recordkeeping and reporting.

For new sources, only the costs of MRR apply. We estimate the annual cost in the 5th year for all new sources to be $341,000.

Our economic impact analysis showed the economic impacts of the promulgated standards to generally be minimal, with projected price increases and production decreases of less than 0.01 percent. Social costs are estimated at approximately $1.62 million in the 5th year for existing sources, with the burden being shared fairly equally between consumers and producers. No firms or facilities are expected to become at risk of closure due to the final standards. For more information, consult the ''Economic Impact Analysis of the Proposed NESHAP: Surface Coating of Large Appliances'' (Docket No. A–97–41).

V. What Are the Administrative Requirements?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of

the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is 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 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. These final standards are not subject to Executive Order 13045 because they do not establish an environmental standard based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

C. Executive Order 13132, Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that this rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, Executive Order 13132 does not apply to this rule.

D. 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 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate large appliance surface coating facilities. Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA 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 this final 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 this rule for any year has been estimated to be slightly less than $2 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these standards contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such

governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

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

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

For the purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business ranging from 100–1,000 employees or less than $3.5 million in annual sales; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In accordance with the RFA and SBREFA, EPA conducted an assessment of these standards on small businesses within the large appliance coating industry. Based on Small Business Administration size definitions and reported sales and employment data, EPA's survey identified 221 facilities that apply surface coatings to large appliances. These facilities, which include major and area sources, are owned by 84 companies. Of these companies, 34 are small businesses. Although small businesses represent about 40 percent of the companies within the source category, they are expected to incur only 10 percent of the total industry compliance costs. Under the final standards, the average annual compliance cost share of sales for small businesses is only 0.20 percent, with 26 of the 34 small businesses not expected to incur any additional costs because they are area sources or are permitted as synthetic minor HAP emission sources. After reviewing the range of costs to be borne by small businesses, EPA has determined the costs are typically small and that this action will not have a significant impact on a substantial number of small entities.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has nonetheless worked aggressively to minimize the impact of these standards on small entities, consistent with our obligations under the CAA. We solicited input from small entities during the data-gathering phase of the proposed rulemaking. We are including compliance options that give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-HAP coatings (i.e., pollution prevention) that meet the final standards instead of using add-on capture and control systems. This method of compliance can be demonstrated with minimum burden by using purchase and usage records. No testing of materials will typically be required as the facility owner will be allowed to show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer.

H. Paperwork Reduction Act

The information collection requirements for these final standards 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 EPA (ICR No. 1954.01) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at auby.susan@epa.gov, or by calling (202) 566–1672. 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 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 final standards require maintaining records of all coatings, thinners, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each monthly compliance period, mass fraction organic HAP, density, and, for coatings only, volume fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected sourcewide emissions for each monthly compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The MRR burden in the 5th year after the effective date of the promulgated rule is estimated to be 32,000 labor hours at a cost of $1.50 million for new and existing sources.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's rules are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register**.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or

more VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This rulemaking involves technical standards. The EPA cites the following standards in this rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A-F, and 311. The search and review results have been documented and are placed in the docket (Docket No. A–97–41) for this rule.

The four VCS described below were identified as acceptable alternatives to EPA test methods for the purposes of this rule.

The VCS, ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

The VCS, ASTM 1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' is cited in this rule for determining the density of coatings and the volatile matter in coatings.

The two VCS, ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' are cited in this rule as acceptable alternatives to EPA Method 24 to determine the volume solids content of coatings. Currently, EPA Method 24 does not have a procedure for determining the volume of solids in coatings. These standards augment the procedures in Method 24, which currently states that volume solids content be calculated from the coating manufacturer's formulation.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference (IBR) in EPA Method 24. Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are IBR in EPA Method 311.

In addition to the VCS EPA uses in this rule, the search for emissions measurement procedures identified eleven other VCS. The EPA determined that nine of these eleven standards identified for measuring emissions of the HAP or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. For further information on the determination of the eleven methods, see the docket for this rulemaking (Docket A–97–41).

Sections 63.4130, 63.4141, 63.4161, 63.4165, and 63.4166, and Table 1 of subpart NNNN list the EPA testing methods included in the final standards. Under § 63.7(f) of Subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 3, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is 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. Section 63.14 is amended by revising paragraphs (b)(24), (25), and (i) and adding a new paragraph (b)(26) to read as follows:

§ 63.14 Incorporations by reference

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings, IBR approved for §§ 63.4141(b)(1) and 63.5160(c).

(25) ASTM D6093–97, Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer, IBR approved for §§ 63.4141(b)(1) and 63.5160(c).

(26) ASTM D1475–98, Standard Test Method for Density of Liquid Coatings, Inks, and Related Products, IBR approved for §§ 63.4141(b)(3) and 63.4141(c).

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(i) The following material is available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2300, Fairfield, NJ 07007–2300; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112: ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, IBR approved for §§ 63.3360(d)(1)(iii), 63.4166(a)(3), and 63.5160(d)(1)(iii).

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3. Part 63 is amended by adding subpart NNNN to read as follows:

Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

Sec.

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Subpart NNNN—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

What This Subpart Covers

§ 63.4080 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants for large appliance surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4081 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a facility that applies coatings to large appliance parts or products, and is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP), except as provided in paragraph (d) of this section. A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year. You are not subject to this subpart if your large appliance surface coating facility is located at, or is part of, an area source of HAP emissions. An area source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that is not a major source.

(b) The large appliance surface coating source category includes any facility engaged in the surface coating of a large appliance part or product. Large appliance parts and products include but are not limited to cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and heating, ventilation, and air-conditioning (HVAC) units, air-conditioning (except motor vehicle) units, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps. Specifically excluded are heat transfer coils and large commercial and industrial chillers.

(c) The large appliance surface coating activities and equipment to which this subpart applies are listed in paragraphs (c)(1) through (9) of this section:

(1) Surface preparation of large appliance parts and products;

(2) Preparation of a coating for application (e.g., mixing in thinners and other components);

(3) Application of a coating to large appliance parts and products using, for example, spray guns or dip tanks;

(4) Application of porcelain enamel, powder coating, and asphalt interior soundproofing coating;

(5) Flash-off, drying, or curing following the coating application operation;

(6) Cleaning of equipment used in coating operations (e.g., application equipment, hangers, racks);

(7) Storage of coatings, thinners, and cleaning materials;

(8) Conveying of coatings, thinners, and cleaning materials from storage areas to mixing areas or coating application areas, either manually (e.g., in buckets) or by automated means (e.g., transfer through pipes using pumps); and

(9) Handling and conveying of waste materials generated by coating operations.

(d) This subpart does not apply to surface coating that meets any of the criteria of paragraphs (d)(1) through (5) of this section.

(1) The surface coating of large appliance parts such as metal or plastic handles, hinges, or fasteners that have a wider use beyond large appliances is not subject to this subpart.

(2) The surface coating of large appliances conducted for the purpose of repairing or maintaining large appliances used by a facility and not for commerce is not subject to this subpart unless organic HAP emissions from the surface coating itself are as high as the rates specified in paragraph (a) of this section.

(3) The surface coating of heat transfer coils or large commercial and industrial chillers.

(4) The provisions of this subpart do not apply to research or laboratory facilities; janitorial, building, and facility maintenance operations; hobby shops operated for noncommercial purposes or coating applications using hand-held non-refillable aerosol containers.

(5) The provisions of this subpart do not apply to processes involving metal plating or phosphating of a substrate.

(e) If you own or operate an affected source that is subject to this subpart and at the same affected source you also perform surface coating subject to any other subparts in this part, you may choose for the affected source to comply with only one subpart. In order to choose this alternative, the total mass of organic HAP emissions from all surface coating operations in the affected source

must be less than or equal to the total mass of organic HAP emissions that would result if it complied separately with all applicable subparts. You must make this comparison for the initial compliance period and report it in the Notification of Compliance Status as required in § 63.4110(b)(10) and in the Notification of Compliance Status required by the other subparts. If you choose this alternative, your demonstration of compliance with the other subpart constitutes compliance with this subpart.

§ 63.4082 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are part of the large appliance surface coating facility:

(1) All coating operations as defined in § 63.4181;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if you commenced its construction after July 23, 2002, and the construction is of a completely new large appliance surface coating facility where previously no large appliance surface coating facility had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.4083 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4140, 63.4150, and 63.4160.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section.

(1) If the initial startup of your new or reconstructed affected source is before July 23, 2002, the compliance date is July 23, 2002.

(2) If the initial startup of your new or reconstructed affected source occurs after July 23, 2002, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is July 25, 2005.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source, or the date the area source becomes a major source, or July 23, 2002, whichever is latest.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or July 25, 2005, whichever is later.

(d) You must meet the notification requirements in § 63.4110 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4090 What emission limits must I meet?

(a) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than 0.13 kilogram per liter (kg/liter) (1.1 pound per gallon (lb/gal)) of coating solids used during each compliance period.

(b) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than 0.022 kg/liter (0.18 lb/gal) of coating solids used during each compliance period.

§ 63.4091 What are my options for meeting the emission limits?

You must include all coatings, thinners, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.4090. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations as a group or to the entire affected source. You may use different compliance options for different coating operations or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.4130(c), and you must report it in the next semiannual compliance report required in § 63.4120.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.4090, and that each thinner and each cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4140, 63.4141, and 63.4142 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on data on the coatings, thinners, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4090. You must meet all the requirements of §§ 63.4150, 63.4151, and 63.4152 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on data on the coatings, thinners, and cleaning materials used in the coating operation(s) and the emission reductions achieved by emission capture and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4090. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.4092, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), and that you meet the work practice standards required in § 63.4093. You must meet all the requirements of §§ 63.4160 through 63.4168 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.4092 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material

option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4161(h), you must meet the operating limits specified in Table 1 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.4167. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 1 to this subpart or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the U.S. Environmental Protection Agency (EPA) Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4093 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the EPA, may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4100 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.4091(a) and (b), must be in compliance with the applicable emission limit in § 63.4090 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.4091(c), must be in compliance with the applicable emission limit in § 63.4090 and work practice standards in § 63.4093 at all times. Each controlled coating operation must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4092 at all times, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date specified for your affected source in § 63.4083 and the date when the initial emission capture system and add-on control device performance tests have been completed as specified in § 63.4160. This requirement does not apply to a solvent recovery system for which you conduct a liquid-liquid material balance according to § 63.4161(h) in lieu of conducting performance tests.

(d) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.4101 What parts of the General Provisions apply to me?

Table 2 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4110 What notifications must I submit?

(a) You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (a)(1) and (2) of this section.

(1) You must submit the Initial Notification required by § 63.9(b) for an existing affected source no later than July 23, 2003. For a new or reconstructed affected source, you must submit the Initial Notification no later than 120 days after initial startup or November 20, 2002, whichever is later.

(2) You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4140, § 63.4150, or § 63.4160 that applies to your affected source.

(b) The Notification of Compliance Status must contain the information specified in paragraphs (b)(1) through (10) of this section and the applicable information specified in § 63.9(h).

(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 the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4140, § 63.4150, or § 63.4160 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4091 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (b)(6)(i) and (ii) of this section.

(i) A description of and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.4090, include all the calculations you used to determine the kg organic HAP emitted per liter of coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers or test reports.

(7) For each of the data items listed in paragraphs (b)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.4141(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4151.

(8) The determination of kg organic HAP emitted per liter of coating solids used for the compliance option(s) you use, as specified in paragraphs (b)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example determination of the organic HAP content for one coating, according to § 63.4141(d).

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions; the calculation of the total volume of coating solids used; and the calculation of the organic HAP emission rate, using Equations 1, 1A through 1C, 2, and 3, respectively, of § 63.4151.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used, using Equations 1 and 1A through 1C of § 63.4151; the calculation of the total volume of coating solids used, using Equation 2 of § 63.4151; the calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1, 1A through 1C, 2, 3, and 3A through 3C of § 63.4161, as applicable; and the calculation of the organic HAP emission rate, using Equation 4 of § 63.4161.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (b)(9)(i) through (v) of this section, except that the requirements in paragraphs (b)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4093.

(v) A statement of whether or not you developed and implemented the startup, shutdown, and malfunction plan required by § 63.4100(d).

(10) If you have chosen for your affected source to comply with the requirements of another subpart in lieu of the requirements of this subpart, as allowed in § 63.4081(d), your Notification of Compliance Status must include a statement certifying your intent, as well as documentation and supporting materials showing that, during the initial compliance period, your affected source's total organic HAP emissions were equal to or less than the organic HAP emissions that would have resulted from complying separately with each applicable subpart.

§ 63.4120 What reports must I submit?

You must submit semiannual compliance reports for each affected source according to the requirements of this section. The semiannual compliance reporting requirements of this section may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(5) of this section.

(a) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1) through (4) of this section.

(1) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4140, § 63.4150, or § 63.4160 that applies to your affected source and ends on June 30 or December 31, whichever date is the first date following the end of the initial compliance period.

(2) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(3) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(4) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent semiannual compliance reports according to the dates the permitting authority has established instead of the date specified in paragraph (a)(3) of this section.

(5) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 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 an affected source submits a semiannual compliance report pursuant to this section 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 semiannual compliance report includes all required information concerning deviations from

any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(b) The semiannual compliance report must contain the information specified in paragraphs (b)(1) through (4) of this section and the information specified in paragraphs (c) through (j) of this section that is applicable to your affected source.

(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. The reporting period is the 6-month period ending on June 30 or December 31.

(4) Identification of the compliance option or options specified in § 63.4091 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(c) If there were no deviations from the emission limitations in §§ 63.4090, 63.4092, and 63.4093 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period.

(d) If you use the compliant material option and there was a deviation from the applicable emission limit in § 63.4090, the semiannual compliance report must contain the information in paragraphs (d)(1) through (4) of this section.

(1) Identification of each coating used that deviated from the emission limit, each thinner and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(2) The determination of the organic HAP content, according to § 63.4141(d), for each coating identified in paragraph (d)(1) of this section. You do not need to submit background data supporting this calculation, for example, information provided by coating suppliers or manufacturers or test reports.

(3) The determination of mass fraction of organic HAP for each thinner and cleaning material identified in paragraph (d)(1) of this section. You do not need to submit background data supporting this calculation, for example, information provided by material suppliers or manufacturers or test reports.

(4) A statement of the cause of each deviation.

(e) If you use the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4090, the semiannual compliance report must contain the information in paragraphs (e)(1) through (3) of this section.

(1) The beginning and ending dates of each compliance period during which the organic HAP emission rate exceeded the emission limit.

(2) The calculations used to determine the organic HAP emission rate for the compliance period in which the deviation occurred. You must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.4151; and, if applicable, the calculation used to determine the organic HAP in waste materials according to § 63.4151(e)(4). You do not need to submit background data supporting these calculations, for example, information provided by materials suppliers or manufacturers or test reports.

(3) A statement of the cause of each deviation.

(f) If you use the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(g) If you use the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (g)(1) through (14) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(1) The beginning and ending dates of each compliance period during which the organic HAP emission rate exceeded the applicable emission limit in § 63.4090.

(2) The calculations used to determine the organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used during the compliance period, using Equations 1, 1A through 1C, and 2 of § 63.4151 and, if applicable, the calculation used to determine the mass of organic HAP in waste materials according to § 63.4151(e)(4); the calculation of the total volume of coating solids used during the compliance period, using Equation 2 of § 63.4151; the calculation of the mass of organic HAP emission reduction during the compliance period by emission capture systems and add-on control devices, using Equations 1, 1A through 1C, 2, 3, and 3A through 3C of § 63.4161; and the calculation of the organic HAP emission rate, using Equation 4 of § 63.4161. You do not need to submit the background data supporting these calculations, for example, information provided by materials suppliers or manufacturers or test reports.

(3) The date and time that each malfunction started and stopped.

(4) A brief description of the CPMS.

(5) The date of the latest CPMS certification or audit.

(6) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(7) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(8) The date and time period of each deviation from an operating limit in Table 1 to this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(9) A summary of the total duration of each deviation from an operating limit in Table 1 to this subpart and bypass of the add-on control device during the semiannual reporting period and the total duration as a percent of the total source operating time during that semiannual reporting period.

(10) A breakdown of the total duration of the deviations from the operating limits in Table 1 to this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(11) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(12) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control

device since the last semiannual reporting period.

(13) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(14) A statement of the cause of each deviation.

(h) If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(i) [Reserved]

(j) If you use the emission rate with add-on controls option and you have a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (j)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan (SSMP), you must include the information specified in § 63.10(d)(5) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate startup, shutdown, and malfunction report as described in paragraphs (j)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile (fax), telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4130 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers such as manufacturer's formulation data or test data used to determine the mass fraction of organic HAP and density for each coating, thinner, and cleaning material and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, a record of the time periods (beginning and ending dates and times) and the coating operations at which each compliance option was used and a record of all determinations of kg organic HAP per liter of coating solids for the compliance option(s) you used, as specified in paragraphs (c)(1) through (3) of this section.

(1) For the compliant material option, a record of the determination of the organic HAP content for each coating, according to § 63.4141(d).

(2) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4151 and, if applicable, the calculations used to determine the mass of organic HAP in waste materials according to § 63.4151(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4151; and the calculation of the organic HAP emission rate, using Equation 3 of § 63.4151.

(3) For the emission rate with add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4151 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4151(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4151; the calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1, 1A through 1C, 2, 3, and 3A through 3C of § 63.4161, as applicable; and the calculation of the organic HAP emission rate, using Equation 4 of § 63.4161.

(d) A record of the name and volume of each coating, thinner, and cleaning material used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period except for zero-HAP coatings for which volume solids determination is not required as allowed in § 63.4141(a).

(g) A record of the density for each coating used during each compliance period except for zero-HAP coatings for which volume solids determination is not required as allowed in § 63.4141(a) and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, a record of the density for each thinner and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.4151 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4151(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.4151, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility, and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.4151.

(3) The methodology used in accordance with § 63.4151(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a

period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4165(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4164 and 63.4165(b) through (e) including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4165(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.4166.

(i) Records of each add-on control device performance test conducted according to §§ 63.4164 and 63.4166.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(8) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4167 and to document compliance with the operating limits as specified in Table 1 of this subpart.

(9) A record of the work practice plan required by § 63.4093, and documentation that you are implementing the plan on a continuous basis.

§ 63.4131 In what form and for 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). Where appropriate, the records may be maintained as electronic spreadsheets or as a data base.

(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 may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4140 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.4141. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. The initial compliance demonstration includes the determination according to § 63.4141 and supporting documentation showing that, during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.4090, and that you used no thinners or cleaning materials that contained organic HAP.

§ 63.4141 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation(s) in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.4090 and must use no thinner or cleaning material that contains organic HAP, as determined according to this section during the initial compliance period. Any coating operation(s) for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4092 and 63.4093, respectively. To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for the coating operation(s) using this option. Use the procedures in this section on each coating, thinner, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option. If the mass fraction of organic HAP of a coating equals zero, determined according to paragraph (a) of this section, and you use the compliant material option, you are not required to comply with

paragraphs (b) and (c) of this section for that coating.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (for example, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data if they represent each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 of this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3, and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 of this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by a test, by information provided by the supplier or the manufacturer of the material, or by calculation as specified in paragraphs (b)(1) through (3) of this section.

(1) *ASTM Method D2697–86 (Reapproved 1998) or D6093–97.* You may use ASTM Method D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' or D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, see § 63.14) to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(3) *Calculation of volume fraction of coating solids.* If the volume fraction of coating solids cannot be determined using the options in paragraphs (b)(1) and (2) of this section, you must determine it using Equation 1 of this section:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \qquad \text{(Eq. 1)}$$

Where:

V_s = volume fraction of coating solids, liters coating solids per liter coating.

$m_{volatiles}$ = total volatile matter content of the coating, including HAP, volatile organic compounds (VOC), water, and exempt compounds, determined according to Method 24 in appendix A of 40 CFR part 60, grams volatile matter per liter coating.

D_{avg} = average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14) information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other information sources, the test results will take precedence.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products'' (incorporated by reference, see § 63.14), information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other information sources, the test results will take precedence.

(d) Determine the organic HAP content of each coating. Determine the organic HAP content, kg organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 2 of this section, except that if the mass fraction of organic HAP equals zero, then the organic HAP content also equals zero and you are not required to use Equation 2 to calculate the organic HAP content:

$$H_c = (D_c)(W_c) / V_s \qquad \text{(Eq. 2)}$$

Where:

H_c = organic HAP content of the coating, kg organic HAP per liter coating solids.

D_c = density of coating, kg coating per liter coating, determined according to paragraph (c) of this section.

W_c = mass fraction of organic HAP in the coating, kg organic HAP per kg coating, determined according to paragraph (a) of this section.

V_s = volume fraction of coating solids, liters coating solids per liter coating, determined according to paragraph (b) of this section.

(e) The organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limit in § 63.4090; and each thinner and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.4130 and 63.4131. As part of the Notification of Compliance Status required in § 63.4110, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeds the applicable emission limit in § 63.4090, and you used no thinners or cleaning materials that contain organic HAP, determined according to paragraph (a) of this section.

§ 63.4142 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period, to demonstrate continuous compliance, you must use no coating for which the organic HAP content, determined according to § 63.4141(d), exceeds the applicable emission limit in § 63.4090, and use no thinner or cleaning material that contains organic HAP, determined according to § 63.4141(a). Each month following the initial compliance period described in § 63.4140 is a compliance period.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(d).

(c) As part of each semiannual compliance report required by § 63.4120, you must submit a statement that you were in compliance with the emission limitations during the reporting period because you used no thinners or cleaning materials that contained organic HAP, and you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4090.

(d) You must maintain records as specified in §§ 63.4130 and 63.4131.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4150 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4151. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. The initial compliance demonstration includes the calculations according to § 63.4151 and supporting documentation showing that the organic HAP emission rate for the initial compliance period was equal to or less than the applicable emission limit in § 63.4090.

§ 63.4151 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation(s) in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation(s) must meet the applicable emission limit in § 63.4090 but not the operating limits or work practice standards in §§ 63.4092 and 63.4093, respectively, during the initial compliance period. You must meet all of the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.4090 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period according to the requirements in § 63.4141(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during the compliance period according to the requirements in § 63.4141(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner, and cleaning material used during the compliance period according to the requirements in § 63.4141(c).

(d) *Determine the volume of each material used during the compliance period.* Determine the volume (liters) of each coating, thinner, and cleaning material used during the compliance period by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions during the compliance period.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners, and cleaning materials used during the compliance period minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the compliance period, kg.

A = total mass of organic HAP in the coatings used during the compliance period, kg, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners used during the compliance period, kg, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the compliance period, kg, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the compliance period, kg, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the kg organic HAP in the coatings used during the compliance period, using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the compliance period, kg.

$Vol_{c,i}$ = total volume of coating, i, used during the compliance period, liters.

$D_{c,i}$ = density of coating, i, kg coating per liter coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg organic HAP per kg coating.

m = number of different coatings used during the compliance period.

(2) Calculate the kg of organic HAP in the thinners used during the compliance period, using Equation 1B of this section:

$$B = \sum_{j=i}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass or organic HAP in the thinners used during the compliance period, kg.

$Vol_{t,j}$ = total volume of thinner, j, used during the compliance period, liters.

$D_{t,j}$ = density of thinner, j, kg thinner per liter thinner.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg organic HAP per kg thinner.

n = number of different thinners used during the compliance period.

(3) Calculate the kg organic HAP in the cleaning materials used during the compliance period, using Equation 1C of this section:

$$C = \sum_{k=1}^{P} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the compliance period, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the compliance period, liters.

$D_{s,k}$ = density of cleaning material, k, kg cleaning material per liter cleaning material.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg organic HAP per kg material.

p = number of different cleaning materials used during the compliance period.

(4) Determine the mass of organic HAP contained in waste materials sent to a TSDF. If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in the calculation of the mass of organic HAP emissions (Equation 1 of this section), then you must determine it according to paragraphs (e)(4)(i) through (v) of this section.

(i) You may include in the determination of organic HAP in waste materials only the waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include in the determination the organic HAP contained in wastewater.

(ii) You must determine either the amount of waste materials sent to a TSDF during the compliance period or the amount collected and stored during the compliance period and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a compliance period if you have already included them in the amount collected and stored during that compliance period or a previous compliance period.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document your methodology to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4130(h).

(v) To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used during the compliance period.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all of the coatings used during the compliance period, using Equation 2 of this section.

$$V_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = total volume of coating solids used during the compliance period, liters.

$Vol_{c,i}$ = total volume of coating, i, used during the compliance period, liters.

$V_{s,i}$ = volume fraction of coating solids for coating, i, liters solids per liter coating, determined according to § 63.4141(b).

m = number of coatings used during the compliance period.

(g) Calculate the organic HAP emission rate, kg organic HAP per liter coating solids used, using Equation 3 of this section:

$$H_{avg} = \frac{H_e}{V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{avg} = organic HAP emission rate for the compliance period, kg organic HAP per liter coating solids.

H_e = total mass organic HAP emissions from all materials used during the compliance period, kg, as calculated by Equation 1 of this section.

V_{st} = total volume coating solids used during the compliance period, liters, as calculated by Equation 2 of this section.

(h) The organic HAP emission rate for the initial compliance period must be less than or equal to the applicable emission limit in § 63.4090. You must keep all records as required by §§ 63.4130 and 63.4131. As part of the Notification of Compliance Status required by § 63.4110, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4090.

§ 63.4152 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.4151(a) through (g), must be less than or equal to the applicable emission limit in § 63.4090. Each month following the initial compliance period described in § 63.4150 is a compliance period.

(b) If the organic HAP emission rate for any compliance period exceeded the applicable emission limit in § 63.4090, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.4110(b)(6) and 63.4120(e).

(c) As part of each semiannual compliance report required by § 63.4120, you must submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4090.

(d) You must maintain records as specified in §§ 63.4130 and 63.4131.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4160 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (a)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS you use to demonstrate compliance must be installed and operating no later than the applicable compliance date specified in § 63.4183. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4164, 63.4165, and 63.4166, and establish the operating limits required by § 63.4092 no later than the compliance date specified in § 63.4083. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4161(h), you must initiate the first material balance no later than the compliance date specified in § 63.4083.

(2) You must develop and begin implementing the work practice plan required by § 63.4093 no later than the compliance date specified in § 63.4083.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4161. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next month. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4164, 63.4165, and 63.4166; results of liquid-liquid material balances conducted according to § 63.4161(h); calculations according to § 63.4161 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.4090(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4168; and documentation of whether you developed and implemented the work practice plan required by § 63.4093.

(b) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (b)(1) through (4) this section.

(1) All emission capture systems, add-on control devices, and CPMS you use to demonstrate compliance must be installed and operating no later than the applicable compliance date specified in § 63.4183. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4164, 63.4165, and 63.4166, and establish the operating limits required by § 63.4092 no later than 180 days after the applicable compliance date specified in § 63.4183. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4161(h), you must initiate the first material balance no later than 180 days after the applicable compliance date specified in § 63.4183.

(2) You must develop and begin implementing the work practice plan required by § 63.4093 no later than the compliance date specified in § 63.4083.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4161. The initial compliance period begins on the applicable compliance date specified in § 63.4083 and ends on the last day of the first full month after the compliance date, or the date you conduct the performance tests of the emission capture systems and add-on control devices, or initiate the first liquid-liquid material balance for a solvent recovery system; whichever is later. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4164, 63.4165, and 63.4166; results of liquid-liquid material balances conducted according to § 63.4161(h); calculations according to § 63.4161 and supporting documentation showing that, during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.4090(b); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4168; and documentation of whether you developed and implemented the work practice plan required by § 63.4093.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4092 until after you have completed the performance tests specified in paragraph (b)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (b)(1) of this section. This requirement does not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4161(h).

§ 63.4161 How do I demonstrate initial compliance?

You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation(s) in the affected source for which you do not use this option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limit in § 63.4090 and the work practice standards required in § 63.4093; and each controlled coating operation must meet the operating limits required in § 63.4092. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(a) Except as provided in § 63.4160(b)(4) and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.4161(h), you must establish and demonstrate continuous compliance

during the initial compliance period with the operating limits required by § 63.4092, using the procedures specified in §§ 63.4167 and 63.4168.

(b) You must develop, implement, and document your implementation of the work practice plan required by § 63.4093 during the initial compliance period as specified in § 63.4130.

(c) You must follow the procedures in paragraphs (d) through (l) of this section to demonstrate compliance with the applicable emission limit in § 63.4090.

(d) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.4151(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner, and cleaning material used during the compliance period, and the volume fraction of coating solids for each coating used during the compliance period.

(e) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4151, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners, and cleaning materials used during the compliance period in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(f) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during the compliance period. The emissions reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (g) of this section to calculate the mass of organic HAP emissions reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (h) of this section to calculate the organic HAP emissions reduction.

(g) *Calculate the organic HAP emissions reduction for controlled coating operations not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate organic HAP emissions reduction, using Equation 1 of this section, by applying the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during the compliance period. For any period of time a deviation specified in § 63.4163(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, you must assume zero efficiency for the emission capture system and add-on control device. For the purposes of completing the compliance calculations, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculations of organic HAP emissions reduction in Equation 1 of this section.

$$H_c = \left(A_I + B_I + C_I\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emissions reduction for the controlled coating operation during the compliance period, kg.

A_I = total mass of organic HAP in the coatings used in the controlled coating operation, kg, as calculated in Equation 1A of this section.

B_I = total mass of organic HAP in the thinners used in the controlled coating operation, kg, as calculated in Equation 1B of this section.

C_I = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the compliance period, kg, as calculated in Equation 1C of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4164 and 63.4165 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.4164 and 63.4166 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the kg of organic HAP in the coatings used in the controlled coating operation, using Equation 1A of this section:

$$A_I = \sum_{i=1}^{m}\left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A_I = mass of organic HAP in the coatings used in the controlled coating operation, kg.

$Vol_{c,i}$ = total volume of coating, i, used, liters.

$D_{c,i}$ = density of coating, i, kg per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, kg per kg.

m = number of different coatings used.

(2) Calculate the kg of organic HAP in the thinners used in the controlled coating operation, using Equation 1B of this section:

$$B_I = \sum_{j=1}^{n}\left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_I = mass of organic HAP in the thinners used in the controlled coating operation, kg.

$Vol_{t,j}$ = total volume of thinner, j, used, liters.

$D_{t,j}$ = density of thinner, j, kg per liter.

$W_{t,j}$ = mass fraction of organic HAP in thinner, j, kg per kg.

n = number of different thinners used.

(3) Calculate the kg of organic HAP in the cleaning materials used in the controlled coating operation during the compliance period, using Equation 1C of this section:

$$C_I = \sum_{k=1}^{p}\left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C_I = mass of organic HAP in the cleaning materials used in the controlled coating operation, kg.

$Vol_{s,k}$ = total volume of cleaning material, k, used, liters.

$D_{s,k}$ = density of cleaning material, k, kg per liter.
$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, kg per kg.
p = number of different cleaning materials used.

(h) *Calculate the organic HAP emissions reduction for controlled coating operations using liquid-liquid material balance.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emissions reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during the compliance period. Perform a liquid-liquid material balance for each compliance period as specified in paragraphs (h)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (h)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each compliance period. The device must be initially certified by the manufacturer to be accurate to within ±2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the compliance period, kg, based on measurement with the device required in paragraph (h)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating used in the coating operation controlled by the solvent recovery system during the compliance period, kg volatile organic matter per kg coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the compliance period, kg per liter, according to § 63.4151(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the compliance period, liters.

(6) Calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_v = 100 \frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i C_{Vi} + \sum_{j=1}^{n} Vol_j D_j + \sum_{k=1}^{p} Vol_k D_k} \quad \text{(Eq. 2)}$$

Where:
R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the compliance period, percent.
M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the compliance period, kg.
Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the compliance period, liters.
D_i = density of coating, i, kg coating per liter coating.
C_{Vi} = mass fraction of volatile organic matter for coating, i, kg volatile organic matter per kg coating.
Vol_j = volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the compliance period, liters.
D_j = density of thinner, j, kg thinner per liter thinner.
Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the compliance period, liters.
D_k = density of cleaning material, k, kg cleaning material per liter cleaning material
m = number of different coatings used in the coating operation controlled by the solvent recovery system during the compliance period.
n = number of different thinners used in the coating operation controlled by the solvent recovery system during the compliance period.
p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the compliance period.

(7) Calculate the mass of organic HAP emissions reduction for the coating operation controlled by the solvent recovery system during the compliance period, using Equation 3 of this section:

$$H_{CSR} = (A_I + B_I + C_I)\left(\frac{R_V}{100}\right) \quad \text{(Eq. 3)}$$

Where:
H_{CSR} = mass of organic HAP emissions reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the compliance period, kg.
A_I = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 1A of this section.
B_I = total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 1B of this section.
C_I = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, kg, calculated using Equation 1C of this section.
R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) [Reserved]

(j) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during the compliance period, using Equation 2 of § 63.4151.

(k) *Calculate the organic HAP emission rate.* Determine the organic HAP emission rate to the atmosphere, kg organic HAP per liter coating solids used during the compliance period, using Equation 4 of this section.

$$H_{HAP} = \frac{H_e - \sum_{i=1}^{q}\left(H_{C,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right)}{V_{st}} \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = organic HAP emission rate to the atmosphere during the compliance period, kg organic HAP per liter coating solids used.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings, thinners, and cleaning materials used during the compliance period, kg, determined according to paragraph (e) of this section.

$H_{C,i}$ = total mass of organic HAP emissions reduction for controlled coating operation, i, during the compliance period, kg, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emissions reduction for controlled coating operation, j, during the compliance period, kg, from Equation 3 of this section.

V_{st} = total volume of coating solids used during the compliance period, liters, from Equation 2 of § 63.4151.

q = number of controlled coating operations except those controlled with a solvent recovery system.

r = number of coating operations controlled with a solvent recovery system.

(l) To demonstrate initial compliance with the emission limit, calculated using Equation 4 of this section, must be less than or equal to the applicable emission limit in § 63.4090. You must keep all records as required by §§ 63.4130 and 63.4131. As part of the Notification of Compliance Status required by § 63.4110, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4090, and you achieved the operating limits required by § 63.4092 and the work practice standards required by § 63.4093.

§ 63.4162 [Reserved]

§ 63.4163 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.4090, the organic HAP emission rate for each compliance period determined according to the procedures in § 63.4161 must be equal to or less than the applicable emission limit in § 63.4090. Each month following the initial compliance period described in § 63.4160 is a compliance period.

(b) If the organic HAP emission rate for any compliance period exceeded the applicable emission limit in § 63.4090, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4092 that applies to you as specified in Table 1 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

(2) If an operating parameter deviates from the operating limit specified in Table 1 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4161, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculation of organic HAP emissions reductions in Equation 1 of § 63.4161.

(d) You must meet the requirements for bypass lines in § 63.4168(b). If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g). For the purposes of completing the compliance calculations specified in § 63.4161, you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation. You must not include those materials in the calculation of organic HAP emissions reductions in Equation 1 of § 63.4161.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4093. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4130(k)(9), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4110(b)(6) and 63.4120(g).

(f) As part of each semiannual compliance report required in § 63.4120, you must submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4090, and you achieved the operating limits required by § 63.4092 and the work practice standards required by § 63.4093 during each compliance period.

(g) During periods of startup, shutdown, and malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.4100(d).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. 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).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4130 and 63.4131.

§§ 63.4130 and 63.4131.

§ 63.4164 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4160 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under

representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4165 and of an add-on control device according to the requirements in § 63.4166.

(c) The performance test to determine add-on control device organic HAP destruction or removal efficiency must consist of three runs as specified in § 63.7(e)(3) and each run must last at least 1 hour.

§ 63.4165 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4160.

(a) You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off and coating, curing, and drying occurs within the capture system and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation, to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term VOC in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners, and cleaning materials used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = total mass of TVH liquid input from all coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run, kg.

TVH_i = mass fraction of TVH in coating, thinner, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, kg TVH per kg material.

Vol_i = total volume of coating, thinner, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = density of coating, thinner, or cleaning material, i, kg material per liter material.

n = number of different coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system, using Equation 2 of this section:

$$CE = \frac{\left(TVH_{used} - TVH_{uncaptured}\right)}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied and all areas where emissions from these applied coatings and materials subsequently occur such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, kg, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure other than the coating operation for which capture efficiency is being determined must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system, using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, kg.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, kg.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4166 How do I determine the add-on control device emission destruction or removal efficiency?

(a) For all types of add-on control devices, use the test methods as specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME, PTC 19.10–1981, ''Flue

and Exhaust Gas Analyses'' (incorporated by reference, see § 63.14).

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high-volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c [12][0.0416]\left[10^{-6}\right] \quad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mm Hg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section.

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad \text{(Eq. 2)}$$

Where:

DRE = add-on control device organic emissions destruction or removal efficiency, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4167 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4160 and described in §§ 63.4164, 63.4165, and 63.4166, you must establish the operating limits required by § 63.4092 according to this section unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4092.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature just before the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e.,* conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system including the burner assembly and fuel supply lines for problems and, as necessary, adjusting the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine

destruction efficiency according to § 63.4166.

(c) *Carbon adsorbers.* If your add-on control device is a carbon absorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon absorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4165(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 to this subpart.

(1) During the capture efficiency determination required by § 63.4160 and described in §§ 63.4164 and 63.4165, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4168 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation except as specified in paragraph (a)(6) of this section.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Except for periods of required quality assurance or control activities, any period during which the CPMS fails to operate and record data continuously as required by paragraph (a)(1) of this section, or generates data that cannot be included in calculating averages as specified in paragraph (a)(6) of this section, is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must comply with the requirements of paragraphs (a)(3) through (5) and (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You

must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shutdown the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4120.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (a) and (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you establish operating limits according to § 63.6167(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(3) For each gas temperature monitoring device, you must comply with the requirements in paragraphs (c)(3)(i) through (vii) of this section.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor's reading.

(vi) Any time the sensor exceeds the manufacturer's specified maximum operating temperature range, either conduct calibration and validation checks or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent, capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (a) and (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the requirements in paragraph (a) of this section and the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the

pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4180 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of 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 EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the work practice standards in § 63.4093 under § 63.6(g).

(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.

§ 63.4181 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Add-on control device means an air pollution control device, such as a thermal oxidizer or carbon absorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings and cleaning materials, both at the point of application and at subsequent points where emissions from the coatings and cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials such as dirt, grease, oil, and dried or wet coating (e.g., depainting) from a substrate before or after coating application or from equipment associated with a coating operation such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes cleaning materials used for substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. For the purposes of this subpart, coatings include paints, porcelain enamels, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating (surface preparation), to apply coating to a substrate (coating application) and to dry or cure the coating after application, or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Applications of coatings using hand-held, nonrefillable aerosol containers, touchup markers, or marking pens are not coating operations for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart used to sample, condition (if applicable), analyze, and provide a record of coating operation, capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

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 limit, or 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 limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Facility maintenance means the routine repair or refurbishing (including surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the facility or that are necessary for the facility to function in its intended capacity. It does not mean cleaning of equipment that is part of a large appliances coating operation.

Heat transfer coil means a tube-and-fin assembly used in large appliance

products to remove heat from a circulating fluid.

Large appliance part means a component of a large appliance product except for the wider use parts excluded under § 63.4081(d)(1).

Large appliance product means, but is not limited to, any of the following products (except as provided under § 63.4081(d)(3)) manufactured for household, recreational, institutional, commercial, or industrial use:

(1) Cooking equipment (ovens, ranges, and microwave ovens but not including toasters, counter-top grills, and similar small products);

(2) Refrigerators, freezers, and refrigerated cabinets and cases;

(3) Laundry equipment (washers, dryers, drycleaning machines, and pressing machines);

(4) Dishwashers, trash compactors, and water heaters; and

(5) HVAC units, air-conditioning (except motor vehicle) units, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps.

Specifically excluded are heat transfer coils and large commercial and industrial chillers.

Large commercial and industrial chillers means, for the purposes of this subpart, equipment designed to produce chilled water for use in commercial or industrial HVAC systems.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.4141. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as kg organic HAP per kg of material.

Month means a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating, calculated using Equation 2 of § 63.4141. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to a substrate for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oils includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products conducted under the close supervision of technically trained personnel and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate including use of cleaning material to remove dried coating which is sometimes called ''depainting.''

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which no organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating, expressed as liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Tables to Subpart NNNN of Part 63

TABLE 1 TO SUBPART NNNN OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

[If you are required to comply with operating limits by § 63.4092, you must comply with the applicable operating limits in the following table]

For following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4167(a).	i. collecting the combustion temperature data according to § 63.4168(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the combustion temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4167(b); and either.	i. collecting the temperature data according to § 63.4168(c); ii. reducing the data to 3-hour block before the averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.

TABLE 1 TO SUBPART NNNN OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

[If you are required to comply with operating limits by § 63.4092, you must comply with the applicable operating limits in the following table]

For following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
	b. ensure that average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.4167(b)(2); or.	i. collecting the temperature data according to § 63.4168(c); ii. reducing the data to 3-hour block difference across averages; and iii. maintaining the 3-hour average temperature difference at or above the temperature difference limit.
	c. develop and implement an inspection and maintenance plan according to § 63.4167(b)(4).	i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.4167(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.4167(c).	i. measuring the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle according to § 63.4168(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.4167(c).	i. measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.4168(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.4167(d).	i. collecting the condenser outlet (product side) gas temperature according to § 63.4168(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas exceed the temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.4167(e).	i. collecting the temperature data according to 63.4168(f); ii. reducing the data to 3-hour block averaged; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.4167(e).	i. collecting the pressure drop data according to 63.4168(f); and ii. reducing the pressure drop data to across the 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to § 63.4165(a).	a. the direction of the air flow at all times must be into the enclosure; and either.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.4168(g)(1) or the pressure drop across the enclosure according to § 63.4168(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or.	See item 6.a. of this table.
	c. the pressure drop across the enclosure must be at least 0.007 inch H2O, as established in Method 204 of appendix M to 40 CFR part 51.	See item 6.a. of this table.

TABLE 1 TO SUBPART NNNN OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

[If you are required to comply with operating limits by § 63.4092, you must comply with the applicable operating limits in the following table]

For following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
7. emission capture system that is not a PTE according to § 63.4165(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.4167(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.4168(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart NNNN is also specified in § 63.4081.
§ 63.1(c)(1)	Applicability After Standard Established	Yes	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart NNNN.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes	
§ 63.2	Definitions	Yes	Additional definitions are Specified in § 63.4181.
§ 63.3(a)–(c)	Units and Abbreviations	Yes	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes	
§ 63.4(b)–(c)	Circumvention/Severability	Yes	
§ 63.5(a)	Construction/Reconstruction	Yes	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	Section 63.4083 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	Section 63.4083 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add—on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an and add—on control device to comply with the standards.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes	
§ 63.6(h)	Compliance With Opacity/Visible Emission standards.	No	Subpart NNNN does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes	
§ 63.6(j)	Presidential Compliance Exemption	Yes	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4164, 63.4165, and 63.4166.

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for caputre system and control device efficiency at sources using these to comply with the standards. Section 63.4160 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.4168.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart NNNN does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes	
§ 63.8(c)(1)–(3)	Continuous Monitoring Systems (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4168.
§ 63.8(c)(4)	CMS	No	Section 63.4168 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart NNNN does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	Section 63.4168 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	Section 63.4120 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	Sections 63.4167 and 63.4168 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart NNNN does not have opacity or visible emission standards.

TABLE 2 TO SUBPART NNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNN—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart NNNN	Explanation
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	Section 63.4110 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes	
§ 63.9(j)	Change in Previous Information	Yes	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.4130 and 63.4131.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for startup, shutdown, and malfunction records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2)(vi)–(xi)		Yes	
§ 63.10(b)(2)(xii)	Records	Yes	
§ 63.10(b)(2)(xiii)		No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4120(a)(7).
§ 63.10(c)(9)–(15)		Yes	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4120.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4120(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart NNNN does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply with the standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart NNNN does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	Section 63.4120(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart NNNN does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes	
§ 63.11	Control Device Requirements/Flares	No	Subpart NNNN does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes	
§ 63.13	Addresses	Yes	
§ 63.14	Incorporation by Reference	Yes	
§ 63.15	Availability of Information/Confidentiality	Yes	

TABLE 3 TO SUBPART NNNN OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.

TABLE 3 TO SUBPART NNNN OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

TABLE 4 TO SUBPART NNNN OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene.
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] e.g., Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] e.g., Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

[FR Doc. 02–17311 Filed 7–22–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
July 23, 2002

Part III

Department of the Treasury

31 CFR Part 103

Office of the Comptroller of the Currency

12 CFR Part 21

Office of Thrift Supervision

12 CFR Part 563

Federal Reserve System

12 CFR Parts 208 and 211

Federal Deposit Insurance Corporation

12 CFR Part 326

National Credit Union Administration

12 CFR Part 748

Commodity Futures Trading Commission

17 CFR Part 1

Securities and Exchange Commission

17 CFR Part 240

Transactions and Customer Identification Programs; Proposed Rules

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 21

[Docket No. 02–11]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 211

[Docket No. R–1127]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 326

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[No. 2002–27]

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Customer Identification Programs for Banks, Savings Associations, and Credit Unions

AGENCIES: The Financial Crimes Enforcement Network, Treasury; Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies) are jointly issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. The proposed regulation applies to banks, savings associations, and credit unions.

DATES: Written comments on the proposed rule may be submitted on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail or fax comments. Comments should be sent by one method only. Financial institution commenters are encouraged to submit comments only to their Federal functional regulator. Non-financial institution commenters are encouraged to submit comments only to FinCEN. All comments will be considered by Treasury and the Agencies in formulating the final rule.

OCC: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention; Docket No. 02–11; FAX number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov.* Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1127 and may be mailed to Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; sent by FAX to (202) 452–3819 or (202) 452–3102; or sent by e-mail to *regs.comments@federalreserve.gov.* Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12 (except as provided in section 261.14) of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Comments should be directed to: Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. In addition, comments may be sent by fax to (202) 898–3838, or by electronic mail to *comments@FDIC.gov.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m., on business days.

OTS: Comments may be mailed to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2002–27; FAX number (202) 906–6518, Attention: No. 2002–27; or Internet address *regs.comments@ots.treas.gov,* Attention: No. 2002–27 and include your name and telephone number. Comments may also be hand delivered to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, No. 2002–27. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, you may inspect comments at the Public Reading Room, 1700 G St. NW., by appointment. To make an appointment for access, you may call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the business day after the date we receive a request.

NCUA: Direct comments to the Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may fax comments to (703) 518–6319, or e-mail comments to *regcomments@NCUA.gov.* To inspect comments, please contact the Office of General Counsel, (703) 518–6540; or the Office of Examination and Insurance, (703) 518–6360.

FinCEN: Comments may be mailed to FinCEN, Section 326 Bank Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption ''Attention: Section 326 Bank Rule Comments'' in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington,

DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

OCC: Office of the Chief Counsel (202) 874–3295.

Board: Enforcement and Special Investigations Sections: (202) 452–5235; (202) 728–5829; or (202) 452–2961.

FDIC: Special Activities Section, Division of Supervision, and Legal Division at (202) 898–3671.

OTS: Office of the Chief Counsel, (202) 906–6012.

NCUA: Office of General Counsel, (703) 518–6540; or Office of Examination and Insurance, (703) 518–6360.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Public Law 107–56. Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary to prescribe regulations setting forth minimum standards for financial institutions that relate to the identification and verification of any person who applies to open an account.

Section 326 applies to all ''financial institutions.'' This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. See 31 U.S.C. 5312(a)(2).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Agencies, the SEC, and the CFTC (the Federal functional regulators). Final regulations implementing section 326 must be effective by October 25, 2002.

Section 326 of the Act provides that the regulations must contain certain requirements. At a minimum, the regulations must require financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available. The following proposal is being issued jointly by Treasury and the Agencies. It applies only to a financial institution that is a ''bank'' as defined in 31 CFR 103.11(c) that is subject to regulation by one of the Agencies,[1] and any foreign branch of an insured bank. Regulations governing the applicability of section 326 to other financial institutions, including section 4(k) institutions regulated by the SEC and the CFTC, will be issued separately.

Treasury, the Agencies, the SEC, and the CFTC consulted extensively in the development of all rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury under its own authority is proposing conforming amendments to 31 CFR 103.34, which currently imposes requirements concerning the identification of bank customers.

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed rule will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, each of the Agencies is also proposing to add a nonsubstantive provision in its own regulations in either 12 CFR part 21, 12 CFR parts 208 and 211, 12 CFR part 326, 12 CFR part 563, or 12 CFR part 748, that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-references will be included in individual final rules published concurrently with the joint final rule issued by Treasury and the Agencies implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Regulations Implementing Section 326

Definitions

Section 103.121(a)(1) Account. The proposed rule's definition of ''account'' is based on the statutory definition of ''account'' that is used in section 311 of the Act. ''Account'' means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. For example, a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an account.

Section 311 of the Act does not require that this definition be used for regulations implementing section 326 of the Act. However, to the extent possible, Treasury and the Agencies propose to apply consistent definitions for each of the regulations implementing the Act to reduce confusion. ''Deposit accounts'' and ''transaction accounts,'' which as previously noted, are considered ''accounts'' for purposes of this rulemaking, are themselves defined terms. In addition, the term ''account'' is limited to banking and business relationships established to provide ''ongoing'' services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Section 103.121(a)(2) Bank. As discussed above, the proposal adopts the definition of ''bank'' already used in 31 CFR 103.11(c), which encompasses

[1] Published elsewhere in this separate part of this issue of the **Federal Register** is a separate Treasury proposal implementing section 326 for banks that are not subject to regulation by a Federal functional regulator, including certain state-chartered uninsured trust companies and non-federally insured credit unions.

virtually all of the financial institutions regulated by the Agencies, including banks, savings associations, and credit unions. Any branch, agency, or representative office of a foreign bank in the United States, as well as any Edge corporation, would be subject to this joint regulation under the existing definition of ''bank.''[2] However, the definition is modified to include ''any foreign branch of an insured bank'' to make clear that the procedures required by this regulation must be implemented throughout the bank, no matter where its offices are located. These procedures also apply to bank subsidiaries to the same extent as existing BSA compliance program requirements. We note that securities broker-dealers, futures commission merchants, insurance companies, and investment companies will be subject to forthcoming rules implementing section 326, whether or not they are affiliated with a bank.

Section 103.121(a)(3) Customer. The proposed rule defines ''customer'' to mean any person seeking to open a new account. Accordingly, the term ''customer'' includes a person applying to open an account, but would not cover a person seeking information about an account, such as rates charged or interest paid on an account, if the person does not actually open an account. ''Customer'' includes both individuals and other persons such as corporations, partnerships, and trusts. In addition, any person seeking to open an account at a bank, on or after the effective date of the final rule, will be a ''customer,'' regardless of whether that person already has an account at the bank.

The proposed rule also defines a ''customer'' to include any signatory on an account. Thus, for example, an individual with signing authority over a corporate account is a ''customer'' within the meaning of the proposed rule. A signatory can become a ''customer'' when the account is opened or when the signatory is added to an existing account.

The requirements of section 326 of the Act apply to any person ''seeking to open a new account.'' Accordingly, transfers of accounts from one bank to another, that are not initiated by the customer, for example, as a result of a merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed regulation.[3]

Section 103.121(a)(4) Federal functional regulator. The proposed rule defines ''Federal functional regulator'' by reference to § 103.120(a)(2). Accordingly, this term means each of the Agencies (as well as the SEC and the CFTC)

Section 103.121(a)(5) Person. The proposed rule defines ''person'' by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities.

Section 103.121(a)(6) U.S. Person. Under the proposed rule, for an individual, ''U.S. person'' means a U.S. citizen. For persons other than an individual, ''U.S. person'' means an entity established or organized under the laws of a State or the United States. A non-U.S. person is defined in § 103.121(a)(7) as a person who does not satisfy these criteria.

Section 103.121(a)(8) Taxpayer identification number. The proposed rule continues the provision in current § 103.34(a)(4), which provides that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes a taxpayer identification number.

Customer Identification Program: Minimum Requirements

Section 103.121(b)(1) General Rule. Section 326 of the Act requires Treasury and the Agencies to jointly issue a regulation that establishes minimum standards regarding the identity of any customer who applies to open an account. Section 326 then prescribes three procedures that Treasury and the Agencies must require institutions to implement as part of this process: (1) Identification and verification of persons seeking to open an account; (2) recordkeeping; and (3) comparison with government lists.

Rather than imposing the same list of specific requirements on every bank, regardless of its circumstances, the proposed regulation requires all banks to implement a Customer Identification Program (CIP) that is appropriate given the bank's size, location, and type of business. The proposed regulation requires a bank's CIP to contain the statutorily prescribed procedures, describes these procedures, and details certain minimum elements that each of the procedures must contain.

In addition, the proposed rule requires that the CIP be written and that it be approved by the bank's board of directors or a committee of the board. This latter requirement highlights the responsibility of a bank's board of directors to approve and exercise general oversight over the bank's CIP.

Under the proposed regulation, the CIP must be incorporated into the bank's anti-money laundering (BSA) program.[4] A bank's BSA program must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Each of these requirements also applies to a bank's CIP.

Unlike other sections of 31 CFR 103, the proposed regulation explicitly states that the CIP must be a part of a bank's BSA program. This language is included to make clear that the CIP is not a separate program. However, this statement should not be read to create any negative inference about a bank's need to establish and maintain a BSA program that is designed to ensure compliance with all other sections of 31 CFR 103.

Section 103.121(b)(2) Identity Verification Procedures. Under section 326 of the Act, the regulations issued by Treasury and the Agencies must require banks to implement and comply with reasonable procedures for verifying the identity of any person seeking to open an account, to the extent reasonable and practicable. The proposed regulation implements this requirement by providing that each bank must have risk-based procedures for verifying the identity of a customer that take into consideration the types of accounts that banks maintain, the different methods of opening accounts, and the types of identifying information available. These procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Under the proposed regulation, a bank must first have procedures that specify

[2] Section 103.11(c) defines bank to include ''each agent, agency, branch, or office within the United States of any person doing business in one or more of the capacities listed below: * * *. (8) a bank organized under foreign law; (9) any national banking association or corporation acting under the provisions of section [25a] of the [Federal Reserve Act] (12 U.S.C. 611–32).''

[3] However, there may be situations involving the transfer of accounts where it would be appropriate for a bank to verify the identity of customers associated with the accounts that it is acquiring. Therefore, Treasury and the Agencies expect procedures for transfers of accounts to be part of a bank's existing BSA program.

[4] All insured depository institutions currently must have a BSA program. See 12 CFR 21.21 (OCC), 12 CFR 208.63 (Board), 12 CFR 326.8 (FDIC), 12 CFR 563.177 (OTS), and 12 CFR 748.2 (NCUA). In addition, all financial institutions are required by 31 U.S.C. 5318(h) to develop and implement an anti-money laundering program.

the identifying information that the bank must obtain from any customer. The proposed regulation also sets forth certain, minimal identifying information that a bank must obtain prior to opening an account or adding a signatory to an account. Second, the bank must have procedures describing how the bank will verify the identifying information provided. The bank must have procedures that describe when it will use documents for this purpose and when it will use other methods, either in addition or as an alternative to using documents for the purpose of verifying the identity of a customer.

While a bank's CIP must contain the identity verification procedures set forth above, these procedures are to be risk-based. For example, a bank need not verify the identifying information of an existing customer seeking to open a new account, or who becomes a signatory on an account, if the bank (1) previously verified the customer's identity in accordance with procedures consistent with this regulation, and (2) continues to have a reasonable belief that it knows the true identity of the customer. The proposal requires a bank to exercise reasonable efforts to ascertain the identity of each customer.

Although the main purpose of the Act is to prevent and detect money laundering and the financing of terrorism, Treasury and the Agencies anticipate that the proposed regulation will ultimately benefit consumers. In addition to deterring money laundering and terrorist financing, requiring every bank to establish comprehensive procedures for verifying the identity of customers should reduce the growing incidence of fraud and identity theft involving new accounts.[5]

Section 103.121(b)(2)(i) Information Required. The proposed regulation provides that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. At a minimum, a bank must obtain from each customer the following information prior to opening an account or adding a signatory to an account: name; address; for individuals, date of birth; and an identification number, described in greater detail below. To satisfy the requirement that a bank obtain the address of a customer, Treasury and the Agencies expect a bank to obtain both the address of an individual's residence and, if different, the individual's mailing address. For customers who are not individuals, the bank should obtain an address showing the customer's principal place of business and, if different, the customer's mailing address.

For U.S. persons a bank must obtain a U.S. taxpayer identification number (*e.g.,* social security number, individual taxpayer identification number, or employer identification number). For non-U.S. persons a bank must obtain one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The basic information that banks would be required to obtain under this proposed regulation reflects the type of information that financial institutions currently obtain in the account-opening process and is similar to the identifying information currently required for each deposit or share account opened (*see* 31 CFR 103.34(a)(1)). The proposed regulation uses the term ''similar safeguard'' to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs.

Treasury and the Agencies recognize that a new business may need access to banking services, particularly a bank account or an extension of credit, before it has received an employer identification number from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that a taxpayer identification number must be provided prior to establishing or adding a signatory to an account. Accordingly, a CIP may permit a bank to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the CIP must require that the bank obtain a copy of the application before it opens or adds a signatory to the account and obtain the employee identification number within a reasonable period of time after an account is established or a signatory is added to an account. Currently, the IRS indicates that the issuance of an employer identification number can take up to five weeks. This length of time, coupled with when the person applied for the employer identification number, should be considered by the bank in determining the reasonable period of time within which the person should provide its employer identification number to the bank.

Section 103.121(b)(2)(ii) Verification. The proposed regulation provides that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with § 103.121(b)(2)(i), within a reasonable period of time after the account is opened. Treasury and the Agencies considered proposing that a customer's identity be verified before an account is opened or within a specific time period after the account is opened. However, we recognize that such a position would be unduly burdensome for both banks and customers and therefore contrary to the plain language of the statute, which states that the procedures must be both reasonable and practicable. The amount of time it will take an institution to verify identity may depend upon the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. In addition, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provides a bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.[6]

Section103.121(b)(2)(ii)(A) Verification Through Documents. The CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. For individuals, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For corporations, partnerships, trusts, and other persons that are not individuals, these may be documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

Section 103.121(b)(2)(ii)(B) Non-Documentary Verification. The proposed regulation provides that a

[5] Last year, over 86,000 complaints were logged into the Identity Theft Complaint database established by the Federal Trade Commission (FTC). Forms of identity theft commonly reported included (1) credit card fraud, where one or more new credit cards were opened in the victim's name; (2) bank fraud, where a new bank account was opened in the victim's name; and (3) fraudulent loans, where a loan had been obtained in the victim's name. *See* Statement of J. Howard Beales, Director, Bureau of Consumer Protection, FTC, to the Senate Committee on the Judiciary, Subcommittee on Technology, March 20, 2002.

[6] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.,* 31 CFR 500, prohibiting transactions involving designated foreign countries or their nationals.

bank's CIP also must contain procedures describing non-documentary methods the bank will use to verify identity and when these methods will be used in addition to, or instead of, relying on documents. For example, the procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Treasury and the Agencies believe that banks typically require documents to be presented when an account is opened face-to-face. Although customers usually satisfy these requirements by presenting government-issued identification documents bearing a photograph, such as a driver's license or passport, Treasury and the Agencies recognize that some customers legitimately may be unable to present those customary forms of identification when opening an account. For example, an elderly person may not have a valid driver's license or passport. Under these circumstances, Treasury and the Agencies expect that banks will provide products and services to those customers and verify their identities through other methods. Similarly, a bank may be unable to obtain original documents to verify a customer's identity when an account is opened by telephone, by mail, and over the Internet. Thus, when an account is opened for a customer who is not physically present, a bank will be permitted to use other methods of verification, to the extent set forth in the CIP.

While other verification methods must be used when a bank cannot examine original documents, Treasury and the Agencies also recognize that original identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, banks are encouraged to use other verification methods, even when a customer has provided original documents.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. The risk that the bank will not know the customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in jurisdictions that have been designated by the United States as a primary money laundering concern or have been designated as non-cooperative by an international body. As a bank's identity verification procedures should be risk-based, they should identify types of accounts that pose a heightened risk, and prescribe additional measures to verify the identity of any person seeking to open an account and the signatory for such accounts.

The proposed regulation gives examples of other non-documentary verification methods that a bank may use in the situations described above. These methods could include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).[7]

Section 103.121(b)(2)(iii) Lack of Verification. The proposed regulation also states that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer.

Generally, a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[8] Thus, a bank should have procedures that specify the actions that it will take when it cannot form a reasonable belief that it knows the true identity of a customer, including when an account should not be opened. In addition, a bank's CIP should have procedures that address the terms under which a customer may conduct transactions while a customer's identity is being verified. The procedures also should specify at what point, after attempts to verify a customer's identity have failed, a customer's account that has been opened should be closed. Finally, if a bank cannot form a reasonable belief that it knows the identity of a customer, the procedures should also include determining whether a Suspicious Activity Report should be filed in accordance with applicable law and regulation.

Section 103.121(b)(3) Recordkeeping. Section 326 of the Act requires reasonable procedures for maintaining records of the information used to verify a person's name, address, and other identifying information. The proposed regulation sets forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank is required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the bank must maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain.[9] The bank also must record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the bank must record the resolution of any discrepancy in the identifying information obtained. The bank must retain all of these records for five years after the date the account is closed.

Treasury and the Agencies emphasize that the collection and retention of information about a customer, such as an individual's race or sex, as an ancillary part of collecting identifying information do not relieve a bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, age, or other prohibited classifications.

Nothing in this proposed regulation modifies, limits or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this regulation, as long as the records are accurate and remain

[7] Treasury and the Agencies understand that most banks currently make use of technology that permits instantaneous negative, positive, and logical verification of identity.

[8] There are some exceptions to this basic rule. For example, a bank may maintain an account, at the direction of a law enforcement or intelligence agency, although the bank does not know the true identity of a customer.

[9] The bank need not keep a separate record of the identifying information provided by the customer if this information clearly appears on the copy of the document maintained by the bank.

accessible in accordance with 31 CFR 103.38(d).

Section 103.121(b)(4) Comparison with Government Lists. Section 326 of the Act also requires reasonable procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government.

In addition, the proposed rule states that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists. This provision makes clear that a bank must have procedures for responding to circumstances when the bank determines that a customer is named on a list.

Section 103.121(b)(5) Customer Notice. Section 326 of the Act states that customers of financial institutions shall be required to comply with the identity verification procedures described above ''after being given adequate notice.'' Therefore, a bank's CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. A bank may satisfy the notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. For example, the bank may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the bank may also provide notice electronically.

Section 103.121(c) Exemptions. Section 326 states that the Secretary (and, in the case of section 4(k) institutions, the appropriate Federal functional regulator, as defined in section 103.120(a)(2)), may by regulation or order, exempt any financial institution or type of account from the requirements of this regulation in accordance with such standards and procedures as the Secretary may prescribe.

Under the proposed rule, the appropriate Federal functional regulator, with the concurrence of Treasury, may by order or regulation exempt any bank or type of account from the requirements of this section. In issuing such exemptions, the Federal functional regulator and the Treasury shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, consistent with safe and sound banking, and in the public interest. The Federal functional regulator and Treasury also may consider other necessary and appropriate factors.

Section 103.121(d) Other Information Requirements Unaffected. This section provides that nothing in section 103.121 shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in section 103.121, as well as with the provisions of section 103.22, which require that certain information concerning the transaction be reported by filing a Cash Transaction Report (CTR).

B. Conforming Amendments to 31 CFR 103.34

Current section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Generally, sections 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. Treasury and the Agencies believe that the requirements of section 103.34(a)(1) and (2) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with proposed section 103.121.

Section 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons [10] opening certain deposit accounts. This proposed rule does not contain any exemptions from the CIP requirements.

Treasury and the Agencies are requesting comments on whether any of these exemptions should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act.

Section 103.34(a)(4) provides that section 6109 of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service (IRS) promulgated thereunder shall determine what constitutes a taxpayer identification number. This provision is continued in proposed section 103.121(a)(8). Section 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. Treasury and the Agencies believe that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of ''any'' person seeking to open an account.

For these reasons, Treasury, under its own authority, is proposing to repeal section 103.34(a).

Section 103.34(b) sets forth certain recordkeeping requirements for banks. Among other things, section 103.34(b)(1) requires a bank to keep ''any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number).'' Treasury and the Agencies believe that the quoted language in section 103.34(b)(1) is inconsistent with the requirements of proposed section 103.121. For this reason, Treasury, under its own authority, is proposing to delete the quoted language.

C. Technical Amendment to 31 CFR 103.11(j)

Section 103.11(j), which defines the term ''deposit account,'' contains an

[10] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened at part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

obsolete reference to the definition of ''transaction account,'' which is defined in section 103.11(hh). Under its own authority, Treasury is proposing to correct this reference.

III. Request for Comments

Treasury and the Agencies invite comment on all aspects of this rulemaking, and specifically seek comment on the following issues:

1. Whether the proposed definition of ''account'' is appropriate and whether other examples of accounts should be added to the regulatory text.

2. How the proposed regulation should apply to various types of accounts that are designed to allow a customer to transact business immediately.

3. Whether the definition of ''bank'' in the proposed regulation should be amended with respect to the foreign branches of banks by (i) excluding foreign branches or (ii) clarifying that a foreign branch must comply only to the extent that the bank's program does not contravene applicable local law. Treasury and the Agencies request that commenters cite and describe any potentially conflicting foreign laws that may apply to the foreign branches of banks.

Comment is requested on this issue because Treasury and the Agencies recognize that interpreting the BSA to apply to the foreign branch of a U.S. depository institution could cause practical and legal problems for that institution if the branch has a conflicting obligation under applicable local law. The regulation, if adopted as proposed, may place a foreign branch in a position of potentially violating local law by implementing aspects of its bank's CIP, which is described more fully in the Supplemental Information, above.

4. Ways that banks can comply with the requirement that a bank obtain both the address of an individual's residence, and, if different, the individual's mailing address in situations involving individuals who lack a permanent address.

5. Whether non-U.S. persons that are not individuals will be able to provide a bank with the identifying information required in section 103.121(b)(2)(i)(D)(2), or whether other categories of identifying information should be added to this section to permit non-U.S. persons that are not individuals to open accounts. Commenters on this issue should suggest other means of identification that banks currently use or should use.

6. Whether the proposed regulation will subject banks to conflicting State laws. Treasury and the Agencies request that commenters cite and describe any potentially conflicting State laws.

7. The extent to which the verification procedures required by the proposed regulation make use of information that banks currently obtain in the account opening process. Treasury and the Agencies note that the legislative history of section 326 indicates that Congress intended ''the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process.'' *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

8. Whether any of the exemptions from the customer identification requirements contained in current section 103.34(a)(3) should be continued in section 103.121(c). In this regard, Treasury and the Agencies request that commenters address the standards set forth in proposed section 103.121(c) (as well as any other appropriate factors).

IV. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board, FDIC, and OTS to use plain language in all proposed and final rules published after January 1, 2000. Therefore, these agencies specifically invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' unless the agency certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 603, 605(b).[11]

The Agencies have reviewed the impact of this proposed rule on small banks. Treasury and the Agencies certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule closely parallel the requirements for customer identification programs mandated by section 326 of the Act.

Moreover, Treasury and the Agencies believe that banks already have implemented prudential business practices and anti-money laundering programs that involve the key controls that would be required in a customer identification program in accordance with the proposed regulation. First, all banks already undertake extensive measures to verify the identity of their customers as a matter of good business practice. In addition, banks already must have anti-money laundering programs that include procedures for identification, verification, and documentation of customer information.[12]

Second, banks already should have compliance programs in place to check lists provided by the Federal government of known and suspected terrorists and terrorist organizations. Currently, banks are prohibited from engaging in transactions involving certain foreign countries or their nationals under rules issued by the Office of Foreign Assets Control (OFAC). *See* 31 CFR 500. Banks should already have compliance programs in place to ensure that they do not violate OFAC rules. Treasury and the Agencies understand that many banks, including small banks, have instituted programs to check other lists provided to them by the Federal government following the events of September 11, 2001. Treasury and the Agencies believe that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, Treasury and the Agencies believe the provision in the proposed rule that requires a bank to provide adequate notice to its customers that it is requesting information to verify their

[11] The RFA defines the term ''small entity'' in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a ''small entity'' for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. The NCUA defines ''small credit union'' as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87–2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

[12] *See* footnote 3.

identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. Treasury and the Agencies believe that the compliance burden, if any, is minimized for banks, including small banks, because the proposed regulation vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, Treasury and the Agencies believe that the flexibility incorporated into the proposed rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury and the Agencies believe that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

VI. Paperwork Reduction Act

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). In summary, the proposed rule requires banks to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act.

The proposed rule applies only to a financial institution that is a ''bank'' as defined in 31 CFR 103.11(c),[13] and any foreign branch of an insured bank. The proposed rule requires each bank to establish a written CIP that must include recordkeeping procedures (proposed section 103.121(b)(3)) and procedures for providing customers with notice that the bank is requesting information to verify their identity (proposed section 103.121(b)(5)).

The proposed rule requires a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. These records must be maintained at the bank for five years after the date the account is closed (proposed section 103.121(b)(3)). Treasury and the Agencies believe that little burden is associated with the recordkeeping requirements outlined in proposed section 103.121(b)(2), because such recordkeeping is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR part 103 (*see, e.g.,* 31 CFR 103.34, requiring certain records for each deposit or share account opened).

The proposed rule also requires banks to give customers ''adequate notice'' of the identity verification procedures (proposed section 103.121(b)(5)). A bank may satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the bank may provide the notice electronically. Treasury and the Agencies believe that nominal burden is associated with the disclosure requirement outlined in proposed section 103.121(b)(5). This section requires a bank to notify its customers about the procedures the bank has implemented to verify their identities. However, a bank may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

A person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information requirements contained in the proposed rule have been submitted to the OMB by Treasury in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The institutions subject to these requirements include national banks and Federal branches and agencies (OCC financial institutions); state member banks and branches and agencies of foreign banks (Board financial institutions); insured state nonmember banks (FDIC financial institutions); savings associations (OTS financial institutions); and federally insured credit unions (NCUA financial institutions).

Estimated number of OCC financial institutions: 2,289.

Estimated number of Board financial institutions: 1,188.

Estimated number of FDIC financial institutions: 5,500.

Estimated number OTS financial institutions: 1,020.

Estimated number of NCUA financial institution: 9,944.

Estimated average annual burden for the recordkeeping requirements of the proposed rule per each financial institution respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the proposed rule per each financial institution respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 219,351 hours.

Treasury and the Agencies request public comment on all aspects of the recordkeeping and disclosure requirements contained in this proposed rule, including how burdensome it would be for banks to comply with these requirements. Also, Treasury and the Agencies request comment on whether the banks are currently maintaining the records requested in proposed section 103.121(b)(2). Treasury and the Agencies also invite comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

[13] This definition includes banks, thrifts, and credit unions.

VII. Executive Order 12866

Treasury, the OCC, and OTS have determined that this proposal is not a ''significant regulatory action'' under Executive Order 12866. The rule follows closely the requirements of section 326 of the Act.

Treasury, the OCC, and OTS believe that national banks and savings associations already have procedures in place that fulfill most of the requirements of the proposed regulation. First, the procedures are a matter of good business practice. Second, national banks and savings associations already are required to have BSA compliance programs that address many of the requirements detailed in this notice of proposed rulemaking. Third, banks and savings associations should already have compliance programs in place to ensure they comply with OFAC rules prohibiting transactions with certain foreign countries or their nationals.

Treasury, the OCC, and OTS invite national banks, the thrift industry, and the public to provide any cost estimates and related data that they think would be useful in evaluating the overall costs of the rule.

For these reasons, and for the reasons discussed elsewhere in this preamble, Treasury, the OCC, and OTS believe that the burden stemming from this rulemaking will not cause the proposed rule to be a ''significant regulatory action.''

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Section 103.11(j) is amended by removing ''paragraph (q)'' and adding ''paragraph (hh)''.

3. Section 103.34 is amended as follows:

a. By removing paragraph (a);

b. By redesignating paragraph (b) introductory text and paragraphs (b)(1) through (b)(13) as introductory text and paragraphs (a) through (m), respectively.

c. In newly redesignated introductory text, by removing '', in addition,'' in the first sentence; and

d. In newly redesignated paragraph (a), by removing '', including any notations, if such are normally made, of specific identifying information verifying the identity of the signer (such as a driver's license number or credit card number)''.

4. Subpart I of part 103 is amended by adding new § 103.121 to read as follows:

§ 103.121 Customer Identification Programs for banks, savings associations, and credit unions.

(a) *Definitions.* For purposes of this section:

(1) *Account* means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. For example, a deposit account, a transaction or asset account, and a credit account or other extension of credit would each constitute an account.

(2) *Bank* means a bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator, and any foreign branch of an insured bank.

(3) *Customer* means:

(i) Any person seeking to open a new account; and

(ii) Any signatory on the account at the time the account is opened, and any new signatory added thereafter.

(4) *Federal functional regulator* has the same meaning as provided in § 103.120(a)(2).

(5) *Person* has the same meaning as provided in § 103.11(z).

(6) *U.S. person* means:

(i) A U.S. citizen; or

(ii) A corporation, partnership, trust, or person (other than an individual) that is established or organized under the laws of a State or the United States.

(7) *Non-U.S. person* means a person that is not a *U.S. person*.

(8) *Taxpayer identification number.* The provisions of section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(b) *Customer Identification Program: minimum requirements.* (1) *In general.* A bank must implement a written Customer Identification Program (Program) that, at a minimum, includes each of the components of this section. The Program should be tailored to the bank's size, location and type of business. The bank's board of directors or a committee of the board must approve the Program. The Program must be a part of the bank's anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), and 12 U.S.C. 1786(q)(1).

(2) *Identity verification procedures.* The Program must include procedures for verifying the identity of each customer, to the extent reasonable and practicable. The procedures must be based on the bank's assessment of the risks presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, and the type of identifying information available, and must enable the bank to form a reasonable belief that it knows the true identity of the customer.

(i) *Information required.* (A) *In general.* The Program must contain procedures that specify the identifying information that the bank must obtain from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, at a minimum, a bank must obtain the following information prior to opening or adding a signatory to an account:

(*1*) Name;

(*2*) For individuals, date of birth;

(*3*) (*i*) For individuals, residence and, if different, mailing address; or

(*ii*) For persons other than individuals, such as corporations, partnerships, and trusts: principal place of business and, if different, mailing address;

(*4*) (*i*) For U.S. persons, a U.S. taxpayer identification number (e.g., social security number, individual taxpayer identification number, or employer identification number); or

(*ii*) For non-U.S. persons, one or more of the following: a U.S. taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(B) *Limited exception.* The Program may permit the bank to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the bank must obtain a copy of the application before

it opens or adds a signatory to the account and obtain the employer identification number within a reasonable period of time after it opens or adds a signatory to the account.

(ii) *Verification.* The Program must contain risk-based procedures for verifying the information obtained pursuant to paragraph (b)(2)(i)(A) of this section within a reasonable time after the account is established or a signatory is added to the account. A bank need not verify the information about an existing customer seeking to open a new account or who becomes a signatory on an account, if the bank previously verified the customer's identity in accordance with procedures consistent with this section, and continues to have a reasonable belief that it knows the true identity of the customer.

(A) *Verification through documents.* The Customer Identification Program must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. These documents may include:

(*1*) For individuals: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(*2*) For corporations, partnerships, trusts and persons other than individuals: documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

(B) *Non-documentary verification methods.* The Program must contain procedures that describe non-documentary methods the bank will use to verify identity and when these methods will be used in addition to, or instead of, relying on documents. These procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents. Other verification methods may include contacting a customer; independently verifying documentary information through credit bureaus, public databases, or other sources; checking references with other financial institutions; and obtaining a financial statement.

(iii) *Lack of verification.* The Program must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer.

(3) *Recordkeeping.* (i) The Program must include procedures for maintaining a record of all information obtained under the procedures implementing paragraph (b)(1) of this section. The record must include:

(A) All identifying information provided by a customer pursuant to paragraphs (b)(2)(i)(A) and (B) of this section;

(B) A copy of any document that was relied on pursuant to paragraph (b)(2)(ii)(A) of this section that clearly evidences the type of document and any identification number it may contain;

(C) The methods and result of any measures undertaken to verify the identity of the customer pursuant to paragraph (b)(2)(ii)(B) of this section; and

(D) The resolution of any discrepancy in the identifying information obtained.

(ii) The bank must retain all records for five years after the date the account is closed.

(4) *Comparison with government lists.* The Program must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any federal government agency. The procedures must also ensure that the bank follows all federal directives issued in connection with such lists.

(5) *Customer notice.* The Program must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity.

(c) *Exemptions.* The appropriate Federal functional regulator with the concurrence of the Secretary, may by order or regulation, exempt any bank or type of account from the requirements of this section. In issuing such exemptions, the Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and is in the public interest. The Federal functional regulator and the Secretary also may consider other appropriate factors.

(d) *Other information requirements unaffected.* Nothing in this section shall be construed to relieve a bank of its obligation to comply with any other provision in this part concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 2, 2002.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 10, 2002.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors of the Federal Deposit Insurance Corporation this 3rd day of July, 2002.

Valerie J. Best,

Assistant Executive Secretary.

Dated: July 5, 2002. In concurrence, by the Office of Thrift Supervision.

James E. Gilleran,

Director.

Dated: July 3, 2002.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 02–18191 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA31

Financial Crimes Enforcement Network; Customer Identification Programs for Certain Banks (Credit Unions, Private Banks and Trust Companies) That Do Not Have a Federal Functional Regulator

AGENCIES: The Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001(the Act) for credit unions and trust companies that do not have a federal functional regulator. The proposed rule provides the same rules for these financial institutions as are provided in a companion notice of proposed rulemaking being issued jointly by FinCEN and the Federal bank regulators published elsewhere in this separate part of this issue of the **Federal Register**.

DATES: Written comments on the proposed rule may be submitted on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to

delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only. Comments may be mailed to FinCEN, Section 326 Certain Credit Union and Trust Company Rule Comments, P.O. Box 39, Vienna, VA 22183 or sent by e-mail to *regcomments@fincen.treas.gov* with the caption ''Attention: Section 326 Certain Credit Union and Trust Company Rule Comments'' in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act, Public Law 107–56. Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary to prescribe regulations setting forth minimum standards for financial institutions that relate to the identification and verification of any person who applies to open an account. Final regulations implementing section 326 must be effective by October 25, 2002.

Section 326 applies to all ''financial institutions.'' This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the Federal bank regulators (the Agencies), the SEC, and the CFTC (the Federal functional regulators). FinCEN and the Federal bank regulators are today jointly issuing a proposed rule that applies to banks within the meaning of 31 CFR 103.11(c) that are subject to a Federal banking regulator. Under its own authority, FinCEN is issuing this proposed rule to extend rules identical [1] to those in the joint proposal to all banks lacking a Federal functional regulator, namely private banks and State chartered credit unions that are not federally insured, and trust companies. The text of the joint rule is published elsewhere in this separate part of this issue of the **Federal Register**.

Section 326 of the Act provides that the regulations must contain certain requirements. At a minimum, the regulations must require financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

B. Codification of the Proposed Rule

The substantive requirements of the proposed rule will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. FinCEN anticipates that, at that time, it will publish a final rule that implements section 326 in a single section that will apply to all banks.

[1] The references in the joint rule to a bank's anti-money laundering program requirement (proposed § 103.121 (b)(1)) and to the procedures for exemptions granted by the Federal functional regulator (with Treasury concurrence) (proposed § 103.121(c)) will be modified appropriately at the final rule stage.

II. Detailed Analysis

A. Regulations Implementing Section 326

Definitions. Account. The proposed rule's definition of ''account'' is based on the statutory definition of ''account'' that is used in section 311 of the Act. ''Account'' means each formal banking or business relationship established to provide ongoing services, dealings, or other financial transactions. For example, a deposit account, transaction or asset account, and a credit account or other extension of credit would each constitute an account.

Section 311 of the Act does not require that this definition be used for regulations implementing section 326 of the Act. However, to the extent possible, Treasury proposes to apply consistent definitions for each of the regulations implementing the Act to reduce confusion. ''Deposit accounts'' and ''transaction accounts,'' which as previously noted, are considered ''accounts'' for purposes of this rulemaking, are themselves defined terms. In addition, the term ''account'' is limited to banking and business relationships established to provide ''ongoing'' services, dealings, or other financial transactions to make clear that this term is not intended to cover infrequent transactions such as the occasional purchase of a money order or a wire transfer.

Bank. For purposes of this proposed rule, the ''bank'' includes only those banks within the meaning of 31 CFR 103.11(c) that lack a Federal functional regulator. These are private banks and certain State chartered credit unions that are not federally insured, and trust companies.

Customer. The proposed rule defines ''customer'' to mean any person seeking to open a new account. Accordingly, the term ''customer'' includes a person applying to open an account, but would not cover a person seeking information about an account, such as rates charged or interest paid on an account, if the person does not actually open an account. ''Customer'' includes both individuals and other persons such as corporations, partnerships, and trusts. In addition, any person seeking to open an account at a bank, on or after the effective date of the final rule, will be a ''customer,'' regardless of whether that person already has an account at the bank.

The proposed rule also defines a ''customer'' to include any signatory on an account. Thus, for example, an individual with signing authority over a corporate account is a ''customer'' within the meaning of the proposed

rule. A signatory can become a ''customer'' when the account is opened or when the signatory is added to an existing account.

The requirements of section 326 of the Act apply to any person ''seeking to open a new account.'' Accordingly, transfers of accounts from one bank to another, that are not initiated by the customer, for example, as a result of a merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed regulation.

Person. The proposed rule defines ''person'' by reference to § 103.11(z). This definition includes individuals, corporations, partnerships, trusts, estates, joint stock companies, associations, syndicates, joint ventures, other unincorporated organizations or groups, certain Indian Tribes, and all entities cognizable as legal personalities.

U.S. Person. Under the proposed rule, for an individual, ''U.S. person'' means a U.S. citizen. For persons other than an individual, ''U.S. person'' means an entity established or organized under the laws of a State or the United States. A non-U.S. person is defined as a person who does not satisfy these criteria.

Taxpayer identification number. The proposed rule continues the provision in current § 103.34(a)(4), which provides that the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes a taxpayer identification number.

Customer Identification Program: Minimum Requirements.

General Rule. Section 326 of the Act requires Treasury to issue a regulation that establishes minimum standards regarding the identity of any customer who applies to open an account. Section 326 then prescribes three procedures that Treasury must require institutions to implement as part of this process: (1) Identification and verification of persons seeking to open an account; (2) recordkeeping; and (3) comparison with government lists.

Rather than imposing the same list of specific requirements on every bank, regardless of its circumstances, the proposed regulation requires all banks to implement a Customer Identification Program (CIP) that is appropriate given the bank's size, location, and type of business. The proposed regulation requires a bank's CIP to contain the statutorily prescribed procedures, describes these procedures, and details certain minimum elements that each of the procedures must contain.

In addition, the proposed rule requires that the CIP be written and that it be approved by the bank's board of directors or a committee of the board. This latter requirement highlights the responsibility of a bank's board of directors to approve and exercise general oversight over the bank's CIP.

Under the proposed joint regulation for federally regulated banks, the CIP must be incorporated into the bank's anti-money laundering (BSA) program. FinCEN has not yet issued an anti-money laundering program regulation for the banks subject to this proposed rule, but anticipates doing so in the near future, at which time they would be required to incorporate the CIP into that program. A bank's BSA program must include (1) internal policies, procedures, and controls to ensure ongoing compliance; (2) designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Each of these requirements also applies to a bank's CIP.

Identity Verification Procedures. Under section 326 of the Act, the regulations issued by Treasury must require banks to implement and comply with reasonable procedures for verifying the identity of any person seeking to open an account, to the extent reasonable and practicable. The proposed regulation implements this requirement by providing that each bank must have risk-based procedures for verifying the identity of a customer that take into consideration the types of accounts that banks maintain, the different methods of opening accounts, and the types of identifying information available. These procedures must enable the bank to form a reasonable belief that it knows the true identity of the customer.

Under the proposed regulation, a bank must first have procedures that specify the identifying information that the bank must obtain from any customer. The proposed regulation also sets forth certain, minimal identifying information that a bank must obtain prior to opening an account or adding a signatory to an account. Second, the bank must have procedures describing how the bank will verify the identifying information provided. The bank must have procedures that describe when it will use documents for this purpose and when it will use other methods, either in addition or as an alternative to using documents for the purpose of verifying the identity of a customer.

While a bank's CIP must contain the identity verification procedures set forth above, these procedures are to be risk-based. For example, a bank need not verify the identifying information of an existing customer seeking to open a new account, or who becomes a signatory on an account, if the bank (1) previously verified the customer's identity in accordance with procedures consistent with this regulation, and (2) continues to have a reasonable belief that it knows the true identity of the customer. The proposal requires a bank to exercise reasonable efforts to ascertain the identity of each customer.

Although the main purpose of the Act is to prevent and detect money laundering and the financing of terrorism, Treasury anticipates that the proposed regulation will ultimately benefit consumers. In addition to deterring money laundering and terrorist financing, requiring every bank to establish comprehensive procedures for verifying the identity of customers should reduce the growing incidence of fraud and identity theft involving new accounts.[2]

Information Required. The proposed regulation provides that a bank's CIP must contain procedures that specify the identifying information the bank must obtain from a customer. At a minimum, a bank must obtain from each customer the following information prior to opening an account or adding a signatory to an account: name; address; for individuals, date of birth; and an identification number, described in greater detail below. To satisfy the requirement that a bank obtain the address of a customer, Treasury expects a bank to obtain both the address of an individual's residence and, if different, the individual's mailing address. For customers who are not individuals, the bank should obtain an address showing the customer's principal place of business and, if different, the customer's mailing address.

For U.S. persons a bank must obtain a U.S. taxpayer identification number (*e.g.,* social security number, individual taxpayer identification number, or employer identification number). For non-U.S. persons a bank must obtain one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number

[2] Last year, over 86,000 complaints were logged into the Identity Theft Complaint database established by the Federal Trade Commission (FTC). Forms of identity theft commonly reported included (1) credit card fraud, where one or more new credit cards were opened in the victim's name; (2) bank fraud, where a new bank account was opened in the victim's name; and (3) fraudulent loans, where a loan had been obtained in the victim's name. *See* Statement of J. Howard Beales, Director, Bureau of Consumer Protection, FTC, to the Senate Committee on the Judiciary, Subcommittee on Technology, March 20, 2002.

and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The basic information that banks would be required to obtain under this proposed regulation reflects the type of information that financial institutions currently obtain in the account-opening process and is similar to the identifying information currently required for each deposit or share account opened (*see* 31 CFR 103.34(a)(1)). The proposed regulation uses the term ''similar safeguard'' to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs.

Treasury recognizes that a new business may need access to banking services, particularly a bank account or an extension of credit, before it has received an employer identification number from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that a taxpayer identification number must be provided prior to establishing or adding a signatory to an account. Accordingly, a CIP may permit a bank to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the CIP must require that the bank obtain a copy of the application before it opens or adds a signatory to the account and obtain the employee identification number within a reasonable period of time after an account is established or a signatory is added to an account. Currently, the IRS indicates that the issuance of an employer identification number can take up to five weeks. This length of time, coupled with when the person applied for the employer identification number, should be considered by the bank in determining the reasonable period of time within which the person should provide its employer identification number to the bank.

Verification. The proposed regulation provides that the CIP must contain risk-based procedures for verifying the information that the bank obtains in accordance with the proposed rule, within a reasonable period of time after the account is opened. Treasury considered proposing that a customer's identity be verified before an account is opened or within a specific time period after the account is opened. However, Treasury recognizes that such a position would be unduly burdensome for both banks and customers and therefore contrary to the plain language of the statute, which states that the procedures must be both reasonable and practicable. The amount of time it will take an institution to verify identity may depend upon the type of account opened, whether the customer is physically present when the account is opened, and the type of identifying information available. In addition, although an account may be opened, it is common practice among banks to place limits on the account, such as by restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed regulation provides a bank with the flexibility to use a risk-based approach to determine how soon identity must be verified.[3]

Verification Through Documents. The CIP must contain procedures describing when the bank will verify identity through documents and setting forth the documents that the bank will use for this purpose. For individuals, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For corporations, partnerships, trusts, and other persons that are not individuals, these may be documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

Non-Documentary Verification. The proposed regulation provides that a bank's CIP also must contain procedures describing non-documentary methods the bank will use to verify identity and when these methods will be used in addition to, or instead of, relying on documents. For example, the procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the account is not opened in a face-to-face transaction; and the type of account increases the risk that the bank will not be able to verify the true identity of the customer through documents.

Treasury believes that banks typically require documents to be presented when an account is opened face-to-face. Although customers usually satisfy these requirements by presenting government-issued identification documents bearing a photograph, such as a driver's license or passport, Treasury recognizes that some customers legitimately may be unable to present those customary forms of identification when opening an account. For example, an elderly person may not have a valid driver's license or passport. Under these circumstances, Treasury expects that banks will provide products and services to those customers and verify their identities through other methods. Similarly, a bank may be unable to obtain original documents to verify a customer's identity when an account is opened by telephone, by mail, and over the Internet. Thus, when an account is opened for a customer who is not physically present, a bank will be permitted to use other methods of verification, to the extent set forth in the CIP.

While other verification methods must be used when a bank cannot examine original documents, Treasury also recognizes that original identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, banks are encouraged to use other verification methods, even when a customer has provided original documents.

Obtaining sufficient information to verify a customer's identity can reduce the risk that a bank will be used as a conduit for money laundering and terrorist financing. The risk that the bank will not know the customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in jurisdictions that have been designated by the United States as a primary money laundering concern or have been designated as non-cooperative by an international body. As a bank's identity verification procedures should be risk-based, they should identify types of accounts that pose a heightened risk, and prescribe additional measures to verify the identity of any person seeking to open an account and the signatory for such accounts.

The proposed regulation gives examples of other non-documentary verification methods that a bank may use in the situations described above. These methods could include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine

[3] It is possible that a bank would, however, violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.,* 31 CFR 500, prohibiting transactions involving designated foreign countries or their nationals.

whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The bank also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number, date of birth, and social security number (logical verification).[4]

Lack of Verification. The proposed regulation also states that a bank's CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer.

Generally, a bank should only maintain an account for a customer when it can form a reasonable belief that it knows the customer's true identity.[5] Thus, a bank should have procedures that specify the actions that it will take when it cannot form a reasonable belief that it knows the true identity of a customer, including when an account should not be opened. In addition, a bank's CIP should have procedures that address the terms under which a customer may conduct transactions while a customer's identity is being verified. The procedures also should specify at what point, after attempts to verify a customer's identity have failed, a customer's account that has been opened should be closed. Finally, if a bank cannot form a reasonable belief that it knows the identity of a customer, the procedures should also include determining whether a Suspicious Activity Report should be filed in accordance with applicable law and regulation.

Recordkeeping. Section 326 of the Act requires reasonable procedures for maintaining records of the information used to verify a person's name, address, and other identifying information. The proposed regulation sets forth recordkeeping procedures that must be included in a bank's CIP. Under the proposal, a bank is required to maintain a record of the identifying information provided by the customer. Where a bank relies upon a document to verify identity, the bank must maintain a copy of the document that the bank relied on that clearly evidences the type of document and any identifying information it may contain.[6] The bank also must record the methods and result of any additional measures undertaken to verify the identity of the customer. Last, the bank must record the resolution of any discrepancy in the identifying information obtained. The bank must retain all of these records for five years after the date the account is closed.

Treasury emphasizes that the collection and retention of information about a customer, such as an individual's race or sex, as an ancillary part of collecting identifying information do not relieve a bank from its obligations to comply with anti-discrimination laws or regulations, such as the prohibition in the Equal Credit Opportunity Act against discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, age, or other prohibited classifications.

Nothing in this proposed regulation modifies, limits or supersedes section 101 of the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a bank may use electronic records to satisfy the requirements of this regulation, as long as the records are accurate and remain accessible in accordance with 31 CFR 103.38(d).

Comparison with Government Lists. Section 326 of the Act also requires reasonable procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations provided to the bank by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government.

In addition, the proposed rule requires that the procedures must ensure that the bank follows all Federal directives issued in connection with such lists. This provision makes clear that a bank must have procedures for responding to circumstances when the bank determines that a customer is named on a list.

Customer Notice. Section 326 of the Act contemplates that financial institutions will provide their customers with ''adequate notice'' of the customer identification procedures. Therefore, a bank's CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identity. A bank may satisfy the notice requirement by generally notifying its customers about the procedures the bank must comply with to verify their identities. For example, the bank may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the bank may also provide notice electronically.

Exemptions. Section 326 states that the Secretary (and, in the case of section 4(k) institutions, the appropriate Federal functional regulator) may by regulation or order, exempt any financial institution or type of account from the requirements of this regulation in accordance with such standards and procedures as the Secretary may prescribe.

Under the proposed rule, Treasury, may by order or regulation exempt any bank lacking a federal functional regulator or type of account at such a bank from the requirements of this section. In issuing such exemptions, Treasury shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, consistent with safe and sound banking, and in the public interest. Treasury also may consider other necessary and appropriate factors.

Other Information Requirements Unaffected. Nothing in the proposal shall be construed to relieve a bank of its obligations to obtain, verify, or maintain information in connection with an account or transaction that is required by another provision in part 103. For example, if an account is opened with a deposit of more than $10,000 in cash, the bank opening the account must comply with the customer identification requirements in the proposal, as well as with the provisions of section 103.22, which require that certain information concerning the transaction be reported by filing a Cash Transaction Report (CTR).

B. Conforming Amendments to 31 CFR 103.34

Current section 103.34(a) sets forth customer identification requirements when certain types of deposit accounts are opened. Generally, sections 103.34(a)(1) and (2) require a bank, within 30 days after certain deposit accounts are opened, to secure and maintain a record of the taxpayer identification number of the customer

[4] Treasury understands that most banks currently make use of technology that permits instantaneous negative, positive, and logical verification of identity.

[5] There are some exceptions to this basic rule. For example, a bank may maintain an account, at the direction of a law enforcement or intelligence agency, although the bank does not know the true identity of a customer.

[6] The bank need not keep a separate record of the identifying information provided by the customer if this information clearly appears on the copy of the document maintained by the bank.

involved. If the bank is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.34 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the bank is required to record the person's passport number or a description of some other government document used to determine identification. Treasury believes that the requirements of section 103.34(a)(1) and (2) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with the proposal.

Section 103.34(a)(3) currently provides that a bank need not obtain a taxpayer identification number with respect to specified categories of persons [7] opening certain deposit accounts. This proposed rule does not contain any exemptions from the CIP requirements.

Treasury is requesting comments on whether any of these exemptions should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act.

Section 103.34(a)(4) provides that section 6109 of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service (IRS) promulgated thereunder shall determine what constitutes a taxpayer identification number. This provision is continued in the proposal. Section 103.34(a)(4) also provides that IRS rules shall determine whose number shall be obtained in the case of multiple account holders. Treasury believes that this provision is inconsistent with section 326 of the Act, which requires that banks verify the identity of ''any'' person seeking to open an account. For these reasons, Treasury is proposing to repeal section 103.34(a).

Section 103.34(b) sets forth certain recordkeeping requirements for banks. Among other things, section 103.34(b)(1) requires a bank to keep ''any notations, if such are normally made, of specific identifying information verifying the identity of [a person with signature authority over an account] (such as a driver's license number or credit card number).'' Treasury believes that the quoted language in section 103.34(b)(1) is inconsistent with the requirements of the proposal. For this reason, Treasury is proposing to delete the quoted language.

III. Request for Comments

Treasury invites comment on all aspects of this rulemaking, and specifically seek comment on the following issues:

1. Whether the proposed definition of ''account'' is appropriate and whether other examples of accounts should be added to the regulatory text.

2. How the proposed regulation should apply to various types of accounts that are designed to allow a customer to transact business immediately.

3. Ways that banks can comply with the requirement that a bank obtain both the address of an individual's residence, and, if different, the individual's mailing address in situations involving individuals who lack a permanent address.

4. Whether non-U.S. persons that are not individuals will be able to provide a bank with the identifying information required in the proposal, or whether other categories of identifying information should be added to this proposal to permit non-U.S. persons that are not individuals to open accounts. Commenters on this issue should suggest other means of identification that banks currently use or should use.

5. Whether the proposed regulation will subject banks to conflicting State laws. Treasury requests that commenters cite and describe any potentially conflicting State laws.

6. The extent to which the verification procedures required by the proposed regulation make use of information that banks currently obtain in the account opening process. Treasury notes that the legislative history of section 326 indicates that Congress intended ''the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process.'' *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

7. Whether any of the exemptions from the customer identification requirements contained in current section 103.34(a)(3) should be continued in the proposal. In this regard, Treasury requests that commenters address the standards set forth in the proposal (as well as any other appropriate factors).

IV. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis' unless the agency certifies that the rule will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 603, 605(b).[8]

Treasury certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule closely parallel the requirements for customer identification programs mandated by section 326 of the Act.

Moreover, Treasury believes that banks already have implemented prudential business practices and anti-money laundering programs that involve the key controls that would be required in a customer identification program in accordance with the proposed regulation. First, all banks already undertake extensive measures to verify the identity of their customers as a matter of good business practice.

Second, banks already should have compliance programs in place to check lists provided by the Federal government of known and suspected terrorists and terrorist organizations. Currently, banks are prohibited from engaging in transactions involving certain foreign countries or their nationals under rules issued by Treasury's Office of Foreign Assets Control (OFAC). *See* 31 CFR part 500. Banks should already have compliance programs in place to ensure that they do

[7] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) judges, public officials, or clerks of courts of record as custodians of funds in controversy or under the control of the court; (iii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iv) aliens who are accredited representatives of certain international organizations, and their immediate families; (v) aliens temporarily residing in the United States for a period not to exceed 180 days; (vi) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; (vii) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter; (viii) a person under 18 years of age, with respect to an account opened as part of a school thrift savings program, provided the annual interest is less than $10; (ix) a person opening a Christmas club, vacation club, or similar installment savings program, provided the annual interest is less than $10; and (x) non-resident aliens who are not engaged in a trade or business in the United States.

[8] The RFA defines the term ''small entity'' in 5 U.S.C. 601 by reference to the definitions published by the Small Business Administration (SBA). The SBA has defined a ''small entity'' for banking purposes as a bank or savings institution with less than $150 million in assets. *See* 13 CFR 121.201. The NCUA defines ''small credit union'' as those under $1 million in assets. Interpretive Ruling and Policy Statement No. 87–2, Developing and Reviewing Government Regulations (52 FR 35231, September 18, 1987).

not violate OFAC rules. Treasury understands that many banks, including small banks, have instituted programs to check other lists provided to them by the Federal government following the events of September 11, 2001. Treasury believes that all banks have access to a variety of resources, such as computer software packages, that enable them to check lists provided by the Federal government.

Third, Treasury believes the provision in the proposed rule that requires a bank to provide adequate notice to its customers that it is requesting information to verify their identity will impose minimal costs on banks. Banks may elect to satisfy that requirement through a variety of low-cost measures, such as by posting a sign in the bank's lobby or providing any other form of written or oral notice.

The recordkeeping requirements similarly may impose some costs on banks, if, for example, some of the information that must be maintained as a consequence of implementing customer identification programs is not already retained. Treasury believes that the compliance burden, if any, is minimized for banks, including small banks, because the proposed regulation vests a bank with the discretion to design and implement appropriate recordkeeping procedures, including allowing banks to maintain electronic records in lieu of (or in combination with) paper records.

Finally, Treasury believes that the flexibility incorporated into the proposed rule will permit each bank to tailor its CIP to fit its own size and needs. In this regard, Treasury believes that expenditures associated with establishing and implementing a CIP will be commensurate with the size of a bank. If a bank is small, the burden to comply with the proposed rule should be *de minimis*.

V. Paperwork Reduction Act

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). In summary, the proposed rule requires banks to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act.

The proposed rule applies only to a financial institution that is a ''bank'' as defined in 31 CFR 103.11(c) lacking a Federal functional regulator. The proposed rule requires each bank to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the bank is requesting information to verify their identity.

The proposed rule requires a bank to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained. These records must be maintained at the bank for five years after the date the account is closed. Treasury believes that little burden is associated with the recordkeeping requirements of the proposal, because such recordkeeping is a usual and customary business practice. In addition, banks already must keep similar records to comply with existing regulations in 31 CFR Part 103 (*see, e.g.*, 31 CFR 103.34, requiring certain records for each deposit or share account opened).

The proposed rule also requires banks to give customers ''adequate notice'' of the identity verification procedures. A bank may satisfy the notice requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the bank may provide the notice electronically. Treasury believes that nominal burden is associated with the disclosure requirement of the proposal. This section requires a bank to notify its customers about the procedures the bank has implemented to verify their identities. However, a bank may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

A person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information requirements contained in the proposed rule have been submitted to the OMB by Treasury in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The institutions subject to these requirements include private banks, credit unions, and trust companies that do not have a Federal functional regulator.

Estimated number of financial institutions: 2,460.

Estimated average annual burden for the recordkeeping requirements of the proposed rule per each financial institution respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the proposed rule per each financial institution respondent: 1 hour.

Estimated total annual recordkeeping and disclosure burden: 27,060 hours.

Treasury requests public comment on all aspects of the recordkeeping and disclosure requirements contained in this proposed rule, including how burdensome it would be for banks to comply with these requirements. Also, Treasury requests comment on whether the banks are currently maintaining the records requested by the proposal. Treasury also invites comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of FinCEN's functions, including whether the information has practical utility;

(2) The accuracy of the estimated burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Executive Order 12866

Treasury has determined that this proposal is not a ''significant regulatory action'' under Executive Order 12866. The rule follows closely the requirements of section 326 of the Act.

Treasury believes banks already have procedures in place that fulfill most of the requirements of the proposed regulation. First, the procedures are a matter of good business practice. Second, banks should already have compliance programs in place to ensure

they comply with OFAC rules prohibiting transactions with certain foreign countries or their nationals.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–18193 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46192, File No. S7–25–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA32

Customer Identification Programs For Broker-Dealers

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury to jointly prescribe with the Securities and Exchange Commission a regulation that, at a minimum, requires broker-dealers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the broker-dealer by any government agency.

DATES: Written comments on the proposed rule may be submitted to the Treasury Department and the Securities and Exchange Commission on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only.

Treasury: Comments may be mailed to FinCEN, Section 326 Broker-Dealer Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption ''Attention: Section 326 Broker-Dealer Rule Comments'' in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

Securities and Exchange Commission: Comments also should be submitted in triplicate to Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rulecomments@sec.gov.* Comment letters should refer to File No. S7–25–02; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet web site *(http//www.sec.gov).* Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: *Treasury:* Office of the Chief Counsel (FinCEN), 703/905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), 202/622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), 202/622–0480.

Securities and Exchange Commission: Division of Market Regulation, 202/942–0177 or *marketreg@sec.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.[1] Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA). *See* 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary of the Treasury (Secretary) to prescribe regulations setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the financial institution.

Section 326 applies to all ''financial institutions.'' This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks in the United States, investment companies, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each Federal functional regulator appropriate for such financial institution. The Federal functional regulators include the Securities and Exchange Commission (Commission), the Commodity Futures Trading Commission (CFTC), and the banking agencies (banking agencies), namely, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration. Final regulations implementing section 326 must be effective before October 25, 2002.

Section 326 provides that the regulations, at a minimum, must require financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

[1] Pub. L. 107–56.

The following proposal is being issued jointly by Treasury and the Commission. It applies only to persons registered, or required to be registered, with the Commission as brokers or dealers under the Securities Exchange Act of 1934 (Exchange Act), except persons who register pursuant to paragraph (b)(11) of section 15 of the Exchange Act (15 U.S.C. 78o(b)(11)) solely because they effect transactions in security futures products. This class of brokers and dealers will be subject to regulations issued by Treasury and the CFTC separately. Regulations governing the applicability of section 326 to other financial institutions, such as those regulated by the banking agencies, will be issued separately as well.

Treasury, the Commission, the CFTC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

In addition, Treasury under its own authority is proposing conforming amendments to 31 CFR 103.35, which currently imposes requirements concerning the identification of bank customers.

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed rule will be codified with other BSA regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, the Commission is also proposing to add a provision in its own regulations in 17 CFR part 240 that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-reference will be included in a final rule published by the Commission concurrently with the joint final rule issued by Treasury and the Commission implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Section 103.122(a) Definitions

Section 103.122(a)(1) Account. The proposed rule's definition of ''account'' is intended to include all types of securities accounts maintained by brokers or dealers. These include accounts to purchase, sell, lend or otherwise hold securities or other assets, cash accounts, margin accounts, prime brokerage accounts that consolidate trading done at a number of firms, and accounts for repurchase and stock loan transactions.

Section 103.122(a)(2) Broker-dealer. The proposed rule defines ''broker-dealer'' to include any person registered, or required to be registered, with the Commission as a broker or dealer under the Exchange Act, except persons who register, or are required to be registered, solely because they effect transactions in security futures products. These latter brokers or dealers, which register with the Commission pursuant to section 15(b)(11) of the Exchange Act, will be subject to a separate regulation issued jointly by Treasury and the CFTC implementing section 326.

Section 103.122(a)(3) Commission. The proposed rule defines ''Commission'' to mean the United States Securities and Exchange Commission.

Section 103.122(a)(4) Customer. The proposed rule defines ''customer'' as any person who opens a new account at a broker-dealer or is granted trading authority with respect to an account at a broker-dealer. Under this definition, a person who has an account at a broker-dealer prior to the effective date of the regulation would not be a ''customer.'' However, such a person becomes a ''customer'' if the person opens a different account. Moreover, a person becomes a ''customer'' each time the person opens a different type of account at a broker-dealer. Thus, if a person opens a cash account and subsequently opens a margin account, the person would be a ''customer'' for verification purposes on both occasions.

Similarly, a person with trading authority prior to the effective date of the regulation is not a ''customer.'' However, any person being granted trading authority after the effective date is a customer. This is true even if the person is granted trading authority with respect to an account that existed prior to the effective date or the person had been granted trading authority for another account prior to the effective date.

The requirements of section 326 apply to ''customers'' (*i.e.,* persons opening new accounts or being granted trading authority), but do not apply to persons seeking information about an account such as a schedule of transaction fees, if an account is not opened. In addition, transfers of accounts from one broker-dealer to another that are not initiated by the customer, for example as a result of a merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed regulation.[2]

Section 103.122(a)(5) Person. The proposed rule defines ''person'' as having the same meaning as that term is defined in section 103.11(z). Thus, the term includes natural persons, corporations, partnerships, trusts or estates, joint stock companies, associations, syndicates, joint ventures, any unincorporated organizations or groups, Indian Tribes, and all entities cognizable as legal entities.

Section 103.122(a)(6) U.S. person. The proposed rule defines ''U.S. person'' because U.S. citizens and persons incorporated under U.S. laws will be required to provide U.S. tax identification numbers whereas other persons, who may not have a U.S. tax identification number, will be required to provide other similar numbers. Thus, the rule defines ''U.S. person'' to mean a U.S. citizen or, for persons other than natural persons, an entity established or organized under the laws of a State or the United States.[3]

Section 103.122(a)(7) Non-U.S. person. The proposed rule defines a ''Non-U.S. person'' as a person that is not a ''U.S. person'' as that term is defined in the rule.

Section 103.122(a)(8) Taxpayer identification number. The proposed rule defines ''taxpayer identification number'' to have the same meaning as determined under the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder.

B. Section 103.122(b) Customer Identification Program

Section 326 of the Act requires the Secretary and the Commission to prescribe regulations requiring broker-dealers to implement and comply with ''reasonable procedures'' for: verifying the identity of customers ''to the extent reasonable and practicable;'' maintaining records associated with such verification; and consulting lists of known terrorists.

[2] However, there may be situations involving the transfer of accounts where it would be appropriate for a broker-dealer to verify the identity of customers associated with the accounts it is acquiring. Therefore, Treasury and the Commission expect procedures for transfers of accounts to be part of a broker-dealer's overall anti-money laundering program required under section 352 of the Patriot Act. *See* Footnote 5 *infra* for a discussion of the requirements of section 352.

[3] The terms ''State'' and ''United States'' are defined in section 103.11.

Paragraph (b) of the proposed rule sets forth the requirement that a broker-dealer must develop and operate a customer identification program (''CIP'') and sets forth relevant factors for the design of CIP procedures. The degree to which a CIP is effective will be a function of a broker-dealer's assessment of these factors and the nature of its response to them (as manifested in the CIP's procedures and guidelines). In addition, as section 326 and the proposed rule provide, the reasonableness of the CIP also will be a function of what is practicable for the broker-dealer.

In developing and updating CIPs, broker-dealers should consider the type of identifying information available for customers and the methods available to verify that information. While certain minimum identifying information is required in paragraph (c) of this proposed rule and certain suitable verification methods are described in paragraph (d), broker-dealers should consider on an ongoing basis whether other information or methods are appropriate, particularly as they become available in the future.

Broker-dealers must also base their CIPs on the risks associated with their business operations. Some relevant risk factors to be considered are set forth in paragraph (b) and discussed below in general terms.[4]

The first risk factor to consider is the broker-dealer's size. For example, a large firm that opens a substantial number of accounts on any given day will have different risks than one that opens a new account no more than once or twice a month. The same is true with respect to a firm that has many branches as compared to a firm with one office.

The second risk factor is the location of the broker-dealer. Firms should assess whether they are located in areas where money laundering activities have been known to exist or that otherwise raise the risk that attempts will be made to open accounts for money laundering purposes.

The third risk factor is the method by which customers open accounts at the broker-dealer. Accounts opened exclusively on-line present different, and perhaps greater, risks than those opened in person on the firm's premises.

The fourth and fifth risk factors are the types of accounts and transactions offered by the broker-dealer. Broker-dealers should assess whether there are different risks (and degrees of risk) associated with the various types of accounts they provide to customers (*e.g.,* cash, margin, prime-brokerage) and transactions they execute in those accounts (*e.g.,* short sales, over-the-counter derivatives, repurchase and reverse repurchase agreements, block trades).

The sixth risk factor is the customer base. Broker-dealers should assess the risks associated with different types of customers. For example, a firm should examine whether it is opening accounts for customers located in countries the Secretary determines to be of ''primary money laundering concern'' pursuant to section 311 of the Act. Verification procedures should account for the concerns raised by such customers. In addition, certain legal entities may pose greater risks (*e.g.,* a closely held corporation as opposed to one that is publicly traded).

The seventh risk factor requires an assessment of whether the broker-dealer can rely on another broker-dealer, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account. A shared account means an account subject to a carrying or clearing agreement governed by New York Stock Exchange (NYSE) Rule 382 or National Association of Securities Dealers, Inc. (NASD) Rule 3230 (*i.e.,* a customer account introduced by a correspondent broker-dealer to a clearing and carrying broker-dealer). Rules 382 and 3230 allow correspondents and clearing firms to set forth in written agreements a division of responsibilities with respect to the accounts they share.

We anticipate broker-dealers sharing accounts may realize efficiencies by dividing up the requirements in this proposed rule pursuant to their clearing agreements. For example, the correspondent may undertake to obtain the identifying information from customers as required in paragraph (c), and the clearing firm may undertake the verification procedures as required in paragraph (d). Nonetheless, both firms would still be responsible for ensuring that each requirement in the rule is met with respect to each customer. Accordingly, a broker-dealer must continually assess whether the other firm can be relied on to perform its responsibilities. This would include communicating and coordinating with the other firm on an on-going basis. Moreover, a broker-dealer is expected to cease such reliance if it is no longer reasonable.

Paragraph (b) also requires that the identity verification procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of the customer. This provision makes clear that, while there is flexibility in establishing these procedures, the broker-dealer is responsible for exercising reasonable efforts to ascertain the identity of each customer.

Finally, paragraph (b) requires that broker-dealers make their CIPs part of their overall anti-money laundering programs required under section 352 of the Act (31 U.S.C. 5318(h)).[5] This requirement is intended to make it clear that the CIP is not a separate program, but rather should be integrated into a broker-dealer's overall anti-money laundering procedures and policies. However, this should not be read to create any negative inference about a broker-dealer's need to establish and maintain an overall money laundering program that is designed to ensure compliance with all other applicable regulations promulgated under the Act.

C. Section 103.122(c) Required Information

The first step in verifying identity is obtaining identifying information from customers. Paragraph (c) of the proposed rule provides that a broker-dealer's CIP must require customers to provide, at a minimum, certain identifying information before an account is opened for the customer or the customer is granted trading authority over an account. Specifically, the broker-dealer must obtain each customer's: (1) Name; (2) date of birth, if applicable; (3) addresses; [6] and (4) documentary number.[7]

[4] This discussion of the risk factors is included in the release because it may be helpful in providing some meaning and context with respect to the factors. However, it is not meant to provide comprehensive definitions of these risk factors or an exhaustive description of the considerations involved in assessing them. Instead, it should serve as a starting point for defining and assessing them.

[5] Section 352 requires brokers and dealers to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 22, 2002, the Commission approved rule changes submitted by the NASD and the NYSE. Exchange Act Release No. 45798 (April 22, 2002), 67 FR 20854 (April 26, 2002). These rules (NASD Rule 3011 and NYSE Rule 445) set forth minimum requirements for these programs.

[6] With respect to the address requirement, each customer must provide a mailing address, and, if different, the address of the customer's residence (if a natural person) or principal place of business (if not a natural person).

[7] Each customer that is a U.S. person must provide a U.S. taxpayer identification number (*e.g.,* social security number or employer identification number). Customers that are Non-U.S. persons must provide either a U.S. taxpayer identification number, an alien identification card number, or the number and country of issuance of any other

The rule requires only that the minimum identifying information be obtained from each customer. Broker-dealers, in assessing the risk factors in paragraph (b), should determine whether other identifying information is necessary to form a reasonable belief as to the true identity of each customer. There may be certain types of customers from whom it is reasonable to obtain other identifying information in addition to the minimum required information. There also may be circumstances that make it appropriate to obtain additional information. If a broker-dealer, in examining the nature of its business and operations, determines that additional information should be obtained in certain cases, it should set forth guidelines in its CIP indicating the types of additional information and the circumstances when it shall be obtained.

Treasury and the Commission recognize that a new business may need to open a brokerage account before it has received an employer identification number (EIN) from the Internal Revenue Service. For this reason, the proposed rule contains a limited exception to the requirement that a taxpayer identification number must be provided prior to the opening of an account or the granting of trading authority. Accordingly, a CIP may permit an account to be opened or trading authority to be granted for a person, other than an individual (such as a corporation, partnership or trust), that has applied for, but has not received, an EIN. However, in such a case, the CIP must require that the broker-dealer obtain a copy of the application for the EIN prior to the time the account is opened or trading authority granted. Currently, the IRS indicates that the issuance of an EIN can take up to five weeks. This length of time, coupled with when the person applied for the EIN, should be considered by the broker-dealer in determining the reasonable period of time within which the person should provide its EIN to the broker-dealer.

D. Section 103.122(d) Required Verification Procedures

After obtaining identifying information from a customer, the broker-dealer must take steps to verify the accuracy of that information in order to reach a point where it can form a reasonable belief that it knows the true identity of the customer. Accordingly, paragraph (d) of the proposed rule requires a broker-dealer's CIP to have procedures for verifying the accuracy of the identifying information provided by the customer. The extent of the verification for each customer will depend on the steps necessary for a broker-dealer to reach a reasonable belief that it knows the true identity of the customer.

Paragraph (d) requires that the verification procedures must be undertaken within a reasonable time before or after a customer's account is opened or a customer is granted authority to effect transactions with respect to an account. This flexibility must be exercised in a reasonable manner, given that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending. The amount of time it will take a broker-dealer to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in person, and on the type of identifying information available. In addition, although an account is opened, a broker-dealer may choose to place limits on the account, such as restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed rule provides broker-dealers with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account or the granting of trading authority. [8]

A person becomes a customer each time the person opens a new account at a broker-dealer or is granted trading authority with respect to an account. Therefore, upon the opening of each account or the granting of new authority, the verification requirements of this rule would apply. However, if a customer whose identification has been verified previously opens a new account or is granted new authority, the broker-dealer would not need to verify the customer's identity a second time, provided the broker-dealer (1) previously verified the customer's identity in accordance with procedures consistent with the proposed rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

The rule provides for two methods of verifying identifying information: verification through documents and verification through non-documentary means. For example, using documents would include obtaining a driver's license or passport from a natural person or articles of incorporation from a company. Non-documentary methods would include cross-checking the information provided by a customer against that supplied by a credit bureau.

The proposed rule requires that a broker-dealer's CIP address both methods of verification. Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documentary or non-documentary methods. In some cases, it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the broker-dealer's assessment of the factors described in paragraph (b) of the proposed rule.

The risk a broker-dealer will not know a customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in a jurisdiction the Secretary determines is a primary money laundering concern or an international body, such as the Financial Action Task Force on Money Laundering, designates as non-cooperative. Obtaining sufficient information to verify a given customer's true identity can reduce the risk a broker-dealer will be used as a conduit for money laundering and terrorist financing. A broker-dealer's identity verification procedures must be based on its assessments of the factors in paragraph (b). Accordingly, when those assessments suggest a heightened risk, the broker-dealer should prescribe additional verification measures.

1. Verification Through Documents

Paragraph (d)(1) provides that the CIP must describe when a broker-dealer will verify identity through documents and set forth the documents that will be used for this purpose. The rule also lists certain documents that are suitable for verification. For natural persons, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For other persons, suitable documents would be ones showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a

government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The term ''similar safeguard'' is included to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs.

[8] We note that it is possible a broker-dealer could violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.,* 31 CFR part 500, prohibiting transactions involving designated foreign countries or their nationals.

partnership agreement, or a trust instrument.

2. Verification Through Non-Documentary Methods

Paragraph (d)(2) provides that the CIP must describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, using documents. The rule allows for the exclusive use of non-documentary methods because frequently accounts are opened by telephone, mail, or over the Internet. However, even if the customer presents documents, it may be appropriate to use non-documentary methods as well. Ultimately, the broker-dealer is responsible for employing sufficient verification methods to be able to form a reasonable belief that it knows the true identity of the customer.

The proposed rule sets forth certain non-documentary methods that would be suitable for verifying identity. These methods include contacting a customer after the account is opened;[9] obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with information available from a trusted third party source, such as a credit report from a consumer reporting agency (positive verification); and checking references with other financial institutions. The broker-dealer also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number (logical verification).

Paragraph (d)(2) also provides that the CIP must require the use of non-documentary methods in certain cases; specifically, when a natural person is unable to present an unexpired government issued identification document that bears a photograph or similar safeguard and when the broker-dealer is presented with unfamiliar documents to verify the identity of a customer, does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the broker-dealer will be unable to verify the true identity of a customer through documents.

Thus, non-documentary methods should be used when a broker-dealer cannot examine original documents. In addition, Treasury and the Commission recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, broker-dealers are encouraged to use non-documentary methods, even when a customer has provided identification documents.

E. Section 103.122(e) Government Lists

Section 326 of the Act also requires reasonable procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations provided by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government. In addition, the proposed rule states that broker-dealers must follow all Federal directives issued in connection with such lists. This provision makes clear that a broker-dealer must have procedures for responding to circumstances when a customer is named on a list.

F. Section 103.122(f) Customer Notice

Section 326 provides that financial institutions must give their customers notice of their identity verification procedures. Therefore, a broker-dealer's CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identity. A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. For example, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is to be opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. Notice must be given before an account is opened or trading authority is granted.

G. Section 103.122(g) Lack of Verification

Paragraph (g) of the proposed rule states that a broker-dealer's CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer. Generally, a broker-dealer should maintain an account for a customer only when it can form a reasonable belief that it knows the customer's true identity.[10] Thus, a broker-dealer's CIP should specify the actions to be taken when it cannot form a reasonable belief. There also should be guidelines for when an account will not be opened. In addition, the CIP should address the terms under which a customer may conduct transactions while a customer's identity is being verified. The CIP should specify at what point, after attempts to verify a customer's identity have failed, an account that has been opened will be closed. Finally, the procedures should include a process for determining whether a Suspicious Activity Report should be filed in accordance with applicable laws and regulations.

H. Section 103.122(h) Recordkeeping

Section 326 of the Act requires procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information. Paragraph (h) of the proposed rule sets forth recordkeeping procedures that must be included in a broker-dealer's CIP. These procedures must provide for the maintenance of all information obtained pursuant to the CIP. Information that must be maintained includes all identifying information provided by a customer pursuant to paragraph (c). Thus, the broker-dealer must make a record of each customer's name, date of birth (if applicable), addresses, and tax identification number or other number. Broker-dealers also must maintain copies of any documents that were relied on pursuant to paragraph (d)(1) evidencing the type of document and any identification number it may contain. For example, if a customer produces a driver's license, the broker-dealer must make a copy of the driver's license that clearly indicates it is a driver's license and legibly depicts any identification number on the license.

Broker-dealers also must make and maintain records of the methods and results of measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2). For example, if a broker-dealer obtains a report from a credit bureau concerning a customer, the report must be maintained. Broker-dealers also must make and maintain records of the resolution of any discrepancy in the identifying information obtained. To continue with

[9] The purpose of engaging in verification is to check identifying information about a customer against an independent source. Contacting a customer may be a useful part of the verification process when an account is opened on-line or by mail. However, a broker-dealer should not rely solely on this method as a means of verification.

[10] There are some exceptions to this basic rule. For example, a broker-dealer may maintain an account, at the direction of law enforcement, notwithstanding that the broker-dealer does not know the true identity of a customer.

the previous example, if the customer provides a residence address that is different than the address shown on the credit report, the broker-dealer must document how it resolves this discrepancy or, if the discrepancy is not resolved, how it forms a reasonable belief notwithstanding the discrepancy.

The broker-dealer must retain all of these records for five years after the date the account is closed or the grant of authority to effect transactions with respect to an account is revoked. In all other respects, the records should be maintained in accordance with the requirements of Rule 17a-4. [11]

Nothing in this proposed regulation modifies, limits or supersedes section 101 of the Electronic Records in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, a broker-dealer may use electronic records to satisfy the requirements of this regulation, as long as the records are maintained in accordance with Rule 17a-4(f), which the Commission has interpreted as being consistent with the requirements in the E-Sign Act. [12]

Treasury and the Commission emphasize that the collection and retention of information about a customer, as an ancillary part of collecting identifying information, do not relieve a broker-dealer from its obligations to comply with anti-discrimination laws and regulations.

I. Section 103.122(i) Approval of Program

Paragraph (i) of the proposed rule requires that the broker-dealer's CIP be approved by the most senior level of the firm (*e.g.*, the board of directors, managing partners, board of managers, or other governing body performing similar functions) or by persons specifically authorized by that body to approve such a program.

J. Section 103.122(j) Exemptions

Section 326 states that the Secretary and the Federal functional regulator jointly issuing a rule under that section may by order or regulation exempt any financial institution or type of account from the regulation in accordance with such standards and procedures as the Secretary may prescribe. The proposed rule provides that the Commission, with the concurrence of the Secretary, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o and 78o-4. However, it excludes from this exemptive authority broker-dealers that register pursuant to 15 U.S.C. 78o(b)(11). These are firms that register as broker-dealers solely because they deal in securities futures products. The exemptive authority with respect to these firms will be in the rule issued jointly by Treasury and the CFTC. The proposed rule provides that the Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers pursuant to 15 U.S.C 78o-5 (*i.e.,* government securities dealers).

In issuing exemptions under the proposed rule, the Secretary and the Commission shall consider whether the exemption is consistent with the purposes of the BSA, and in the public interest, and may consider other necessary and appropriate factors.

III. Conforming Amendments to 31 CFR 103.35

Current section 103.35(a) sets forth customer identification requirements when certain brokerage accounts are opened. Generally, sections 103.35(a)(1) and (2) require a broker-dealer, within 30 days after an account is opened, to secure and maintain a record of the taxpayer identification number of the customer involved. If the broker-dealer is unable to obtain the taxpayer identification number within 30 days (or a longer time if the person has applied for a taxpayer identification number), it need take no further action under section 103.35 concerning the account if it maintains a list of the names, addresses, and account numbers of the persons for which it was unable to secure taxpayer identification numbers, and provides that information to the Secretary upon request. In the case of a non-resident alien, the broker-dealer is required to record the person's passport number or a description of some other government document used to determine identification.

Section 103.35(a)(3) currently provides that a broker-dealer need not obtain a taxpayer identification number with respect to specified categories of persons [13] opening accounts. The proposed rule does not contain any exemptions from the CIP requirements. Treasury believes that the requirements of section 103.35(a)(1) and (2) are inconsistent with the intent and purpose of section 326 of the Act and incompatible with the proposed rule. For these reasons, Treasury, under its own authority, is proposing to repeal section 103.35(a).

In addition, Treasury and the Commission are requesting comments on whether any of the exemptions in Section 103.35(a)(3) should apply in the context of the proposed CIP requirements in light of the intent and purpose of section 326 of the Act.

IV. Request for Comments

Treasury and the Commission invite comment on all aspects of the proposed regulation, and specifically seek comment on the following issues:

1. Whether the proposed definition of ''account'' is appropriate and whether other examples of accounts should be added to the rule text.

2. How broker-dealers can comply with the requirement to obtain both the address of a person's residence, and, if different, the person's mailing address in situations involving natural persons who lack a permanent address.

3. Whether non-U.S. persons that are not natural persons will be able to provide a broker-dealer with the identifying information required in § 103.122(c)(4), or whether other categories of identifying information should be added to this section. Commenters on this issue should suggest other means of identification that broker-dealers currently use or should use in this circumstance that would allow a broker-dealer to form a reasonable belief that it knows the true identity of the entity.

4. The extent to which the verification procedures required by the proposed rule make use of information that broker-dealers currently obtain in the account opening process. We note that the legislative history of section 326 indicates that Congress intended ''the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process.'' *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

5. Whether any of the exemptions from the customer identification requirements contained in current section 103.35(a)(3) should be continued in the proposed rule. In this regard, Treasury and the Commission

[11] 17 CFR 240.17a-4.

[12] *See* Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

[13] The exemption applies to (i) agencies and instrumentalities of Federal, State, local, or foreign governments; (ii) aliens who are ambassadors; ministers; career diplomatic or consular officers; naval, military, or other attaches of foreign embassies and legations; and members of their immediate families; (iii) aliens who are accredited representatives of certain international organizations, and their immediate families; (iv) aliens temporarily residing in the United States for a period not to exceed 180 days; (v) aliens not engaged in a trade or business in the United States who are attending a recognized college or university, or any training program supervised or conducted by an agency of the Federal Government; and (vi) unincorporated subordinate units of a tax exempt central organization that are covered by a group exemption letter.

request that commenters address the standards set forth in paragraph (j) of the proposed rule (as well as any other appropriate factors).

V. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[14] Treasury has submitted the proposed rule to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information Under the Proposed Rule

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. In summary, the proposed rule requires broker-dealers to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of the CIPs procedures to customers. These recordkeeping and notice requirements are required under section 326 of the Act.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the broker-dealer. Furthermore, section 326 provides that the regulations, at a minimum, must require broker-dealers to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

The proposed rule requires each broker-dealer to establish a written CIP that must include recordkeeping procedures and procedures for providing customers with notice that the broker-dealer is requesting information to verify their identity. The proposed rule requires a broker-dealer to maintain a record of (1) the identifying information provided by the customer, the type of identification document(s) reviewed, if any, the identification number of the document(s), and a copy of the identification document(s); (2) the means and results of any additional measures undertaken to verify the identity of the customer; and (3) the resolution of any discrepancy in the identifying information obtained.

The proposed rule also requires each broker-dealer to give customers ''adequate notice'' of the identity verification procedures. A broker-dealer may satisfy this disclosure requirement by posting a sign in the lobby or providing customers with any other form of written or oral notice. If the account is opened electronically, the broker-dealer may provide the notice electronically. Accordingly, a broker-dealer may choose among a variety of methods of providing adequate notice and may select the least burdensome method, given the circumstances under which customers seek to open new accounts.

C. Respondents

The proposed rule would apply to approximately 5,568 broker-dealers, which is the approximate number of firms that conduct business with the general public.

D. Total Annual Reporting and Recordkeeping Burden

1. Providing Notice to Customers

The requirement to provide notice to customers generally will be a one-time burden in terms of drafting and posting or implementing the notices. The Commission estimates that broker-dealers will take two hours each to draft and post the required notices. There are approximately 5,568 broker-dealers that will have to undertake this task. Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 11,136 hours.

2. Recordkeeping

The requirement to make and maintain records related to the CIP will be an annual time burden. The total burden to the industry will depend on the number of new accounts added each year. The Commission estimates that broker-dealers, on average, will spend two minutes per account making and maintaining the required records.[15] Therefore, in complying with this requirement, the Commission estimates that the industry as a whole will spend approximately 513,333 hours in 2002, 563,333 hours in 2003, and 620,000 hours in 2004.[16]

E. Collection of Information Is Mandatory

These recordkeeping and disclosure (notice) requirements are mandatory.

F. Confidentiality

The collection of information pursuant to the proposed rule would be provided by customers and other sources to broker-dealers and maintained by broker-dealers. In addition, the information may be used by federal regulators, self-regulatory organizations, and authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The proposed rule will require that the records with respect to a given customer be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked.

[14] 44 U.S.C. 3502 *et seq.*

[15] The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004. The Commission arrived at this estimate by considering: (1) the total number of accounts at the 2001 year-end (102,700,000) as reported by broker-dealers on Form X–17a-5—Financial and Operational Combined Uniform Single (FOCUS) Reports they file pursuant to section 17 of the Exchange Act and rule 17a-5 (17 CFR 240.17a-5) thereunder; and (2) the annualized growth rate in total accounts for the years 1990 through 2001 (ten percent). The Commission also estimates that the number of accounts that are closed each year equals five percent of the total number of accounts. Accordingly, the Commission estimates that the total annualized growth rate for new accounts each year is fifteen percent. Therefore, starting with the 2001 total of 102,700,000 and using an annualized growth rate of fifteen percent, the Commission estimates that 15,400,000 new accounts will be added in 2002, 16,900,000 in 2003 and 18,600,000 in 2004.

[16] The Commission derived these estimates by taking the number of new accounts projected for each upcoming year and multiplying the number by two minutes and then dividing that number by 60 to convert minute totals into hour totals.

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), Treasury and the Commission solicit comments to:

(1) Evaluate whether the proposed collections of information are necessary, and whether they would have practical utility,

(2) Evaluate the accuracy of the estimates of the burden of the proposed collection of information,

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov),* with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Commission's Analysis of the Costs and Benefits Associated With the Proposed Rule

The Commission is considering the costs and benefits associated with the proposal and requesting comment on all aspects of this cost-benefit analysis, including identification and assessment of any other costs and benefits not discussed in the analysis. Commenters are encouraged to identify, discuss, analyze, and supply relevant data concerning the costs and benefits associated with the proposed rule.

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for broker-dealers regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The proposed rule implements this statutory mandate by requiring broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies, (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records. The Commission believes that these requirements are reasonable and practicable, as required by the section 326 and, therefore, that the costs associated with them are attributable to the statute. Moreover, while the proposed rule specifies certain minimum requirements, broker-dealers will be able to design their CIPs in a manner most appropriate to their business models and customer bases. This flexibility should be beneficial to broker-dealers in helping them to tailor their CIPs appropriately, while still meeting the statutory requirements of section 326.

Even though the Commission believes the costs associated with the proposed rule are attributable to the statute, it nonetheless has undertaken an analysis of the costs and benefits of the requirements. The Commission seeks comment on all aspects of the proposed rule, including whether the proposed rule, by setting forth minimum requirements, creates a benefit or, conversely, imposes costs because broker-dealers will not be able to choose for themselves the minimum procedures they wish to use to meet the requirements of the statute. The Commission also seeks comment on whether the costs are attributable to the statute.

A. Benefits Associated With the Proposed Rule

The anti-money laundering provisions in the Act are intended to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule is an important part of this effort. It fulfills the statutory mandate of section 326 by specifying how a broker-dealer is to establish a program that will assist it in determining the identities of customers. Verifying identities, in turn, will reduce the risk of broker-dealers unwittingly aiding criminals, including terrorists, in accessing U.S. financial markets to launder money or move funds for illicit purposes. Additionally, the implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft or the placing of fictitious orders to buy or sell securities.

B. Costs Associated with the Proposed Rule

1. Writing Procedures

Most broker-dealers, as a matter of prudent business practices, should already have procedures in place for verifying identities of customers. In addition, Exchange Act Rule 17a–3(a)(9) requires broker-dealers to obtain the name and address of each beneficial owner of a cash or margin account.[17] Similarly, the self-regulatory organizations have rules requiring broker-dealers to obtain identifying information from customers.[18] Accordingly, firms should already have written procedures for complying with these existing regulations.

Nonetheless, the Commission believes that some broker-dealers will have to update or establish a CIP. The proposed rule seeks to keep the costs low by allowing for great flexibility in establishing a CIP. For example, it is to be based on factors specific to each broker-dealer, such as size, customer base and location. Thus, the analysis and detail necessary for a CIP will depend on the complexity of the broker-dealer and its operations. Given the considerable differences among broker-dealers, it is difficult to quantify a cost per broker-dealer. Highly complex firms will have more risk factors to consider, given, for example, their size, multiple offices, variety of services and products offered, and range of customers. However, most large firms already have some procedures in place for verifying customer identities. Smaller and less complex firms will not have as many risk factors.

The Commission estimates that establishing a written CIP could result in additional costs for some broker-dealers to the extent they do not have verification procedures that meet the minimum requirements in the rule. This includes broker-dealers that would need to augment their procedures to make them compliant. On average, the Commission estimates the additional cost per broker-dealer to establish a compliant CIP to be approximately $2,244, resulting in a one time overall cost to the industry of approximately $12,494,592.[19]

[17] 17 CFR 240.17a–3(a)(9).

[18] *See, e.g.,* NYSE Rule 405, NASD Rule 3110.

[19] The Commission estimates that it will take broker-dealers on average approximately 20 hours to establish a written CIP. This estimate seeks to account for the fact that many firms already have customer identification and verification procedures and that discrepancies in size and complexity will result in differing time burdens. The Commission believes that broker-dealers will have senior compliance personnel draft their CIPs and that this

Continued

2. Obtaining Identifying Information

The Commission believes that broker-dealers already obtain from customers most, if not all, of the information required under the proposed rule.[20] Rule 17a–3(a)(9) requires broker-dealers to obtain, with respect to each margin and cash account, the name and address of each beneficial owner, provided that the broker-dealer need only obtain such information from the persons authorized to transact business for the account if it is a joint or corporation account.[21]

Further, broker-dealers are already required, pursuant to NASD Rule 3110, to obtain certain identifying information with respect to each account.[22] For example, if the customer is a natural person, the rule requires the broker-dealer to obtain the customer's name and address.[23] In addition, the broker-dealer must determine whether the customer is of legal age, and, if the customer purchases more than just open-end investment company shares or is solicited to purchase such shares, the broker-dealer must obtain the customer's tax identification or social security number.[24] If the customer is a corporation, partnership, or other legal entity, the broker-dealer must obtain its name, residence, and the names of any persons authorized to transact business on behalf of the entity.[25] If the account is a discretionary account, the broker-dealer must obtain the signature of each person authorized to exercise discretion over the account.[26] Finally, the broker-dealer must maintain all of this information as a record of the firm.

In addition, NYSE Rule 405 requires broker-dealers to ''[u]se due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization and every person holding power of attorney over any account accepted or carried by such organization.'' [27]

While broker-dealers are required currently to obtain most of this information, the Commission estimates that there will be some new costs for broker-dealers because some may not be obtaining all the required information. The Commission estimates that the total cost to the industry to obtain the minimum identifying information will be $5,826,333 in 2002, $6,393,833 in 2003, and $7,037,000 in 2004.[28] The Commission also estimates that some broker-dealers will have to update their account opening applications or account opening websites in order to insert line items requesting customers to provide the required information. The Commission estimates that this will result in a one-time cost to the industry of $563,760.[29]

3. Verifying Identifying Information

The proposed rule provides broker-dealers with substantial flexibility in establishing how they will independently verify the information provided by customers. For example, customers that open accounts on a broker-dealer's premises can simply provide a driver's license or passport, or if the customer is not a natural person, it can provide a copy of any documents showing its existence as a legal entity (*e.g.*, articles of incorporation, business licenses, partnership agreements or trust instruments). There are also a number of options for customers that open accounts via the telephone or Internet. In these cases, broker-dealers may obtain a financial statement from the customer, check the customer's name against a credit bureau or database, or check the customer's references with other financial institutions.

The documentary and non-documentary verification methods set forth in the rule are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible is to allow broker-dealers to select verification methods that are, as section 326 requires, reasonable and practicable. Methods that are appropriate for a smaller broker-dealer with a fairly localized customer base may not be sufficient for a larger firm with customers from many different countries. The proposed rule recognizes this fact and, therefore, allows broker-dealers to employ such verification methods as would be suitable to a given firm to form a reasonable belief that it knows the true identities of its customers.

The Commission estimates that verifying the identifying information could result in costs for broker-dealers because some firms currently may not use verification methods. The Commission estimates that the total cost to the industry to verify the identifying information will be $48,628,333 in

will take an average of 16 hours. The Commission anticipates that in-house counsel will spend on average 4 hours reviewing the CIP. According to the Securities Industry Association (''SIA'') *Management and Professional Earnings 2000* report (''SIA Earnings Report''), Table 051, the hourly cost of a compliance manager plus 35% overhead is $101.25. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107 (Attorney)). Therefore, the Commission estimates that the total cost per broker-dealer to establish a CIP would be $2,244 per broker-dealer [(16 × $101.25) + (4 × $156.00)]. As of the 2000 year-end, there were approximately 5,568 broker-dealers that engaged in some form of a public business. Therefore, the Commission estimates that the total cost to the industry would be $2,244 multiplied by 5,568 or $12,494,592.

[20] For example, the Anti-Money Laundering Committee of the SIA recommended in its *Preliminary Guidance for Deterring Money Laundering Activity* (February 2002) that broker-dealers obtain certain identifying information from customers at the commencement of the business relationship, including, for natural persons: name, address, date of birth, investment experience and objectives, social security number or taxpayer identification number, net worth, annual income, occupation, employer's address, and the names of any persons authorized to effect transactions in the account. For non-resident aliens, the SIA Committee recommended that the broker-dealer obtain, in addition to the information above, a passport number or other valid government identification number. The SIA Committee also made a number of recommendations with respect to customers that are not natural persons.

[21] 17 CFR 240.17a–3(a)(9).

[22] Section 15(b)(8) of the Exchange Act (15 U.S.C. 78o(b)(8)) requires each broker-dealer to become a member of a securities association registered pursuant to section 15A of the Exchange Act (15 U.S.C. 78o–3) unless the broker-dealer effects transactions solely on a national securities exchange of which it is a member. The NASD is the only securities association registered pursuant to section 15A. Exchange Act Rule 15b9–1 (17 CFR 240.15b9–1) exempts broker-dealers from this requirement to register with the NASD if they (1) are an exchange member, (2) carry no customer accounts, and (3) derive gross annual income from purchases and sales of securities other than on a national securities exchange of not greater than $1,000. Generally then, most broker-dealers that carry customer accounts are members of the NASD and subject to Rule 3110.

[23] NASD Rule 3110(c)(1).

[24] NASD Rule 3110(c)(2).

[25] NASD Rule 3110(c)(1).

[26] NASD Rule 3110(c)(3).

[27] NYSE Rule 405(1).

[28] The Commission estimates that obtaining the required minimum identifying information will take broker-dealers approximately one minute per account. This takes into consideration the fact that approximately 97% of customer accounts are held at the 70 largest broker-dealers. These firms likely already obtain the required identifying information from their customers. Therefore, requiring that each piece of identifying information be obtained should not impose a significant additional burden. The average hourly cost of the person who would be obtaining this information is $22.70 per hour (per the SIA Earnings Report, Table 082 (Retail Sales Assistant, Registered) and including 35% in overhead charges). Therefore, the costs to the industry would be: (number of new accounts per year) × (1/60 of an hour) × ($22.70). As indicated previously, the Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

[29] The Commission estimates that it will take each broker-dealer, on average, one hour to update account opening applications or electronic account opening systems. The Commission believes that broker-dealers will have a compliance manager implement the necessary changes. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: ($101.25) × (the number of broker-dealers doing a public business or 5,568) or $563,760.

2002, $53,375,833 in 2003, and $58,745,000 in 2004.[30]

4. Determining Whether Customers Appear on a Federal Government List

The Commission believes that broker-dealers who receive federal government lists, chiefly clearing firms, already have procedures for checking customers against them. First, there are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control of the U.S. Treasury (OFAC). The failure of a firm to comply with these requirements could result in criminal and civil penalties. The Commission believes that, given the events of September 11, 2001, most broker-dealers that receive lists from the federal government have implemented procedures for checking their customers against them.

The Commission estimates that this requirement could result in some additional costs for broker-dealers because some may not already check such lists. The Commission estimates that the total cost to the industry to check such lists will be $3,323,833 in 2002, $3,647,583 in 2003, and $4,014,500 in 2004.[31]

5. Providing Notice to Customers

A broker-dealer may satisfy the notice requirement by generally notifying its customers about the procedures the broker-dealer must comply with to verify their identities. For example, the broker-dealer may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the broker-dealer may provide notice electronically. The Commission estimates the total one-time cost to the industry to provide notice to customers to be $1,432,368.[32]

6. Recordkeeping

The Commission estimates that many of the records required by the rule are already made and maintained by broker-dealers. As discussed above, Commission and self-regulatory organization rules already require broker-dealers to obtain much of the minimum identifying information specified in the proposed rule. These regulations also require that records be made and kept of this information. The Commission estimates that the recordkeeping requirement could result in additional costs for some broker-dealers that currently do not maintain certain of the records for the prescribed time period. The Commission estimates that the total cost to the industry to make and maintain the required records in the upcoming years will be $13,295,333 in 2002, $14,590,333 in 2003, and $16,058,000 in 2004.[33]

[30] The Commission estimates that the processing costs associated with verification methods will be approximately $1.00 per account. The Commission further estimates that the average time spent verifying an account will be five minutes. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × ($1.00) + (number of new accounts per year) × (1/12 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

[31] The Commission believes that most of the firms that receive these lists already check their customers against them. Moreover, as indicated previously, 97% of customer accounts are held at the 70 largest firms. The Commission understands that most of these firms have automated processes for complying with many regulatory requirements. Accordingly, the Commission estimates that it will take broker-dealers on average thirty seconds to check whether a person appears on a government list. The hourly cost of the person who would check the list is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/120 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

[32] The Commission estimates that it will take each broker-dealer, on average, two hours to create and implement the appropriate notice. This estimate takes into consideration the fact that many small firms will be able to provide adequate notice by hanging signs in their premises. Larger firms will be able to provide notice by updating account opening documentation or electronic account opening systems. The Commission believes that broker-dealers will have an attorney draft the appropriate notice, and that this will take approximately one hour. The hourly cost for an in-house counsel plus 35% overhead is $156.00 (SIA Earnings Report, Table 107, (Attorney)). The Commission believes that broker-dealers will have a compliance manager implement the notice, and that implementation will take approximately one hour. The hourly cost for a compliance manager is $101.25 (SIA Earnings Report, Table 051 (Compliance manager)). Accordingly, the total cost to the industry would be: ($156.00 + 101.25) × (the number of broker-dealers doing a public business or 5,568) or $1,432,368.

[33] The Commission estimates that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that many broker-dealers already make and maintain many of the required records. In addition, for many new accounts, the recordkeeping will be fairly simple (*e.g.*, making a photocopy of a driver's license or financial statement, or keeping a record of the results of a public database search or credit bureau query. The hourly cost of the person who would undertake the verification is $25.90 per hour (per the SIA Earnings Report, Table 086 (Data Entry Clerk, Senior) and including 35% in overhead charges). Therefore, the costs to the industry reported above are: (number of new accounts per year) × (1/30 of an hour) × ($25.90). The Commission estimates that the number of new accounts in the upcoming years will be: 15,400,000 in 2002, 16,900,000 in 2003, and 18,600,000 in 2004.

VII. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, to address concerns related to the effects of agency rules on small entities. In this case, Treasury and the Commission believe that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). First, the economic impact on small entities should not be significant because most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Second, as discussed in Section VI (the Commission's cost benefit analysis), the economic impact on broker-dealers, including small entities, is imposed by the statute itself, and not by the proposed rule. Treasury and the Commission seek comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself, and not the proposed rule.

While Treasury and the Commission believe that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, Treasury and the Commission do not have complete data at this time to make this determination. Therefore, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

A. Reason for the Proposed Action

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for broker-dealers and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the broker-dealer. Furthermore, section 326 requires, at a minimum, that broker-dealers implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of section 326, and the regulations promulgated thereunder, is

to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under section 326 and to achieve its important purpose.

B. Objective

The objective of the proposed regulation is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule seeks to achieve this goal by specifying the information broker-dealers must obtain from or about customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with broker-dealers for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

C. Legal Basis

The proposed rule is being promulgated pursuant to section 326 of the Act, which mandates that Treasury and the Commission issue a regulation setting forth minimum standards for financial institutions and their customers regarding the identity of customers that shall apply in connection with the opening of accounts at financial institutions.

D. Small Entities Subject to the Rule

The proposed rule would affect broker-dealers that are small entities. Rule 0–10 under the Exchange Act [34] defines a broker-dealer to be small if it (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in the rule.

As of December 31, 2000, the Commission estimates there were approximately 873 broker-dealers that were ''small'' for purposes of Rule 0–10 that would be subject to this rule because they conduct business with the general public. The Commission bases its estimate on the information provided in broker-dealer FOCUS Reports.

E. Reporting, Recordkeeping and other Compliance Requirements

The proposed rule would require broker-dealers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP.

F. Duplicative, Overlapping or Conflicting Federal Rules

As discussed throughout this preamble, there are other federal rules that contain requirements for collecting certain information from customers. However, these other requirements do not provide sufficient information for broker-dealers to verify the identity of their customers. Congress has mandated that Treasury and the Commission issue a regulation that requires broker-dealers to undertake such verifications.

G. Significant Alternatives

If an agency does not certify that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act directs Treasury and the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The proposed rule provides for substantial flexibility in how each broker-dealer may meet its requirements. This flexibility is designed to account for differences between broker-dealers, including size. Nonetheless, Treasury and the Commission did consider alternatives such as exempting certain small entities from some or all of the requirements of the proposed rule. Treasury and the Commission do not believe that such an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of broker-dealers, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

H. Solicitation of Comments

Treasury and the Commission encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis, including comments regarding the number of small entities that may be affected by the proposed rule. Such comments will be considered by Treasury and the Commission in determining whether a Final Regulatory Flexibility Analysis is required, and will be placed in the same public file as comments on the proposed amendment itself. Comments should be submitted to Treasury or the Commission at the addresses previously indicated.

VIII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the proposed rule closely parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Section 103.35 is amended as follows:

a. By removing paragraph (a);

b. By redesignating paragraph (b) introductory text and paragraphs (b)(1) through (b)(4) as introductory text and paragraphs (a) through (d), respectively; and

[34] 17 CFR 240.0–10(c).

c. In newly redesignated introductory text, by removing ‘‘, in addition,’’ in the first sentence.

3. Subpart I of part 103 is amended by adding § 103.122 to read as follows:

§ 103.122 Customer identification programs for broker-dealers.

(a) *Definitions.* For the purposes of this section:

(1) *Account* means any formal business relationship with a broker-dealer established to effect financial transactions in securities, including, but not limited to, the purchase or sale of securities, securities loan and borrowed activity, or the holding of securities or other assets for safekeeping or as collateral. For example, a cash account, margin account, prime brokerage account that consolidates trading done at a number of firms, or an account for repurchase transactions would each constitute an account.

(2) *Broker-dealer* means any person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C 77a *et seq.*), except persons who register pursuant to 15 U.S.C 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4) *Customer* means:

(i) Any person who opens a new account with a broker-dealer; and

(ii) Any person who is granted authority to effect transactions with respect to an account with a broker-dealer.

(5) *Person* has the same meaning as that term is defined in § 103.11(z).

(6) *U.S. person* means:

(i) Any U.S. citizen; and

(ii) Any corporation, partnership, trust, or person (other than a natural person) that is established or organized under the laws of a State or the United States.

(7) *Non-U.S. person* means a person that is not a *U.S. person.*

(8) *Taxpayer identification number.* The provisions of section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(b) *Customer identification program.* A broker-dealer shall establish, document, and maintain a written Customer Identification Program (‘‘CIP’’). A broker-dealer’s CIP procedures must enable it to form a reasonable belief that it knows the true identity of the customer. A broker-dealer’s CIP must be a part of its anti-money laundering program required under 31 U.S.C. 5318(h). A broker-dealer’s CIP procedures shall be based on the type of identifying information available and on an assessment of relevant risk factors including:

(1) The broker-dealer’s size;

(2) The broker-dealer’s location;

(3) The broker-dealer’s methods for opening accounts;

(4) The types of accounts the broker-dealer maintains for customers;

(5) The types of transactions the broker-dealer executes for customers;

(6) The broker-dealer’s customer base; and

(7) The broker-dealer’s reliance on another broker-dealer with which it shares an account relationship.

(c) *Required information*—(1) *General.* Except as permitted by paragraph (c)(2) of this section, the CIP shall require the broker-dealer to obtain specified identifying information about each customer before an account is opened or a customer is granted authority to effect transactions with respect to an account. The specified information must include, at a minimum:

(i) Name;

(ii) Date of birth, for a natural person;

(iii) Addresses:

(A) Residence and mailing (if different) for a natural person; or

(B) Principal place of business and mailing (if different) for a person other than a natural person; and

(iv) Documentary record:

(A) *U.S. person.* A taxpayer identification number from each customer that is a U.S. person; or

(B) *Non-U.S. person.* A taxpayer identification number, passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(2) *Limited exception.* In the case of a person other than a natural person that has applied for, but has not received, an employer identification number, the CIP may allow the employer identification number to be provided within a reasonable period of time after the account is established, if the broker-dealer obtains a copy of the application for the employer identification number prior to the opening of an account or the granting of trading authority.

(d) *Required verification procedures.* The CIP shall include procedures for verifying the identity of customers, to the extent reasonable and practicable, using identifying information obtained. Such verification must occur within a reasonable time before or after the customer’s account is opened or the customer is granted authority to effect transactions with respect to an account.

(1) *Verification through documents.* The CIP must describe when the broker-dealer will verify customers’ identities through documents and describe the documents that the broker-dealer will use for this purpose. Suitable documents for verification may include:

(i) For natural persons, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(ii) For persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(2) *Verification through non-documentary methods.* The CIP must describe non-documentary methods the broker-dealer will use to verify customers’ identities and when these methods will be used in addition to, or instead of, relying on documents. Non-documentary verification methods may include contacting a customer, obtaining a financial statement, independently verifying information through credit bureaus, public databases, or other sources, and checking references with other financial institutions. Non-documentary methods shall be used when a customer who is a natural person is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard, or the broker-dealer is presented with unfamiliar documents to verify the identity of a customer, the broker-dealer does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(e) *Government lists.* The CIP shall include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations provided to the broker-dealer by any federal government agency. Broker-dealers shall follow all federal directives issued in connection with such lists.

(f) *Customer notice.* The CIP shall include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(g) *Lack of verification.* The CIP shall include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief that it knows the true identity of a customer.

(h) *Recordkeeping.* The CIP shall include procedures for making and retaining a record of all information obtained pursuant to the CIP.

(1) *Required records.* At a minimum, the CIP shall require the broker-dealer to make the following records:

(i) All identifying information provided by a customer pursuant to paragraph (c) of this section, and copies of any documents that were relied on pursuant to paragraph (d)(1) of this section that accurately depict the types of documents and any identification numbers they may contain;

(ii) The methods and results of any measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2) of this section; and

(iii) The resolution of any discrepancy in the identifying information obtained.

(2) *Retention of records.* The broker-dealer must retain all records made or obtained when verifying the identity of a customer pursuant to its CIP until five years after the date the account of the customer is closed or the grant of authority to effect transactions with respect to an account is revoked. In all other respects, the records shall be maintained pursuant to the provisions of 17 CFR 240.17a-4.

(i) *Approval of CIP.* The CIP shall be approved by the broker-dealer's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the CIP.

(j) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o (except broker-dealers that register under subsection (b)(11) of that section) or 15 U.S.C. 78o-4 or type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o-5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 12, 2002.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18192 Filed 7–22–02; 8:45 am]

BILLING CODE 8010–01–P; 4830–01–P516

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25657; File No. S7–26–02]

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA33

Customer Identification Programs for Mutual Funds

AGENCIES: Financial Crimes Enforcement Network, Treasury; Securities and Exchange Commission.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the Securities and Exchange Commission are jointly issuing a proposed regulation to implement Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury to jointly prescribe with the Securities and Exchange Commission a regulation that, at a minimum, requires investment companies to adopt and implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to investment companies by any government agency. The proposed rule would apply to investment companies that are mutual funds.

DATES: Written comments on the proposed rule should be submitted to the Treasury Department and the Securities and Exchange Commission on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington area may be subject to delay, commenters are encouraged to e-mail comments. Comments should be sent by one method only.

Treasury: Comments may be mailed to FinCEN, Section 326 Mutual Fund Rule Comments, P.O. Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption ''Attention: Section 326 Mutual Fund Rule Comments'' in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

Securities and Exchange Commission: Comments also should be submitted in triplicate to Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–26–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet web site *(http://www.sec.gov).* Personal, identifying information, such as names or E-mail addresses, is not deleted from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: *Securities and Exchange Commission:* Division of Investment Management, Securities and Exchange Commission, (202) 942–0720.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.[1] Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (''BSA''), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the

[1] Pub. L. 107–56.

prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary of the Treasury (''Secretary'') to prescribe regulations setting forth minimum standards for financial institutions and their customers that relate to the identification and verification of any person who applies to open an account. Section 326 provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for: (1) Verifying the identity of customers, to the extent reasonable and practicable, when accounts are opened; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available. Final regulations implementing Section 326 must be effective by October 25, 2002.

Section 326 applies to all ''financial institutions.'' This term is defined very broadly in the BSA to encompass a variety of entities including investment companies, banks, agencies and branches of foreign banks in the United States, thrifts, credit unions, brokers and dealers in securities or commodities, insurance companies, travel agents, pawnbrokers, dealers in precious metals, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2).[2]

Although the BSA includes ''an * * * investment company'' among the entities defined as financial institutions, Treasury has not previously defined the term for purposes of the BSA.[3] The Investment Company Act of 1940 (codified at 15 U.S.C. 80a–1, *et seq.*) (''1940 Act'') defines investment company broadly and subjects those entities to comprehensive regulation by the Commission.[4] However, privately offered entities commonly known as hedge funds, private equity funds and venture capital funds typically rely on exclusions from the 1940 Act definition of investment company.[5] For purposes of the Section 326 requirement, the scope of this proposed rule is limited to those entities that are required to register with the Commission as investment companies and that fall within the category of ''open-end company'' contained in section 5(a)(1) of the 1940 Act.[6] These entities are commonly referred to as ''mutual funds.''[7]

Regulations governing the applicability of Section 326 to other financial institutions, such as broker-dealers and those institutions regulated by the banking agencies, are being issued separately. Treasury, the Commission, the CFTC and the banking agencies consulted extensively in the development of all rules implementing Section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.[8]

The Secretary has determined that the records required to be kept by Section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, the Commission is also proposing to add a provision in its own regulations in 17 CFR part 270 that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-reference will be included in a final rule published by the Commission concurrently with the joint final rule issued by Treasury and the Commission implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Section 103.131(a) Definitions

(1) *Account.* The proposed rule's definition of ''account'' is intended to include all types of securities accounts maintained by mutual funds. This includes each account at a mutual fund.

(2) *Commission* means the United States Securities and Exchange Commission.

(3) *Customer.* The proposed rule defines ''customer'' as any shareholder

[2] For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with the Securities and Exchange Commission (''Commission''), the Commodity Futures Trading Commission (''CFTC''), and the banking agencies (''banking agencies''), namely, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

[3] 31 U.S.C 5312(a)(2)(I).

[4] Section 3(a)(1) defines ''investment company'' as any issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[5] *E.g.,* Sections 3(c)(1) and 3(c)(7) of the Investment Company Act. Section 356 of the Act requires that the Secretary, the Board of Governors of the Federal Reserve System and the Commission jointly submit a report to Congress, not later than October 26, 2002, on recommendations for effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, including persons that, but for the provisions that exclude entities commonly known as hedge funds, private equity funds, and venture capital funds, would be investment companies.

[6] Other types of investment companies regulated by the Commission include closed-end companies and unit investment trusts. Closed-end companies typically sell a fixed number of shares in traditional underwritten offerings. Holders of closed-end company shares then trade their shares in secondary market transactions, usually on a securities exchange or in the over-the-counter market. Unit investment trusts are pooled investment entities without a board of directors or investment adviser that offer investors redeemable units in an unmanaged, fixed portfolio of securities. The Secretary and the Commission will continue to consider whether a CIP requirement would be appropriate for the issuers of these products, or whether they are effectively covered by the CIP requirements of other financial institutions involved in their distribution (e.g., broker-dealers).

[7] By interim rule published on April 29, 2002, Treasury required that mutual funds adopt anti-money laundering programs pursuant to Section 352 of the Act. 67 FR 21117 (April 29, 2002). Treasury temporarily exempted investment companies other than mutual funds from the requirement that they establish anti-money laundering programs and temporarily deferred determining the definition of ''investment company'' for purposes of the BSA. *Id.* However, it is likely that some of the entities excluded from the definition of ''investment company'' in the 1940 Act will be required to establish anti-money laundering programs and customer identification programs pursuant to sections 352 and 326 of the Act.

[8] Section 314(c) of the Act provides that: ''Compliance with the provisions of this title requiring or allowing financial institutions and any association of financial institutions to disclose or share information regarding individuals, entities, and organizations engaged in or suspected of engaging in terrorist acts or money laundering activities shall not constitute a violation of the provisions of title V of the Gramm-Leach-Bliley Act (Public Law 106–102).''

of record who opens a new account with a mutual fund and any person granted authority to effect transactions in the shareholder of record's account with a mutual fund. Under this definition, a shareholder of record prior to the effective date of the regulation would not be a ''customer.'' However, such a person becomes a ''customer'' if the person becomes a shareholder of record or is granted trading authorization in a different account after the effective date. Moreover, a person becomes a ''customer'' each time they open a different type of account. For example, after the effective date, if a person opens a taxable account and subsequently opens an IRA account, the person is a ''customer'' subject to the requirements of this rule on both occasions.[9] However, a shareholder who exchanges shares of one fund for shares of another fund within the same account (or initiates any other transaction that does not involve the opening of a separate account) does not become a ''customer'' for the purpose of this rule.

A person with trading authority prior to the effective date of the regulation is not a ''customer.'' However, any person granted trading authority after the effective date is a customer. This is true even if the person is granted authority with respect to an account that existed prior to the effective date or the person had been granted authority for another account prior to the effective date.

The requirements of Section 326 apply to any person who opens a new account or is granted trading authority for an account, but do not apply to persons seeking information about a mutual fund such as a request for a prospectus or profile. In addition, transfers of accounts from one mutual fund to another that are not initiated by the customer (*e.g.,* as a result of a merger, acquisition, or purchase of assets) fall outside of the scope of Section 326, and are not covered by the proposed regulation.[10]

(4) *Mutual Fund* means an entity that is required to register with the Commission as an ''investment company'' (as the term is defined in Section 3 of the 1940 Act) and that is an ''open-end company'' (as that term is defined in Section 5 of the 1940 Act).

(5) *Person.* The proposed regulation defines ''person'' as having the same meaning as that term is defined in section 103.11(z). Thus, the term includes natural persons, corporations, partnerships, trusts or estates, joint stock companies, associations, syndicates, joint ventures, any unincorporated organizations or groups, Indian Tribes, and all entities cognizable as legal entities.

(6) *Taxpayer identification number.* The proposed rule defines ''taxpayer identification number'' to have the same meaning as determined under the provisions of section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder.

(7) *U.S. person.* The proposed rule defines ''U.S. person'' as a U.S. citizen or, for persons other than natural persons, an entity established or organized under the laws of a State or the United States.[11] A non-U.S. person is a person who does not satisfy these criteria.

B. Section 103.131(b) Customer Identification Program

Section 326 requires the Secretary and the Commission to prescribe regulations requiring mutual funds to adopt and implement ''reasonable procedures'' for: verifying the identity of customers ''to the extent reasonable and practicable;'' maintaining records associated with such verification; and consulting lists of known terrorists.

Paragraph (b) of the proposed rule sets forth the requirement that mutual funds must develop and operate a customer identification program (''CIP'') and sets forth relevant factors for the design of CIP procedures.[12] The degree to which a CIP is effective will be a function of a mutual fund's assessment of these factors and the nature of its response to them (as manifested in the CIP's procedures and guidelines). In addition, as Section 326 and the proposed rule provide, the reasonableness of the CIP also will be a function of what is practicable for the mutual fund.

In developing and updating CIPs, mutual funds should consider the type of identifying information available for customers and the methods available to verify that information. While certain minimum identifying information is required in paragraph (c) of this proposed rule and certain suitable verification methods are described in paragraph (d), mutual funds should consider on an on-going basis whether other information or methods are appropriate, particularly as they become available in the future.

Mutual funds must also base their CIPs on the risks associated with their business operations. Some relevant risk factors to be considered are set forth in paragraph (b) and discussed below in general terms.[13]

The first risk factor to consider is the mutual fund's size. For example, a large mutual fund that opens a substantial number of accounts on any given day will have different risks than one that opens a much smaller number of new accounts.

The second risk factor is the method by which customers open accounts at the mutual fund. Accounts opened exclusively on-line present different, and perhaps greater, risks than those opened in-person on the firm's premises.

The third risk factor is the type of accounts offered by the mutual fund. Mutual funds should assess whether there are different risks (and degrees of risk) associated with the various types of accounts they provide to customers (*e.g.,* taxable, IRA, 401(k) and 403(b) accounts).

The fourth risk factor is the customer base. Mutual funds should assess the risks associated with different types of customers. For example, a mutual fund should examine whether it is opening accounts for customers located in countries the Secretary determines to be of ''primary money laundering concern'' pursuant to Section 311 of the Act. Verification procedures should account for the concerns raised by such customers. In addition, certain types of customers may pose greater risks (*e.g.,* individuals and certain types of business entities, such as closely held corporations, may pose a greater risk than institutional shareholders).

Because mutual funds typically conduct their operations through separate entities, which may or may not be affiliated, some elements of the CIP

[9] As discussed *infra,* this does not necessarily mean that a customer whose identity has been verified by a mutual fund must always have their identity verified every time they subsequently becomes a customer with respect to a different account.

[10] However, there may be situations involving the transfer of accounts where it would be appropriate for a mutual fund to verify the identity of customers associated with the accounts acquired by the mutual fund. Therefore, Treasury and the Commission expect procedures for transfers of accounts to be part of a mutual fund's overall anti-money laundering program required under section 352 of the Act.

[11] The terms ''State'' and ''United States'' are defined at 31 CFR 103.11.

[12] An interim rule issued by Treasury pursuant to Section 352 of the Act requires all mutual funds to establish anti-money laundering programs that, at a minimum, include (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. 67 FR 21117 (April 29, 2002). The proposed rule requires that the CIP be incorporated into a mutual fund's program established under Section 352. At the same time that it issued the interim rule under Section 352 of the Act, Treasury delegated to the Commission authority to examine mutual funds for compliance with Bank Secrecy Act regulations.

[13] This discussion of risk factors is not intended to be comprehensive or exhaustive.

will best be performed by personnel of these separate entities. It is permissible for a mutual fund to contractually delegate the implementation and operation of its CIP to another affiliated or unaffiliated service provider, such as a transfer agent. However, the mutual fund remains responsible for assuring compliance with this rule. Accordingly, the mutual fund must actively monitor the operation of its CIP program and assess its effectiveness.

A mutual fund's CIP does not have to include verification of individuals' identities whose transactions are conducted through an omnibus account. Typically, a fund has little or no identifying information for the individual customers represented in an omnibus account. For example, when fund shares are sold through a broker-dealer, the shareholders' accounts are opened at the broker-dealer. The broker-dealer obtains the identifying information about the customers. This rule does not require that a mutual fund obtain any additional information regarding the identities of individual shareholders who open their accounts through an omnibus accountholder. Of course, the omnibus account holder is itself a customer for purposes of this rule.[14]

Finally, paragraph (b) requires that the identity verification procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of the customer. This provision makes clear that, while there is flexibility in establishing these procedures, the mutual fund is responsible for exercising reasonable efforts to ascertain the identity of each customer.

C. Section 103.131(c) Required Information

Paragraph (c) of the proposed regulation provides that a mutual fund's CIP must require customers to provide, at a minimum, certain identifying information before an account is opened for the customer or the customer is granted trading authority over an account. Specifically, the mutual fund must obtain each customer's: (1) Name, (2) date of birth, if applicable, (3) addresses,[15] and (4) identification number.[16]

The rule only specifies the minimum identifying information that must be obtained from each customer. Mutual funds, in assessing the risk factors in paragraph (b), should determine whether obtaining other identifying information is necessary to form a reasonable belief as to the true identity of each customer. There may be circumstances when a mutual fund should obtain additional identifying information. The CIP should set forth guidelines regarding what those circumstances are and what additional information should be obtained in such circumstances.

Treasury and the Commission recognize that a new business may need to open a mutual fund account before it has received an employer identification number (''EIN'') from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that an EIN be provided prior to establishing an account. Accordingly, in the case of person other than an individual (such as a corporation, partnership or trust) that has applied for, but has not received, an EIN, the EIN may be provided within a reasonable period of time after an account is established, provided that a copy of the EIN application is submitted to the mutual fund prior to the time the account is established. Currently, the IRS indicates that the issuance of an EIN can take up to five weeks. This length of time, coupled with when the entity applied for the EIN, should be considered by the mutual fund in determining the reasonable period of time within which the entity should provide its EIN to the mutual fund.

D. Section 103.131(d) Required Verification Procedures

After obtaining identifying information from a customer, the mutual fund must take steps to verify some, or all, of that information in order to form a reasonable belief that it knows the true identity of the customer. Accordingly, paragraph (d) of the proposed rule requires a mutual fund's CIP to have procedures for verifying identifying information provided by the customer. The mutual fund need not verify each piece of identifying information obtained pursuant to paragraph (c), if it is able to form a reasonable belief that it knows the customer's identity after verifying only certain of the information.

Paragraph (d) further requires that the verification procedures must be undertaken within a reasonable time before or after a customer's account is opened or a customer is granted authority to effect transactions with respect to an account. This flexibility must be exercised in a reasonable manner, given that verifications too far in advance may become stale and verifications too long after the fact may provide opportunities to launder money while verification is pending. The amount of time it will take a mutual fund to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in-person, and on the type of identifying information available. In addition, provided that the appropriate disclosure is made, a mutual fund may choose to place limits on the account, such as temporarily limiting additional purchases in an account until the customer's identity is verified. Therefore, the proposed rule provides mutual funds with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account or granting of trading authority.

A person becomes a customer each time they open a new account with a mutual fund. Therefore, upon the opening of each account, the verification requirements of this rule would apply. However, if a customer whose identification has been verified previously opens a new account, the mutual fund would not need to verify the customer's identity a second time, provided that the mutual fund continued to have a reasonable belief that it knew the true identity of the customer based on the previous verification.

The rule provides for two methods of verifying identifying information: verification through documents and/or verification through non-documentary means. For natural persons, suitable documents for verification include unexpired government-issued identification documents evidencing nationality or residence and bearing a

[14] This treatment of omnibus accounts is consistent with the legislative history of the Act which includes the following: [W]here a mutual fund sells its shares to the public through a broker-dealer and maintains a ''street name'' or omnibus account in the broker-dealer's name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to ''look through'' the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan, and not its participants, would be the fund's customers. Thus, the fund would not be required to ''look through'' the plan to identify its participants. H.R. Rep. 107–250, pt. 1, at 62(2001).

[15] With respect to addresses, each customer must provide a mailing address and, if different, the address of the customer's residence (if a natural person) or principal place of business (if not a natural person).

[16] If the customer is a U.S. person, he must provide a U.S. taxpayer identification number (*e.g.,* social security number or employer identification number). If the customer is a non-U.S. person, he must provide a U.S. taxpayer identification number, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard. The term ''similar safeguard'' is included to permit the use of any biometric identifiers (*e.g.,* fingerprints) that may be used in addition to, or instead of, photographs.

photograph or similar safeguard. For non-natural persons, suitable documents must evidence the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

The proposed rule requires a mutual fund's CIP to address both methods of verification. Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documents or non-documentary methods. In some cases, it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used. These guidelines should be based on the mutual fund's assessment of the factors described in paragraph (b) of the proposed rule.

The risk a mutual fund will not know a customer's true identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created, or conducts substantial business, in jurisdictions designated as primary money laundering concerns or designated as non-cooperative by an international body. Obtaining sufficient information to verify a given customer's identity can reduce the risk a mutual fund will be used as a conduit for money laundering and terrorist financing. A mutual fund's identity verification procedures must be based on its assessments of the factors in paragraph (b). Accordingly, when those assessments suggest a heightened risk, the mutual fund should utilize additional verification measures.

1. Verification Through Documents

Paragraph (d)(1) provides that the CIP must describe when a mutual fund will verify identity through documents and set forth the documents that will be used for this purpose. The rule also lists certain documents that are suitable for verification. For example, documentary verification could include obtaining a driver's license or passport from a natural person or articles of incorporation from a company.

2. Verification Through Non-documentary Methods

Paragraph (d)(2) provides that the CIP must describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, verification through documents. The rule allows for the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet. However, even if the customer presents identification documents, it may be appropriate to use non-documentary methods as well. Ultimately, the mutual fund is responsible for employing sufficient verification methods to be able to form a reasonable belief that it knows the true identity of the customer.

The proposed rule sets forth certain non-documentary methods that would be suitable for verifying identity. These methods include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior; comparing the identifying information with information available from a trusted third-party source, such as a credit report from a consumer reporting agency; and checking references with other financial institutions. The mutual fund also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number.

Paragraph (d)(2) also provides that the CIP must require the use of non-documentary methods in certain cases; specifically, when a natural person is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard and when the mutual fund is presented with unfamiliar documents to verify the identity of a customer, does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.

Treasury and the Commission recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, mutual funds are encouraged to use non-documentary methods, even when a customer has provided identification documents.

E. Section 103.131(e) Government Lists

The proposed rule requires that a mutual fund's CIP must include reasonable procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the mutual fund. This requirement applies only with respect to lists circulated, directly provided, or otherwise made available by the Federal government. In addition, the proposed rule states that mutual funds must follow all Federal directives issued in connection with such lists. A mutual fund must have procedures for responding to circumstances when a customer is named on such a list.

F. Section 103.131(f) Customer Notice

Section 326 provides that financial institutions must give their customers notice of their identity verification procedures. Therefore, a mutual fund's CIP must include procedures for providing customers with adequate notice that the mutual fund is requesting information to verify their identities. A mutual fund may satisfy the notice requirement by generally notifying its customers about the procedures the fund must comply with to verify their identities. If an account is opened electronically, such as through an Internet website, the mutual fund may provide notice electronically. However, notice must be provided to the customer before the account is opened or trading authority is granted.

G. Section 103.131(g) Lack of Verification

Paragraph (g) of the proposed rule states that a mutual fund's CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer. A mutual fund's CIP should specify the actions to be taken when it cannot form a reasonable belief that it knows the customer's true identity, which could include closing the account or placing limitations on additional purchases. There also should be guidelines for when an account will not be opened (*e.g.,* when the required information is not provided). In addition, the CIP should address the terms under which a customer may conduct transactions while the customer's identity is being verified. Mutual funds are also encouraged, but not required at this time, to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (866–566–3974).

H. Section 103.131(h) Recordkeeping

Section 326 of the Act requires procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information. Paragraph

(h) of the proposed rule sets forth recordkeeping procedures that must be included in a mutual fund's CIP. These procedures must provide for the maintenance of all information obtained pursuant to the CIP. Information that must be maintained includes all identifying information provided by a customer pursuant to paragraph (c). Thus, the mutual fund must make a record of each customer's name, date of birth (if applicable), addresses, and identification numbers provided. Mutual funds also must maintain copies of any documents that were relied on pursuant to paragraph (d)(1) evidencing the type of document and any identification number it may contain. For example, if a customer produces a driver's license, the mutual fund must make a copy of the driver's license that clearly indicates it is a driver's license and legibly depicts any identification number on the license.

Mutual funds also must make and maintain records of the methods and results of measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2). For example, if a mutual fund obtains a report from a credit bureau concerning a customer, the report must be maintained. Mutual funds also must make and maintain records of the resolution of any discrepancy in the identifying information obtained. To continue with the previous example, if the customer provides a residence address that is different than the address shown on the credit report, the mutual fund must document how it resolves this discrepancy or, if the discrepancy is not resolved, how it forms a reasonable belief that the mutual fund knows the true identity of the customer, notwithstanding the discrepancy.

The mutual fund must retain all of these records for five years after the date the account is closed. Nothing in this proposed regulation modifies, limits or supersedes Section 101 of the Electronic Records in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (''E-Sign Act''). Thus, a mutual fund may use electronic records to satisfy the requirements of this regulation in accordance with previously issued Commission guidance.[17]

Treasury and the Commission emphasize that the collection and retention of information about a customer, as an ancillary part of collecting identifying information, do not relieve a mutual fund from its obligations to comply with anti-discrimination laws or regulations.

I. Section 103.131(i) Approval of Program

Paragraph (i) of the proposed rule requires that the mutual fund's CIP be approved by its board of directors or trustees. The board should periodically assess the effectiveness of its CIP and should receive periodic reports regarding the CIP from the person or persons responsible for monitoring the fund's anti-money laundering program pursuant to 31 CFR 103.130(c)(3).

J. Section 103.131(j) Exemptions

Section 326 states that the Secretary and the Federal functional regulator jointly issuing the rule may by order or regulation exempt any financial institution or type of account from this regulation in accordance with such standards and procedures as the Secretary may prescribe. The proposed rule provides that the Commission, with the concurrence of the Secretary, may exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

III. Request for Comments

Treasury and the Commission invite comment on all aspects of the proposed regulation, and specifically seek comment on the following issues:

1. Whether the proposed definition of ''account'' is appropriate and whether other examples of accounts should be added to the regulatory text.

2. How mutual funds can comply with the requirement to obtain both the address of a person's residence, and, if different, the person's mailing address in situations involving natural persons who lack a permanent address.

3. Whether non-U.S. persons that are not natural persons will be able to provide a mutual fund with the identifying information required in § 103.131(c)(4), or whether other categories of identifying information should be added to this section. Commenters on this issue should suggest other means of identification that mutual funds currently use or could use in this circumstance that would allow a mutual fund to form a reasonable belief that it knew the true identity of the entity.

4. The extent to which the verification procedures required by the proposed regulation will use information that mutual funds currently obtain in the account opening process. We note that the legislative history of Section 326 indicates that Congress intended ''the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process.'' *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

IV. The Commission's Analysis of the Costs and Benefits Associated With the Proposed Rule

The Commission is considering the costs and benefits associated with the proposal and requesting comment on all aspects of this cost-benefit analysis, including identification and assessment of any other costs and benefits not discussed in the analysis. Commenters are encouraged to identify, discuss, analyze, and supply relevant data concerning the costs and benefits of the proposed rule's implementation of Section 326 requirements.

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for mutual funds regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The Commission believes that the requirements in the proposed rule are reasonable and practicable. Accordingly, the costs to mutual funds to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies, (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records related to the CIP are attributable to the statute.

While the Commission believes the costs are attributable to the statute, it nonetheless has undertaken an analysis of the costs and benefits of the requirements. The Commission seeks comment on whether the costs are attributable to the statute. The Commission also seeks comment on whether the proposed rule, by setting forth minimum requirements, creates a benefit or, conversely, imposes costs because mutual funds will not have to establish their own minimum requirements as required by the statute.

[17] *See* Investment Company Act Release No. 24991 (May 24, 2001) [66 FR 29224 (May 30, 2001)].

A. Benefits Associated With the Proposed Rule

The anti-money laundering provisions in the Act are intended to prevent, detect and prosecute money laundering and the financing of terrorism. The proposed rule is an important part of this effort. It requires mutual funds to establish a program for verifying the true identities of their customers, thereby reducing the risk that mutual funds will be unwittingly aiding criminals, including terrorists, in accessing U.S. financial markets to launder money or move funds for illicit purposes. Additionally, the implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft or the placing of fictitious orders to buy or sell securities. It is virtually impossible to quantify in monetary terms those benefits.

B. Costs Associated With the Proposed Rule

Section 326 of the Act and the proposed rule allows for great flexibility in developing CIPs. Given the considerable differences among mutual funds regarding their distribution channels, customers, and exposure to other relevant risk factors, it is difficult to quantify a cost per mutual fund. Most mutual funds already have some procedures in place for detecting fraud in the account opening process by looking for inconsistencies in the information provided by customers and/or checking customer names against certain databases. In those instances, the Section 326 requirements supplement those procedures.

Section 326 requirements will impose initial, one-time costs and ongoing costs on mutual funds. The costs associated with establishment of CIPs and modification of account applications (both paper and web-based applications) to require that customers provide the information required by the CIP and to provide the required notice regarding use of that information will primarily be initial, one-time costs.

Ongoing costs for mutual funds will be associated with the need to: (1) Collect the information required by the CIPs, (2) verify customers' identities, (3) determine whether customers appear on lists provided by federal agencies, and (4) make and maintain records related to CIPs. These ongoing costs will primarily be a function of the number of new accounts opened at a mutual fund. From January 1, 1990 through December 31, 2001, approximately 16 million mutual fund accounts were added annually.[18]

1. Establishment of a CIP

There are approximately 3,060 mutual fund companies that are registered with the Commission (''mutual fund registrants'').[19] For estimating the total costs associated with Section 326 requirements, the Commission assumes that each mutual fund registrant will be responsible for establishing a CIP.[20]

The Commission staff believes that it will take mutual funds on average approximately 50 hours to establish a CIP. The Commission staff believes that the hourly personnel cost and overhead associated with development of CIPs will be approximately $125. Therefore, the estimated total cost per mutual fund to establish a CIP will be approximately $6,250. Consequently, the estimated initial cost for the 3,060 mutual fund registrants will be approximately $19,125,000.

The actual development costs associated with a single CIP may be higher than the $6,250 estimate. For mutual fund registrants that delegate implementation of their CIP to unaffiliated service providers, the burden per mutual fund registrant may be less because those service providers will likely use the same or similar software and systems for several different registrants. Similarly, the cost per registrant on registrants that utilize a CIP developed by their fund complex may be less. Consequently, the Commission believes this is a reasonable estimate of the cost per mutual fund registrant of developing and implementing the requisite CIPs.

2. Obtaining Identifying Information

Generally, mutual funds currently only require a name and mailing address from a customer in order to open an account. While most mutual funds request a social security number, they generally will open an account if the customer does not provide one. Most funds currently do not require that customers provide a residential address (if different from the mailing address) or a date of birth.

Collecting identifying information for the majority of new accounts should create no additional burden on mutual funds. Most of the burden associated with this requirement will be associated with those account applications where the customer did not provide some of the required information, thus requiring follow-up by the mutual fund. Mutual funds can minimize this burden with clear disclosure on account applications that an account cannot be opened without the requisite information.

The Commission staff believes that the average time spent collecting the requisite information will be one minute per account and that the hourly personnel and overhead cost associated with these requirements will be $25 per hour. Therefore, the estimated cost to the industry from this requirement is: (16 million new accounts per year * 1/60 of an hour * $25). Thus, the estimated annual, industry-wide cost will be approximately $6,666,667.

3. Providing Notice to Customers

A mutual fund may satisfy the notice requirement by generally notifying its customers about the procedures the mutual fund must comply with to verify their identities. If an account is opened electronically, such as through an Internet website, the mutual fund may provide notice electronically. The Commission expects that mutual funds will provide the required notice to customers by modifying their paper and electronic account applications.

The Commission staff believes that it will take mutual funds on average approximately two hours to modify account applications to provide the adequate notice. The Commission staff estimates that the hourly personnel cost and overhead associated with this modification will be approximately $125. Therefore, the estimated total cost per mutual fund to modify its account applications will be approximately $250. Consequently, the estimated initial cost associated with modifying account applications to provide the requisite notice to customers for the 3,060 mutual fund registrants will be approximately $765,000.

4. Verifying Customers' Identities

The proposed rule provides mutual funds with substantial flexibility in establishing how they will independently verify the information provided by customers. For example, customers that open accounts on a

[18] This estimate is derived from information reported in the Investment Company Institute's 2002 Mutual Fund Fact Book. It represents the net annual increase in the number of mutual fund accounts. The actual number of new accounts that were opened during this period is probably higher as this estimate is reduced by the number of accounts that were closed during the same period. No data are available regarding the number of accounts that were closed.

[19] This estimate is based on figures compiled by the Commission staff from Commission filings.

[20] Using the number of mutual fund registrants to estimate the total costs associated with development of CIPs may result in a high estimate of those costs. A mutual fund complex (or mutual fund family) often comprises several mutual fund registrants. The Commission assumes that, in many instances, a single CIP will be developed by a mutual fund complex and utilized by all of the mutual fund registrants in that complex.

mutual fund's premises can simply provide a driver's license or passport, or if the customer is not a natural person, it can provide a copy of any documents showing its existence as a legal entity (*e.g.*, articles of incorporation, business licenses, partnership agreements or trust instruments). There are also a number of options for customers that open accounts via the telephone or Internet. In these cases, mutual funds may obtain a financial statement from the customer, check the customer's name against a credit bureau or database, or check the customer's references with other financial institutions.

The documentary and non-documentary verification methods set forth in the rule are not meant to be an exclusive list of the appropriate means of verification. Other reasonable methods may be available now or in the future. The purpose of making the rule flexible is to allow mutual funds to select verification methods that are, as section 326 requires, reasonable and practicable. The proposed rule allows mutual funds to employ such verification methods as would be suitable to a given firm to form a reasonable belief that it knows the true identities of its customers.

The Commission believes that verifying the identifying information could result in costs for mutual funds because some firms currently may not use verification methods. The estimated total annual cost to the industry to verify the identifying information will be $49,333,333.[21]

5. Determining Whether Customers Appear on Government Lists

Mutual funds should already have procedures for checking customers against government lists. There are substantive legal requirements associated with the lists circulated by Treasury's Office of Foreign Asset Control of the U.S. Treasury (OFAC). The failure of a firm to comply with these requirements could result in criminal and civil penalties. The Commission believes that, given the events of September 11, 2001, most mutual funds that receive lists from the federal government have implemented procedures for checking their customers against them. The Commission believes that this requirement could result in some additional costs for mutual funds because some may not already check such lists. The estimated annual cost to the industry to check such lists is $3,333,333.[22]

6. Recordkeeping

The Commission believes that the recordkeeping requirement could result in additional costs for some mutual funds that currently do not maintain certain of the records for the prescribed time period. The estimated total annual cost to the industry to make and maintain the required records is $13,333,333.[23]

V. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[24] Treasury has submitted the proposed rule to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C 3507(d). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Collection of Information Under the Proposed Rule

The proposed rule contains recordkeeping and disclosure requirements that are subject to the Paperwork Reduction Act of 1995. In summary, the proposed rule requires mutual funds to (1) maintain records of the information used to verify customers' identities and (2) provide notice to customers that information they supply may be used to verify their identities. These recordkeeping and disclosure requirements are required under Section 326 of the Act.

B. Proposed Use of the Information

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds to verify the identities of their customers. Furthermore, Section 326 provides that the regulations must require, at a minimum, mutual funds to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of Section 326, and the proposed rule, is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under Section 326 and to achieve its important purpose.

C. Respondents

If adopted, the proposed rule would apply to approximately 3,060 mutual fund companies that are registered with the Commission.[25]

D. Total Annual Reporting and Recordkeeping Burden

1. Recordkeeping

The requirement to make and maintain records related to the CIP will be an ongoing burden. The total burden will depend on the number of new accounts added each year. From January 1, 1990 through December 31, 2001, approximately 16 million mutual fund accounts were added annually.[26] The Commission estimates that mutual funds, on average, will spend two minutes per account making and maintaining the required records. Therefore, in complying with this requirement, the Commission estimates an annual, industry-wide burden of

[21] The Commission staff believes that the processing costs associated with verification methods will be approximately $1.00 per account. The Commission staff further estimates that the average time spent verifying an account will be five minutes. The hourly cost of the person who would undertake the verification is estimated to be $25 per hour including overhead. Therefore, the estimated costs to the industry reported above are: (16 million new accounts per year) * ($1.00) + (number of new accounts per year) * (1/12 of an hour) * ($25).

[22] The Commission staff believes that it will take mutual funds on average thirty seconds to check whether a customer appears on a government list and that the cost (including overhead) of this process will be $25 per hour. Therefore, the costs to the industry reported above are: (16 million new accounts per year) * (1/120 of an hour) * ($25).

[23] The Commission staff believes that it will take approximately two minutes per new account to make and maintain the required records. This estimate takes into account the fact that, for many new accounts, the recordkeeping will be fairly simple (*e.g.*, making a photocopy of a driver's license or financial statement, or keeping a record of the results of a public database search or credit bureau query. The estimated cost associated with the recordkeeping is $25 per hour (including overhead). The estimated cost to the industry is: (16 million new accounts per year) * (1/30 of an hour) * ($25).

[24] 44 U.S.C. 3501 *et seq.*

[25] This estimate is based on figures compiled by the Commission staff from Commission filings.

[26] This estimate is derived from information reported in the Investment Company Institue's 2002 Mutual Fund Fact Book. It represents the net annual increase in the number of mutual fund accounts. The actual number of new accounts that were opened during this period is probably higher as this estimate is reduced by the number of accounts that were closed during the same period. No data available regarding the number of accounts that were closed.

533,333 hours will be associated with the record-keeping requirements of the proposed rule.

2. Notice to Customers

The requirement for mutual funds to provide the required notice to customers regarding use of customers' information will necessitate the amendment of mutual funds' account applications, both paper and web-based applications. The Commission estimates that the approximately 3,060 mutual fund registrants will each spend approximately two hours modifying their account applications to satisfy the notice requirement. Thus, the Commission estimates an initial, industry-wide burden of 6,120 hours to modify fund applications.

E. Collection of Information Is Mandatory

This collection of information is mandatory.

F. Confidentiality

The collection of information pursuant to the proposed rule would be provided by customers and other sources to mutual funds and maintained by mutual funds. In addition, the information may be used by federal regulators, self-regulatory organizations, and authorities in the course of examinations, investigations, and judicial proceedings. No governmental agency regularly would receive any of the information described above.

G. Record Retention Period

The proposed rule will require that the records with respect to a given customer be retained until five years after the date the account of a customer is closed or the grant of authority to effect transactions with respect to an account is revoked.

H. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), Treasury and the Commission solicit comments to:

(1) Evaluate whether the proposed collection of information is necessary, and whether it would have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those required to respond, including through the use of automated collection techniques or other forms on information technology.

Comments concerning the recordkeeping and disclosure requirements in the proposed rule should be sent (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

VI. Regulatory Flexibility Act

Treasury and the Commission are sensitive to the impact our rules may impose on small entities. Congress enacted the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), to address concerns related to the effects of agency rules on small entities. In this case, we believe that the proposed rule likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). As discussed in Section IV (The Commission's Analysis of the Costs and Benefits of the Section 326 Requirements), we believe that the impact on mutual funds, including small entities, is imposed by the statute itself, and not by the proposed rule. Moreover, the economic impact on small entities should not be significant because we believe that most small entities are likely to have a relatively small number of accounts, and thus compliance should not impose a significant economic impact. Treasury and the Commission seek comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities and whether the costs are imposed by the statute itself, and not the proposed rule.

While we believe that the proposed rule likely would not have a significant economic impact on a substantial number of small entities, we do not have complete data at this time to make this determination. We have therefore prepared this Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603.

A. Reason for the Proposed Action

Section 326 of the Act requires Treasury and the Commission jointly to issue a regulation setting forth minimum standards for mutual funds and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the mutual fund. Furthermore, Section 326 provides that the regulations must require, at a minimum, mutual funds to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency.

The purpose of Section 326, and this proposed rule, is to prevent, detect and prosecute money laundering and the financing of terrorism. In issuing the proposed rule, Treasury and the Commission are seeking to fulfill their statutorily mandated responsibilities under Section 326 and to achieve its important purpose.

B. Objective

The objective of the proposed regulation is to make it easier to prevent, detect and prosecute money laundering and the financing of terrorism. The rule seeks to achieve this goal by requiring mutual funds to obtain identifying information from customers that can be used to verify the identity of the customers. This will make it more difficult for persons to use false identities to establish customer relationships with mutual funds for the purposes of laundering money or moving funds to effectuate illegal activities, such as financing terrorism.

C. Legal Basis

The proposed rule is being promulgated pursuant to Section 326 of the Act, which mandates that Treasury and the Commission issue a regulation setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with opening of an account at the financial institution.

D. Small Entities Subject to the Rule

The proposed rule would affect mutual funds that are small entities. For purposes of the Regulatory Flexibility Act, the Commission has determined that an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[27] Approximately 156 mutual funds meet this definition.[28]

[27] 17 CFR 270.0–10.

[28] This estimate is based on figures compiled by the Commission staff from outside databases.

E. Reporting, Recordkeeping and Other Compliance Requirements

Section 326 requires mutual funds to adopt reasonable procedures to: (1) Verify the identities of their customers; (2) check customers against lists provided by federal agencies, (3) provide notice to customers that information the customers provide may be used to verify customers' identities; and (4) make and maintain records related to the CIP.

F. Duplicative, Overlapping or Conflicting Federal Rules

We have not identified any federal rules that duplicate, overlap or conflict with the proposed rule. Congress has mandated that Treasury and the Commission issue a regulation that requires mutual funds to verify their customers' identities. This congressional directive cannot be followed absent the issuance of a new rule.

G. Significant Alternatives

If an agency does not certify that a rule will not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act directs Treasury and the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any adverse impact on small entities.

In connection with the proposed amendments, we considered the following alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The proposed rule provides for substantial flexibility in how each mutual fund may meet its requirements. This flexibility is designed to account for differences between mutual funds, including size. Nonetheless, Treasury and the Commission did consider alternatives such as exempting certain small entities from some or all of the requirements of the proposed rule. Treasury and the Commission do not believe that such an exemption is appropriate, given the flexibility built into the rule to account for, among other things, the differing sizes and resources of mutual funds, as well as the importance of the statutory goals and mandate of section 326. Money laundering can occur in small firms as well as large firms.

H. Solicitation of Comments

Treasury and the Commission encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis, including comments regarding the number of small entities that may be affected by the proposed rule. Such comments will be considered by Treasury and the Commission in determining whether a Final Regulatory Flexibility Analysis is required, and will be placed in the same public file as comments on the proposed amendment itself. Comments should be submitted to Treasury or the Commission at the addresses previously indicated.

VII. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. As noted above, the proposed rule closely parallels the requirements of section 326 of the Act. Accordingly, a regulatory impact analysis is not required.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding § 103.131 to read as follows:

§ 103.131 Customer identification programs for mutual funds.

(a) *Definitions.* For the purposes of this section:

(1) *Account* means any contractual or other business relationship between a customer and a mutual fund established to effect financial transactions in securities, including the purchase or sale of securities.

(2) *Commission* means the United States Securities and Exchange Commission.

(3) *Customer* means:

(i) Any mutual fund shareholder of record who opens a new account with a mutual fund; and

(ii) Any person authorized to effect transactions in the shareholder of record's account with a mutual fund.

(4) *Mutual Fund* means an entity that is required to register with the Commission as an ''investment company'' (as the term is defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) (''Investment Company Act'')) and is an ''open-end company'' (as that term is defined in Section 5 of the Investment Company Act, 15 U.S.C. 80a–5).

(5) *Person* has the same meaning as that term is defined in § 103.11(z).

(6) *Taxpayer identification number.* The provisions of Section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(7) *U.S. person* means:

(i) Any U.S. citizen; and

(ii) Any corporation, partnership, trust, or person (other than a natural person) that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a U.S. person.

(b) *Customer identification program.* A mutual fund shall establish, document, and maintain a written Customer Identification Program (''CIP''). A mutual fund's CIP procedures must enable it to form a reasonable belief that it knows the true identity of the customer. A mutual fund's CIP must be a part of its anti-money laundering program required under 31 U.S.C. 5318(h). A mutual fund's CIP procedures shall be based on the type of identifying information available and on an assessment of relevant risk factors including:

(1) The mutual fund's size;

(2) The manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected;

(3) The mutual fund's types of accounts; and

(4) The mutual fund's customer base.

(c) *Required information.* (1) *General.* Except as permitted by paragraph (c)(2) of this section, the CIP shall require the mutual fund to obtain specified identifying information about each

customer before an account is opened or a customer is granted authority to effect transactions with respect to an account. The specified information must include, at a minimum:

(i) Name;

(ii) Date of birth, for a natural person;

(iii) Addresses:

(A) Residence and mailing (if different) for a natural person; or

(B) Principal place of business and mailing (if different) for a person other than a natural person; and

(iv) Identification numbers:

(A) A taxpayer identification number from each customer that is a U.S. person; or

(B) A taxpayer identification number, passport number and country of issuance, alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard from each customer that is not a U.S. person.

(2) *Limited exception.* In the case of a person other than a natural person that has applied for, but has not received, an employer identification number, the CIP may allow such information to be provided within a reasonable period of time after the account is established, if the mutual fund obtains a copy of the application for the employer identification number prior to such time.

(d) *Required verification procedures.* The CIP shall include procedures for verifying the identity of customers, to the extent reasonable and practicable, using information obtained pursuant to paragraph (c) of this section. Such verification must occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account:

(1) *Verification through documents.* The CIP must describe when the mutual fund will verify customers' identities through documents and describe the documents that the mutual fund will use for this purpose. Suitable documents for verification may include:

(i) For natural persons, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(ii) For persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, partnership agreement, or trust instrument.

(2) *Verification through non-documentary methods.* The CIP must describe non-documentary methods a mutual fund will use to verify customers' identities and when these methods will be used in addition to, or instead of, relying on documents. Non-documentary verification methods may include contacting a customer; independently verifying information through credit bureaus, public databases, or other sources; and checking references with other financial institutions. Non-documentary methods shall be used when a customer who is a natural person is unable to present an unexpired, government-issued identification document that bears a photograph or similar safeguard; the mutual fund is presented with unfamiliar documents to verify the identity of a customer; or the mutual fund does not obtain documents to verify the identity of a customer, does not meet face-to-face a customer who is a natural person, or is otherwise presented with circumstances that increase the risk the mutual fund will be unable to verify the true identity of a customer through documents.

(e) *Government lists.* The CIP shall include procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations prepared by any federal government agency and made available to the mutual fund. Mutual funds shall follow all federal directives issued in connection with such lists.

(f) *Customer notice.* The CIP shall include procedures for providing customers with adequate notice that the mutual fund is requesting information to verify the customer's identity.

(g) *Lack of verification.* The CIP shall include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer.

(h) *Recordkeeping.* The CIP shall include procedures for maintaining a record of all information obtained pursuant to the CIP. A mutual fund must retain all records made or obtained when verifying the identity of a customer pursuant to its CIP until five years after the date the account of the customer is closed. Records subject to the requirements in this paragraph (h) include:

(1) All identifying information provided by a customer pursuant to paragraph (c) of this section, and copies of any documents that were relied on pursuant to paragraph (d)(1) of this section evidencing the type of document and any identification number it may contain;

(2) The methods and results of any measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2) of this section; and

(3) The resolution of any discrepancy in the identifying information obtained.

(i) *Approval by the board.* The CIP shall be approved by the mutual fund's board of directors or trustees.

(j) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*) and in the public interest, and may consider other necessary and appropriate factors.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 12, 2002.

By the Securities and Exchange Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–18194 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB90

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Customer Identification Programs for Futures Commission Merchants and Introducing Brokers

AGENCIES: Financial Crimes Enforcement Network, Treasury; United States Commodity Futures Trading Commission.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the United States Commodity Futures Trading Commission (CFTC or Commission) are jointly issuing a proposed regulation to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 of the Act requires Treasury to jointly prescribe with the CFTC a regulation that, at a minimum, requires

futures commission merchants and introducing brokers to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable, maintain records of the information used to verify the person's identity, and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the futures commission merchant or introducing broker by any government agency.

DATES: Written comments on the proposed rule may be submitted on or before September 6, 2002.

ADDRESSES: Because paper mail in the Washington, DC area may be subject to delay, commenters are encouraged to e-mail or fax comments. Comments should be sent by one method only. Futures commission merchants and introducing brokers (and their respective trade associations) are encouraged to submit comments only to the CFTC. Other commenters are encouraged to submit comments only to FinCEN. All comments will be considered by Treasury and the CFTC in formulating the final rule.

CFTC: Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521, or by e-mail to *secretary@cftc.gov*. Reference should be made to ''Proposed Section 326 Rule '' Customer Identification.''

FinCEN: Comments may be mailed to FinCEN, Section 326 Futures Industry Comments, PO Box 39, Vienna, VA 22183, or sent to Internet address *regcomments@fincen.treas.gov* with the caption ''Attention: Section 326 Futures Industry Rule Comments'' in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT:

CFTC: Office of the General Counsel, (202) 418–5120, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

Treasury: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480.

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 326 of the USA PATRIOT Act

On October 26, 2001, President Bush signed into law the USA PATRIOT Act.[1] Title III of the Act, captioned ''International Money Laundering Abatement and Anti-terrorist Financing Act of 2001,'' adds several new provisions to the Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq.* These provisions are intended to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 326 of the Act adds a new subsection (l) to 31 U.S.C. 5318 that requires the Secretary of the Treasury (Secretary) to prescribe regulations setting forth minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at the financial institution.

Section 326 applies to all ''financial institutions.'' This term is defined very broadly in the BSA to encompass a variety of entities including banks, agencies and branches of foreign banks located in the United States, thrifts, credit unions, brokers and dealers in securities or commodities,[2] futures commission merchants, insurance companies, travel agents, pawnbrokers, check-cashers, casinos, and telegraph companies, among many others. *See* 31 U.S.C. 5312(a)(2), 5312(c)(1)(A).

For any financial institution engaged in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (section 4(k) institutions), the Secretary is required to prescribe the regulations issued under section 326 jointly with each of the CFTC, the Securities and Exchange Commission (SEC), and the banking agencies, namely, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration (collectively referred to as the banking agencies). Final regulations implementing section 326 must be effective by October 25, 2002.

Section 326 provides that the regulations must require, at a minimum, financial institutions to implement reasonable procedures for (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person's name appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. In prescribing these regulations, the Secretary is directed to take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

The following proposal is being issued jointly by Treasury, through FinCEN, and the Commission. It applies only to persons registered, or required to be registered, with the Commission as either futures commission merchants or introducing brokers under the Commodity Exchange Act (CEA) (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4f(a)(2) of the CEA. Accordingly, this rule does not apply to persons who register, or are required to register, as futures commission merchants or introducing brokers solely because they effect transactions in security futures products. These section 4f(a)(2) futures commission merchants and introducing brokers must be registered with the SEC as brokers or dealers, and they are therefore the subject of rules issued jointly by Treasury and the SEC implementing section 326. Regulations governing the applicability of section 326 to other financial institutions, such as those regulated by the banking agencies, are also the subject of separate regulations.

Treasury, the Commission, the SEC and the banking agencies consulted extensively in the development of all rules implementing section 326 of the Act. All of the participating agencies intend the effect of the rules to be uniform throughout the financial services industry.

The Secretary has determined that the records required to be kept by section 326 of the Act have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, to protect against international terrorism.

[1] Pub. L. 107–56.

[2] Treasury has previously expressed the opinion that introducing brokers are ''brokers or dealers in commodities'' and therefore come within this definition of ''financial institution.'' *See* Financial Crimes Enforcement Network; Anti-Money Laundering Programs For Financial Institutions, 67 FR 21110, 21111 n.5 (April 29, 2002) (citing 31 U.S.C. 5312 (a)(2)(h)). Nonetheless, Treasury takes this opportunity to clarify formally that section 5312 (a)(2)(H) includes ''introducing brokers'' within the definition of ''financial institution.''

B. Codification of the Joint Proposed Rule

The substantive requirements of the joint proposed rule will be codified with other Bank Secrecy Act regulations as part of Treasury's regulations in 31 CFR part 103. To minimize potential confusion by affected entities regarding the scope of the joint proposed rule, the CFTC is also proposing to add a provision in its own regulations in 17 CFR part 1 that will cross-reference the regulations in 31 CFR part 103. Although no specific text is being proposed at this time, the cross-reference will be included in a final rule published by the CFTC concurrently with the joint final rule issued by Treasury and the CFTC implementing section 326 of the Act.

II. Section-by-Section Analysis

A. Section 103.123(a) Definitions

Section 103.123 (a)(1) Account. The proposed rule's definition of ''account'' is intended to include all types of futures and commodity option accounts maintained or introduced by futures commission merchants and introducing brokers. These include, but are not limited to: accounts to purchase or sell contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity; cash accounts; margin accounts; prime brokerage accounts that consolidate trading done at a number of firms; and accounts for repurchase and commodity loan transactions.

Section 103.123(a)(2) Commission. The proposed rule defines ''Commission'' as the United States Commodity Futures Trading Commission.

Section 103.123(a)(3) Commodity. The proposed rule defines ''commodity'' as any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act, 7 U.S.C. 1a(4).

Section 103.123(a)(4) Customer. The proposed rule defines ''customer'' as any person who opens a new account at a futures commission merchant or is granted authority to effect transactions with respect to an account at a futures commission merchant. Where an account is introduced to a futures commission merchant by an introducing broker, a person opening the account or granted authority to effect transactions with respect to the account is a customer of both the futures commission merchant and the introducing broker.

Under this definition, a person who has an account at the futures commission merchant prior to the effective date of the proposed rule would not be a ''customer.'' However, such a person becomes a ''customer'' if the person opens a different account thereafter. Moreover, a person becomes a ''customer'' each time they open a different type of account at a futures commission merchant.

Similarly, an outside advisor with trading authority prior to the effective date of the regulation is not a ''customer.'' However, such a person being granted trading authority after the effective date is a customer. This is true even if the person is granted authority with respect to an account that existed prior to the effective date or the person had been granted authority for another account prior to the effective date.

The requirements of section 326 apply to ''customers'' (*i.e.,* persons opening new accounts or certain persons being granted trading authority), but do not apply to persons seeking information about an account such as a schedule of transaction fees, if an account is not opened. In addition, transfers of accounts from one futures commission merchant to another that are not initiated by the customer, for example as a result of a bankruptcy, merger, acquisition, or purchase of assets or assumption of liabilities, fall outside of the scope of section 326, and are not covered by the proposed rule.[3]

Section 103.123(a)(5) Futures Commission Merchant. The proposed rule defines ''futures commission merchant'' as (and therefore applies to) any persons registered, or required to be registered, with the Commission as futures commission merchants under the CEA, except persons who register, or are required to be registered, solely because they effect transactions in security futures products. These latter futures commission merchants, who register with the Commission pursuant to section 4f(a)(2) of the CEA, will be subject to regulations issued jointly by Treasury and the SEC implementing section 326.

Section 103.123(a)(6) Introducing Broker. The proposed rule defines ''introducing broker'' as (and therefore applies to) any persons registered, or required to be registered, with the Commission as introducing brokers under the CEA, except persons who register, or are required to be registered, solely because they effect transactions in security futures products. These latter introducing brokers, who register with the Commission pursuant to section 4f(a)(2) of the CEA, will be subject to regulations issued jointly by Treasury and the SEC implementing section 326.

Section 103.123(a)(7) Option. The proposed rule defines ''option'' as an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act, 7 U.S.C. 1a(26).

Section 103.123(a)(8) Person. The proposed rule defines ''person'' as having the same meaning as provided in section 103.11(z). Thus, the term includes natural persons, corporations, partnerships, trusts or estates, joint stock companies, associations, syndicates, joint ventures, any unincorporated organizations or groups, Indian Tribes, and all other entities cognizable as legal entities. This means that any such entity will be considered a ''customer'' for the purposes of this rule if, after the effective date, the person opens an account or is granted trading authority with respect to an account.

Section 103.123(a)(9) U.S. person. The proposed rule defines ''U.S. person'' because U.S. citizens and persons incorporated under U.S. laws will be required to provide U.S. tax identification numbers whereas other persons, who may not have a U.S. tax identification number, will be required to provide other similar numbers. Thus, the rule defines ''U.S. person'' to mean a U.S. citizen or, for persons other than natural persons, an entity established or organized under the laws of a State or the United States. The terms ''State'' and ''United States'' are defined in sections 103.11(ss) and 103.11(nn), respectively. A non-U.S. person is defined in § 103.123(a)(10) as a person who does not satisfy these criteria.

Section 103.123(a)(11) Taxpayer identification number. The proposed rule provides that the provisions of Section 6109 of the Internal Revenue Code and the regulations of the Internal Revenue Service thereunder determine what constitutes a taxpayer identification number.

B. Section 103.123(b) Customer Identification Program

As indicated above, section 326 requires the Secretary and the Commission to prescribe regulations requiring futures commission merchants and introducing brokers to implement ''reasonable procedures'' for: verifying the identity of customers ''to the extent reasonable and practicable;'' maintaining records associated with

[3] However, there may be situations involving the transfer of accounts where it would be appropriate for a futures commission merchant to verify the identity of customers associated with the accounts it is acquiring. Therefore, Treasury and the Commission expect procedures for transfers of accounts to be part of a futrures commission merchant's overall anti-money laundering program required under section 352 of the USA PATRIOT Act.

such verification; and consulting lists of known or suspected terrorists or terrorist organizations. Paragraph (b) of the proposed rule sets forth the requirement that futures commission merchants and introducing brokers must develop and operate a customer identification program (CIP).

Paragraph (b) also sets forth certain requirements that each CIP must possess. These factors include the type of identifying information available and six assessments based upon the business operations of the futures commission merchant or introducing broker.

The first factor identified in paragraph (b) is the type of identifying information available. Thus, in implementing and updating their CIPs, futures commission merchants and introducing brokers should consider the type of identifying information that customers can provide. They should also consider the methods available to verify that information, and should consider on an on-going basis whether any additional information or methods are appropriate, particularly as they become available in the future.

The six business-operations-based risk factors include assessments of the futures commission merchant's or introducing broker's (1) size; (2) location; (3) methods of opening accounts; (4) types of accounts and transactions; (5) customer base; and (6) reliance, if any, on another futures commission merchant or introducing broker with which it shares an account relationship. These specific factors are discussed below in general terms.[4]

The first risk factor to consider is the futures commission merchant's or introducing broker's size. For example, a large futures commission merchant or introducing broker that opens a substantial number of accounts on any given day will have different risks than one that opens a new account no more than once or twice a month. The same is true when comparing a futures commission merchant or introducing broker that has many branches with one that has a single office.

The second risk factor is the location of the futures commission merchant or introducing broker. Futures commission merchants and introducing brokers should assess whether they are located or have offices in areas where money laundering activities have been known to exist or that otherwise increase the risk that attempts will be made to open accounts for money laundering purposes.

The third risk factor is the method by which customers open accounts. Accounts opened exclusively on-line present different, and perhaps greater, risks than those opened in-person on the premises of the futures commission merchant or introducing broker.

The fourth risk factor is the type of accounts and transactions that are offered by the futures commission merchant or introducing broker. Futures commission merchants and introducing brokers should assess whether there are different risks (and degrees of risk) associated with the various types of accounts they provide to customers (*e.g.,* futures, options on futures, prime-brokerage) and transactions they execute in those accounts (*e.g.,* longs, shorts, spreads).

The fifth risk factor to be considered is customer base. Futures commission merchants and introducing brokers should assess the risks associated with different types of customers. For example, futures commission merchants and introducing brokers should examine whether they are opening accounts for customers located in countries the Secretary determines to be of ''primary money laundering concern'' pursuant to section 311 of the Act. In addition, certain legal entities may pose greater risks (*e.g.,* a closely-held corporation as opposed to one that is publicly traded).

Each CIP also should address the risks that may be posed by different types of intermediated accounts. With respect to intermediated accounts, such as omnibus accounts and accounts for commodity pools and other collective investment vehicles,[5] a futures commission merchant or introducing broker may have little or no information about the identities and transaction activities of the underlying participants or beneficiaries of such accounts.[6] In most instances, given Treasury's risk-based approach to anti-money laundering programs for financial institutions generally, it is expected that the focus of each futures commission merchant's and introducing broker's CIP will be the intermediary itself, and not the underlying participants or beneficiaries. Thus, futures commission merchants and introducing brokers should assess the risks associated with different types of intermediaries based upon an evaluation of relevant factors, including the type of intermediary; its location; the statutory and regulatory regime that applies to a foreign intermediary (*e.g.*, whether the jurisdiction complies with the European Union anti-money laundering directives or has been identified as non-cooperative by the Financial Action Task Force); the futures commission merchant's or introducing broker's historical experience with the intermediary; references from other financial institutions regarding the intermediary; and whether the intermediary is itself a BSA financial institution required to have an anti-money laundering program.[7]

The sixth risk factor requires an assessment of whether the futures commission merchant or introducing broker can rely on another futures commission merchant or introducing broker, with which it shares an account relationship, to undertake any of the steps required by this proposed rule with respect to the shared account.[8] A shared account relationship may occur in at least two different circumstances: (1) An introducing broker introduces a customer to a futures commission merchant and (2) an executing futures commission merchant executes a customer's order and then ''gives up'' this filled order to a clearing futures

[4] This discussion of the risk factors is included because we believe it is helpful in providing some meaning and context with respect to the factors. However, we are not attempting to provide comprehensive definitions of these risk factors or an exhaustive description of the considerations involved in assessing them. Instead, we intend our discussion to serve as a starting point for defining and assessing them.

[5] The term ''collective investment vehicle'' is not defined in regulations under the CEA but is commonly used to describe an entity through which persons combine funds (*i.e.*, cash) or other assets, which are invested and managed by the entity. *See generally* 65 FR 24127 (April 25, 2000) (CFTC rule regarding exclusion for certain persons from the definition of the term ''commodity pool operator'').

[6] Similarly, when a customer has given a commodity trading advisor discretionary trading authority over its account, the commodity trading advisor and not the futures commission merchant (or introducing broker) may be the financial institution with the most information regarding the customer. Treasury, however, has temporarily exempted commodity trading advisors from the requirement to establish anti-money laundering programs as required by section 352 of the Act. 67 FR 21110, 21112 (April 29, 2002). At such time as Treasury proposes or promulgates regulations requiring commodity trading advisors to establish anti-money laundering programs, it will provide guidance regarding the permissible interrelation between commodity trading advisors and futures commission merchants (or introducing brokers) in order to satisfy their respective BSA obligations.

[7] Treasury's interim final rule requiring mutual funds to establish anti-money laundering programs provided for similar treatment of omnibus accounts. 67 FR 21117 (April 29, 2002); *see also* proposed 31 CFR 103.131.

[8] Treasury and the Commission recognize that a related issue arises in the context of a firm that is registered both with the SEC as a broker-dealer and with the Commission as a futures commission merchant or introducing broker. Neither Treasury nor the Commission intend the effect of this proposed rule to require that both the securities and futures firm identify, and verify the identity of, their customers. For example, if a futures firm has a bifurcated compliance department handling, respectively, the securities and futures sides of its business, the futures firm could perform the required customer identification and verification procedures and the securities firm could rely on it.

commission merchant who carries the customer's account.[9] We anticipate that futures commission merchants and introducing brokers sharing accounts may realize efficiencies by dividing up the requirements in this proposed rule pursuant to either their introducing agreements (in the context of introduced business) or give-up agreements (in the context of give-up business).[10] For example, the introducing broker may undertake to obtain the identifying information from customers as required in paragraph (c) and the futures commission merchant may undertake the verification procedures as required in paragraph (d). Or, in another example, the clearing futures commission merchant may undertake the procedures required for paragraphs (c) and (d) both for its own behalf and on behalf of the executing futures commission merchant. Nonetheless, in both examples, each financial institution would still be responsible for ensuring that each requirement in the proposed rule is met with respect to a customer. Accordingly, a futures commission merchant or introducing broker must assess whether the other firm can be relied on to fulfill its allocated responsibilities. Moreover, a futures commission merchant or introducing broker is expected to cease such reliance if it is no longer reasonable.

Paragraph (b) also requires that the identity verification procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of its customers. This provision makes clear that, while there is flexibility in establishing these procedures, each futures commission merchant and introducing broker is responsible for exercising reasonable efforts to ascertain the identity of each customer.

Finally, paragraph (b) requires that futures commission merchants and introducing brokers incorporate their CIPs into their overall anti-money laundering programs required under section 352 of the Act (31 U.S.C. 5318(h)) and National Futures Association (NFA) Compliance Rule 2–9(c).[11] This requirement is intended to make clear that the CIP is not a separate program, but is merely one component of each futures commission merchant's and introducing broker's overall anti-money laundering program that is designed to ensure compliance with all other applicable rules and regulations promulgated under the Act and the BSA.

C. Section 103.123(c) Required Information

The first step in verifying identity is obtaining identifying information from customers. Paragraph (c) of the proposed rule provides that each futures commission merchant's and introducing broker's CIP must specify identifying information that customers are required to provide. It also sets forth certain information that must be obtained at a minimum and provides that the CIP must require the futures commission merchant and introducing broker to obtain this minimum information before an account is opened or trading authority is granted.

The minimum information that must be obtained from each customer is (1) name, (2) date of birth, if applicable, (3) address, and (4) U.S. taxpayer identification number (*e.g.*, social security number or employer identification number) or if the person is not a U.S. person, a U.S. taxpayer identification number, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[12] The term ''similar safeguard'' is included to permit the use of any biometric identifiers that may be used in addition to, or instead of, photographs. With respect to the address requirement, each customer must provide both a mailing and residence address (if a natural person) or principal place of business (if not a natural person).

The rule only specifies the minimum identifying information that must be obtained from each customer. Futures commission merchants and introducing brokers, in assessing the risk factors in paragraph (b), should determine whether additional identifying information is necessary to form a reasonable belief as to the true identity of each customer. There may be certain types of customers or circumstances where it is reasonable to obtain other identifying information in addition to the minimum. If a futures commission merchant or introducing broker, in examining the nature of its business and operations, determines that additional information should be obtained in certain cases, it should set forth guidelines in its CIP indicating when this shall occur.

Treasury and the Commission recognize that a new business may need access to an account at a futures commission merchant or introducing broker before it has received an employer identification number from the Internal Revenue Service. For this reason, the proposed regulation contains a limited exception to the requirement that a taxpayer identification number must be provided prior to establishing or adding a signatory to an account. Accordingly, a CIP may permit a futures commission merchant or introducing broker to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the CIP must require that the futures commission merchant or introducing broker obtain a copy of the application before it opens or adds a signatory to the account and obtain the employee identification number within a reasonable period of time after an account is established or a signatory is added to an account. Currently, the IRS indicates that the issuance of an employer identification number can

[9] Although no formal survey has been conducted, the Commission has been advised that a significant percentage of all customer trades on U.S. exchanges are effected using an executing futures commission merchant. A customer may elect to use one or more executing futures commission merchants for a number of reasons. In certain circumstances, the customer's carrying futures commission merchant may not be a member of a particular exchange on which the contract in question is listed for trading. In others, particularly in the case of larger institutional customers, the customer may elect to use one or more executing futures commission merchants in order not to disclose its intentions to other market participants. Finally, certain futures commission merchants simply develop a reputation for being able to execute transactions in particular contracts well.

[10] An executing futures commission merchant subject to this proposed rule could obtain from a clearing futures commission merchant, either as part of a give-up agreement or on a transaction-by-transaction basis, a certification that the latter has performed the required customer identification or verification functions. For example, the U.K.''s Joint Money Laundering Steering Group (JMLSG), an association of U.K. Financial Services Industry Trade Associations, recommends that its members employ a variation of the certification approach. For give-up business, the JMLSG's Money Laundering Guidance Notes state: ''Where an executing broker and a clearing broker are undertaking an exchange transaction on behalf of the same customer, the clearing broker should provide the appropriate written assurance that it will have obtained and recorded evidence of the identity of the underlying client.'' *See www.jmlsg.org.uk.*

[11] Section 352 requires financial institutions to establish anti-money laundering programs that, at a minimum, include (1) the development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. On April 23, 2002, the Commission approved rule changes submitted by the NFA setting forth for member futures commission merchants and introducing brokers the minimum requirements for these programs.

[12] Treasury and the Commission understand these categories of identification numbers for foreign citizens generally are applicable to natural persons. Accordingly, we seek comment on the types of numbers that could be provided by other persons.

take up to five weeks. This length of time, coupled with when the person applied for the employer identification number, should be considered by the futures commission merchant or introducing broker in determining the reasonable period of time within which the person should provide its employer identification number to the futures commission merchant or introducing broker.

D. Section 103.123(d) Required Verification Procedures

After obtaining identifying information from a customer, futures commission merchants and introducing brokers must take steps to verify the accuracy of that information in order to reach a point where they can form a reasonable belief as to the true identity of the customer. Accordingly, paragraph (d) of the proposed rule requires each futures commission merchant's and introducing broker's CIP to have procedures for verifying the accuracy of the identifying information provided by the customer. Because the proposed rule requires futures commission merchants and introducing brokers to form a reasonable belief that they know the true identity of each customer, the extent of the verification for each customer will depend on the steps necessary for futures commission merchants and introducing brokers to form such a belief.

Paragraph (d) requires that the verification procedures must be undertaken within a reasonable time before or after a customer's account is opened or a customer is granted authority to effect transactions with respect to an account. This flexibility must be exercised in a reasonable manner, given that verifications too far in advance may become stale and verifications too long after an account is opened may provide money laundering opportunities to persons who would not have had such opportunities if verification occurred sooner. The amount of time it will take a futures commission merchant or introducing broker to verify the identity of a customer may depend on the type of account opened, whether the customer opens the account in person, and on the type of identifying information available. In addition, although an account is opened, a futures commission merchant or introducing broker may choose to place limits on the account, such as restricting the number of transactions or the dollar value of transactions, until a customer's identity is verified. Therefore, the proposed rule provides futures commission merchants and introducing brokers with the flexibility to use a risk-based approach to determine when the identity of a customer must be verified relative to the opening of an account or granting of trading authority.[13]

As mentioned above, a person becomes a customer each time they open a new account or are granted trading authority. Therefore, upon the opening of each account, the verification requirements of this rule would apply. However, if a customer whose identification has been verified previously opens a new account, a futures commission merchant or introducing broker would not need to verify the customer's identity a second time, provided it (1) previously verified the customer's identity in accordance with procedures consistent with this rule, and (2) continues to have a reasonable belief that it knows the true identity of the customer.

The rule provides for two methods of verifying identifying information: use of documents and use of non-documentary means. For example, using documents would include obtaining a driver's license or passport from a natural person or articles of incorporation from a company. Non-documentary methods would include cross-checking the information provided by a customer against that supplied by a credit bureau or consumer reporting agency.

The proposed rule requires each futures commission merchant's and introducing broker's CIP to address both methods of verification. Depending on the type of customer and the method of opening an account, it may be more appropriate to use either documents or non-documentary methods. However, in some cases, it may be appropriate to use both methods. The CIP should set forth guidelines describing when documents, non-documentary methods, or a combination of both will be used.

The risk that a futures commission merchant or introducing broker will not know a customer's identity will be heightened for certain types of accounts, such as accounts opened in the name of a corporation, partnership, or trust that is created or conducts substantial business in jurisdictions designated as primary money laundering concerns or that have been designated as non-cooperative by an international body, such as the Financial Action Task Force.

Obtaining sufficient information to verify a given customer's identity can reduce the risk that a futures commission merchant or introducing broker will be used as a conduit for money laundering and terrorist financing. Each futures commission merchant's and introducing broker's identity verification procedures must be based on its assessment of the factors described in paragraph (b) of the proposed rule. Accordingly, when those assessments suggest a heightened risk, the futures commission merchant and introducing broker should prescribe additional verification measures.

1. Verification Through Documents

Paragraph (d)(1) provides that the CIP must describe when a futures commission merchant or introducing broker will verify identity through documents and set forth the documents that will be used for this purpose. The rule also lists certain documents that are suitable for verification. For natural persons, these documents may include: unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard. For other persons, suitable documents would be ones showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

2. Verification Through Non-Documentary Methods

Paragraph (d)(2) provides that the CIP must describe non-documentary verification methods and when such methods will be employed in addition to, or instead of, using documents. The rule allows for the exclusive use of non-documentary methods because some accounts are opened by telephone, mail, or over the Internet. However, even if the customer presents documents, it may be appropriate to use non-documentary methods as well. In the end, each futures commission merchant and introducing broker is responsible for employing sufficient verification methods to be able to form a reasonable belief that it knows the true identity of the customer.

The proposed rule sets forth certain non-documentary methods that would be suitable for verifying identity. These methods include contacting a customer after the account is opened; obtaining a financial statement; comparing the identifying information provided by the customer against fraud and bad check databases to determine whether any of the information is associated with known incidents of fraudulent behavior (negative verification); comparing the identifying information with

[13] Treasury and the Commission note that it is possible that futures commission merchants and introducing brokers could violate other laws by permitting a customer to transact business prior to verifying the customer's identity. *See, e.g.*, 31 CFR part 500, prohibiting transactions involving designated foreign countries or their nationals.

information available from a trusted third party source, such as a credit report from a credit bureau or consumer reporting agency (positive verification); and checking references with other financial institutions. Futures commission merchants and introducing brokers also may wish to analyze whether there is logical consistency between the identifying information provided, such as the customer's name, street address, ZIP code, telephone number (if provided), date of birth, and social security number (logical verification).

Paragraph (d)(2) also provides that the CIP must require the use of non-documentary methods in certain cases; specifically, when a natural person is unable to present an unexpired government issued identification document that bears a photograph or similar safeguard or when a futures commission merchant or introducing broker is presented with unfamiliar documents to verify the identity of a customer, does not obtain documents to verify the identity of a customer, does not meet a customer face-to-face, or is otherwise presented with circumstances that increase the risk the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

Thus, non-documentary methods should be used when the futures commission merchant or introducing broker cannot examine original documents. In addition, Treasury and the Commission recognize that identification documents, including those issued by a government entity, may be obtained illegally and may be fraudulent. In light of the recent increase in identity fraud, futures commission merchants and introducing brokers are encouraged to use non-documentary methods, even when a customer has provided identification documents.

E. Section 103.123(e) Government Lists

Section 326 of the Act also requires reasonable procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations provided by any government agency. The proposed rule implements this requirement and clarifies that the requirement applies only with respect to lists circulated by the Federal government.

In addition, the proposed rule states that futures commission merchants and introducing brokers must follow all Federal directives issued in connection with such lists. This provision makes clear that futures commission merchants and introducing brokers must have procedures for responding to circumstances when a customer is named on a list.

F. Section 103.123(f) Customer Notice

Section 326 of the Act contemplates that financial institutions will provide their customers with ''adequate notice'' of the customer identification procedures. Therefore, each futures commission merchant's and introducing broker's CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identity. A futures commission merchant or introducing broker may satisfy the notice requirement by generally notifying its customers about the procedures it must comply with to verify their identities. For example, a futures commission merchant or introducing broker may post a sign in its lobby or provide customers with any other form of written or oral notice. If an account is opened electronically, such as through an Internet website, the futures commission merchant or introducing broker may provide notice electronically.

G. Section 103.123(g) Lack of Verification

Paragraph (g) of the proposed rule states that each futures commission merchant's and introducing broker's CIP must include procedures for responding to circumstances in which it cannot form a reasonable belief that it knows the true identity of a customer.

Generally, each futures commission merchant and introducing broker should only maintain an account for a customer when it has a reasonable belief that it knows the customer's true identity.[14] Thus, each futures commission merchant's and introducing broker's CIP should specify the actions to be taken when it cannot form a reasonable belief. There also should be guidelines for when an account will not be opened. In addition, the CIP should address the terms under which a customer may conduct transactions while a customer's identity is being verified. The CIP should specify at what point, after attempts to verify a customer's identity have failed, an account that has been opened should be closed. Finally, the procedures should include a process for determining whether, in connection with conducting customer identification or verification, a Suspicious Activity Report should be filed.

H. Section 103.123(h) Recordkeeping

Section 326 of the Act requires procedures for maintaining records of the information used to verify a person's identity, including name, address, and other identifying information. Paragraph (h) of the proposed rule sets forth recordkeeping procedures that must be included in each futures commission merchant's and introducing broker's CIP. These procedures must provide for the maintenance of all information and documents obtained pursuant to the CIP. Information that must be maintained includes all identifying information provided by a customer pursuant to paragraph (c). Thus, the futures commission merchant and introducing broker must make a record of each customer's name, date of birth (if applicable), addresses, and tax identification number or other number. Futures commission merchants and introducing brokers also must maintain copies of any documents that were relied upon to verify identity pursuant to paragraph (d)(1), evidencing the type of document and any identification number it may contain. For example, if a customer produces a driver's license, the futures commission merchant or introducing broker must make a copy of the driver's license that clearly indicates it is a driver's license and legibly depicts any identification number on the license.

Futures commission merchants and introducing brokers also must make and maintain records evidencing the methods and results of measures undertaken to verify the identity of a customer pursuant to paragraph (d)(2). For example, if a futures commission merchant or introducing broker obtains a report from a credit bureau concerning a customer, the report must be maintained. Futures commission merchants and introducing brokers also must make and maintain records of the resolution of any discrepancy in the identifying information obtained. To continue with the previous example, if the customer provides a residence address that is different from the address shown on the credit report, the futures commission merchant or introducing broker must document how it resolved this discrepancy or, if the discrepancy was not resolved, how it formed a reasonable belief notwithstanding the discrepancy.

Futures commission merchants and introducing brokers must retain all of these records for five years after the date an account is closed or the grant of

[14] There are some exceptions to this basic rule. For example, a futures commission merchant or introducing broker may introduce or maintain an account, at the direction of law enforcement, notwithstanding that it does not know the true identity of a customer.

authority to effect transactions with respect to an account is revoked. In all other respects, the records must be maintained in accordance with the requirements of Commission Rule 1.31.[15]

Nothing in this proposed rule modifies, limits or supersedes section 101 of the Electronic Records in Global and National Commerce Act, Public Law 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act). Thus, futures commission merchants and introducing brokers may use electronic records to satisfy the requirements of this rule, as long as the records are maintained in accordance with Commission Rules 1.4 and 1.31.[16]

Treasury and the Commission emphasize that the collection and retention of information about a customer as an ancillary part of collecting identifying information, do not relieve futures commission merchants and introducing brokers from their obligations to comply with anti-discrimination laws or regulations.

I. Section 103.123(i) Approval of Program

Paragraph (i) of the proposed rule requires that each futures commission merchant's and introducing broker's CIP be approved by its most senior level (*e.g.,* board of directors, managing partners, board of managers or other governing body performing similar functions) or by persons specifically authorized by that body to approve such a program.

J. Section 103.123(j) Exemptions

Section 326 states that the Secretary and the Federal functional regulator jointly issuing the rule may by order or regulation exempt any financial institution or type of account from this rule in accordance with such standards and procedures as the Secretary may prescribe. The proposed rule provides that the Commission, with the concurrence of the Secretary, may exempt any futures commission merchant or introducing broker that registers with the Commission. However, it excludes from this exemptive authority futures commission merchants and introducing brokers that register pursuant to section 4f(a)(2) of the CEA. These are firms that register as futures commission merchants or introducing brokers solely because they deal in security futures products. The exemptive authority with respect to these firms is addressed in the rule issued jointly by Treasury and the SEC.

In issuing exemptions under the proposed rule, the Secretary and the Commission shall consider whether the exemption is consistent with the purposes of the BSA, and in the public interest, and may consider other necessary and appropriate factors.

III. Request for Comments

Treasury and the Commission invite comment on all aspects of the proposed rule, and specifically seek comment on the following issues:

1. Whether the proposed definition of ''account'' is appropriate.

2. How the proposed rule should apply to various types of accounts that are designed to allow a customer to transact business immediately.

3. Ways that futures commission merchants and introducing brokers can comply with the requirement to obtain both the address of a person's residence, and, if different, the person's mailing address in situations involving natural persons who lack a permanent address.

4. Whether non-U.S. persons that are not natural persons will be able to provide futures commission merchants and introducing brokers with the identifying information required in § 103.123(c)(4), or whether other categories of identifying information should be added to this section. Commenters on this issue should suggest other means of identification that futures commission merchants and introducing brokers currently use or should use in this circumstance.

5. Whether the proposed rule will subject futures commission merchants and introducing brokers to conflicting State laws. Treasury and the Commission request that commenters cite and describe any potentially conflicting State laws.

6. The extent to which the verification procedures required by the proposed rule make use of information that futures commission merchants and introducing brokers currently obtain in the account opening process. We note that the legislative history of section 326 indicates that Congress intended ''the verification procedures prescribed by Treasury [to] make use of information currently obtained by most financial institutions in the account opening process.'' *See* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Because this proposed rulemaking contains information collection requirements within the meaning of the PRA, FinCEN has submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for its review in accordance with 44 U.S.C. 3507(d).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The proposed rule requires futures commission merchants and introducing brokers to implement reasonable procedures to (1) maintain records of the information used to verify the person's identity and (2) provide notice of these procedures to customers. These recordkeeping and disclosure requirements are required under section 326 of the Act.

The Commission estimates that approximately 188 futures commission merchants and 1593 introducing brokers will need to implement a CIP. Further, the Commission estimates that each futures commission merchant and introducing broker will need to spend approximately 10 hours per year to meet the recordkeeping requirements of the proposed rule.[17] Further, Treasury and the Commission estimate that each futures commission merchant and introducing broker will need to spend approximately one hour per year to meet the disclosure requirements of the new rule. Therefore, the estimated paperwork burden of this proposed rule is calculated as follows:

Estimated number of respondents: 1781.

Estimated average annual burden for the recordkeeping requirements of the proposed rule for each respondent: 10 hours.

Estimated average annual burden for the disclosure requirements of the proposed rule per each respondent: 1 hour.

Estimated total annual burden: 19,591 hours.

[15] 17 CFR 1.31.

[16] 17 CFR 1.4, 1.31.

[17] The Commission believes that futures commission merchants and introducing brokers already obtain from their customers most, if not all, of the information required under the proposed rule. *See* Commission Rule 1.37, 17 CFR 1.37 (requiring futures commission merchants and introducing brokers to obtain the customer's true name, address, principal occupation or business, name of guarantor, and name of person controlling the account), and NFA Compliance Rule 2–30 (futures commission merchants and introducing brokers are required to obtain, with respect to customers that are individuals, the customer's true name, address, principal occupation or business, estimated annual income and net worth, and approximate age). Futures commission merchants and introducing brokers are required to maintain these records pursuant to Commission Rule 1.31, 17 CFR 1.31, and NFA Compliance Rule 2–10.

Treasury and the Commission invite comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of the Commission's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them (preferably by fax (202–395–6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*), with a copy to FinCEN by mail or the Internet at the addresses previously specified.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rule proposed today would affect futures commission merchants and introducing brokers. The CFTC previously established certain definitions of ''small entities'' to be used in evaluating the impact of its rules in accordance with the RFA.[18] The Commission has previously determined that futures commission merchants are not small entities for the purpose of the RFA.[19] With respect to introducing brokers, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected introducing brokers would be considered to be small entities and, if so, the economic impact on them of any rule.[20] The Commission believes that all introducing brokers will be affected by this rule, including small introducing brokers. However, the Commission does not believe that the economic impact of the rule will be significant. First, the information being collected by introducing brokers is, for the most part, already required to be collected by CFTC rules and by self-regulatory organization rules.[21] Second, each introducing broker will be able to tailor its CIP to fit its own size and needs; the rule provides for flexibility in how they will meet their requirements. Lastly, the CFTC believes that any expenditure associated with establishing and implementing a CIP will be commensurate with the size of an introducing broker. If an introducing broker is small, its economic burden should be *de minimis.* For these reasons, the Commission does not expect the rule, as proposed herein, to have a significant economic impact on a substantial number of small entities. Accordingly, it is hereby certified pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities. Treasury and the Commission invite the public to comment on this finding.

VI. Commission's Analysis of the Costs and Benefits Associated With the Proposed Rule

Section 15(a) of the CEA requires the CFTC to consider the costs and benefits of its action before issuing a new regulation. The CFTC understands that, by its terms, section 15(a) does not require the CFTC to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does it require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, section 15(a) simply requires the CFTC to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the CFTC could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Section 326 of the Act requires Treasury and the Commission to prescribe regulations setting forth minimum standards for futures commission merchants and introducing brokers regarding the identities of customers that shall apply in connection with the opening of an account. The statute also provides that the regulations issued by Treasury and the Commission must, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verification of customers' identities; (2) determination of whether a customer appears on a government list; and (3) maintenance of records related to customer verification. The proposed rule implements this statutory mandate by requiring futures commission merchants and introducing brokers to (1) establish a CIP; (2) obtain certain identifying information from customers; (3) verify identifying information of customers; (4) check customers against lists provided by federal agencies; (5) provide notice to customers that information may be requested in the process of verifying their identities; and (6) make and maintain records. The Commission believes that these requirements are reasonable and practicable, as required by section 326 and, therefore, that the costs associated with them are attributable to the statute. Moreover, while the proposed rule specifies certain minimum requirements, futures commission merchants and introducing brokers will be able to design their CIPs in a manner most appropriate to their business models and customer bases. This flexibility should help them to tailor their CIPs appropriately, while still meeting the statutory requirements of section 326.

The proposed rule is not related to the marketplace and thus should not affect the protection of market participants; the efficiency, competitiveness, and financial integrity of futures markets; price discovery; or sound risk management practices. This proposed rule does, however, address other public interest considerations, namely, the prevention and detection of money laundering and financing of terrorism. As noted elsewhere in this preamble, the CFTC believes the costs associated with implementing CIPs, which are mandated by section 326 of the Act, will be small. On the other hand, the benefits include a reduced risk of futures commission merchants and introducing brokers unwittingly aiding criminals, including terrorists, in laundering money or moving funds for illicit purposes. Additionally, the

[18] *See* 47 FR 18618 (April 30, 1982).

[19] *See* 47 FR at 18619.

[20] *See id.*

[21] *See, supra,* page 34 n.17.

implementation of such programs should make it more difficult for persons to successfully engage in fraudulent activities involving identity theft.

VII. Executive Order 12866

Treasury has determined that this proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. The rule follows closely the requirements of section 326 of the Act. Moreover, as indicated above, Treasury and the Commission believe that futures commission merchants and introducing brokers already have procedures in place that fulfill most of the requirements of the proposed rule. First, the procedures are a matter of good business practice. Second, futures commission merchants and introducing brokers already are required to have BSA compliance programs that address many of the requirements detailed in this notice of proposed rulemaking. Third, futures commission merchants and introducing brokers should already have compliance programs in place to ensure they comply with Treasury's Office of Foreign Assets Control rules prohibiting transactions with certain foreign countries or their nationals. Accordingly, a regulatory impact analysis is not required.

Lists of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, Banking, Brokers, Commodity futures, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 313, 314, 319, 326, 352, Pub L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is amended by adding new section 103.123 to read as follows:

§ 103.123 Customer Identification Programs for futures commission merchants and introducing brokers.

(a) *Definitions.* For the purposes of this section:

(1) *Account* means any formal business relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale for future delivery, options on contracts of sale for future delivery, or options on physicals in any commodity.

(2) *Commission* means the United States Commodity Futures Trading Commission.

(3) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act, 7 U.S.C. 1a(4).

(4) *Customer.* (i) The term customer means:

(A) Any person who opens a new account with a futures commission merchant; and

(B) Any person who is granted authority to effect transactions with respect to an account with a futures commission merchant.

(ii) Where an account is introduced to a futures commission merchant by an introducing broker, a person opening the account or granted authority to effect transactions with respect to the account is a customer of both the futures commission merchant and the introducing broker.

(5) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.), except persons who register pursuant to section 4f(a)(2) of the Commodity Exchange Act, 7 U.S.C. 6f(a)(2).

(6) *Introducing broker* means any person registered or required to be registered as an introducing broker with the Commission under the Commodity Exchange Act, except persons who register pursuant to section 4f(a)(2) of the Commodity Exchange Act.

(7) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act, 7 U.S.C. 1a(26).

(8) *Person* has the same meaning as that term is defined in § 103.11(z).

(9) *U.S. person* means:

(i) A U.S. citizen; or

(ii) A corporation, partnership, trust or person (other than an individual) that is established or organized under the laws of a State or the United States.

(10) *Non-U.S. person* means a person that is not a *U.S. person.*

(11) *Taxpayer identification number.* The provisions of section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the regulations of the Internal Revenue Service promulgated thereunder shall determine what constitutes a taxpayer identification number.

(b) *Customer Identification Program.* Each futures commission merchant and introducing broker shall implement a written Customer Identification Program (Program) that shall be based on the type of identifying information available and on an assessment of the varying risks associated with the futures commission merchant's or the introducing broker's size, location, methods of opening accounts, types of accounts and transactions, customer base, and reliance, if any, on another futures commission merchant or introducing broker with which it shares an account relationship. Each futures commission merchant's and introducing broker's procedures must enable it to form a reasonable belief that it knows the true identity of its customers. The Program should be a part of each futures commission merchant's and introducing broker's anti-money laundering program required under 31 U.S.C. 5318(h).

(c) *Required information*—(1) *General.* Except as permitted by paragraph (c)(2) of this section, each Program shall require the futures commission merchant or the introducing broker to obtain specified identifying information about each of their customers. The Program shall require that this minimum information be obtained prior to opening a customer's account or granting a customer authority to effect transactions with respect to an account. At a minimum, the specified identifying information shall include:

(i) Name;

(ii) Date of birth, for natural persons;

(iii) Addresses:

(A) Residence and mailing (if different) for natural persons; or

(B) Principal place of business and mailing (if different) for persons other than natural persons; and

(iv) Identification number:

(A) For U.S. persons, a U.S. taxpayer identification number (*e.g.,* social security number, or employer identification number); or

(B) For non-U.S. persons, a U.S. taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

(2) *Limited exception.* The Program may permit the futures commission

merchant or introducing broker to open or add a signatory to an account for a person other than an individual (such as a corporation, partnership, or trust) that has applied for, but has not received, an employer identification number. However, in such a case, the futures commission merchant or introducing broker must obtain a copy of the application before it opens or adds a signatory to the account and obtain the employer identification number within a reasonable period of time after it opens or adds a signatory to the account.

(d) *Required verification procedures.* Each Program shall contain risk-based procedures for verifying the identity of customers, to the extent reasonable and practicable. Such verification must occur within a reasonable time before or after the customer's account is opened or the customer is granted authority to effect transactions with respect to an account. A futures commission merchant or introducing broker need not verify the information about an existing customer who opens a new account or who is granted authority to effect transactions with respect to a new account, if it previously verified the customer's identity in accordance with procedures consistent with this paragraph (d), and continues to have a reasonable belief that it knows the true identity of the customer.

(1) *Verification through documents.* Each Program must describe when the futures commission merchant or introducing broker will verify identity through documents and set forth the documents that it will use for this purpose. Suitable documents for verification may include:

(i) For natural persons, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard; and

(ii) For persons other than natural persons, documents showing the existence of the entity, such as registered articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(2) *Verification through non-documentary methods.* Each Program must describe non-documentary methods the futures commission merchant or introducing broker will use to verify their customer's identity and when these methods will be used in addition to, or instead of, relying on documents. These non-documentary methods may include, but are not limited to, contacting a customer; obtaining a financial statement; independently verifying information through credit bureaus, public databases, or other sources; and checking references with other financial institutions. Non-documentary methods shall be used when: a natural person is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is presented with unfamiliar documents to verify the identity of a customer; the futures commission merchant or introducing broker does not obtain documents to verify the identity of a customer; does not meet a customer face-to-face; or is otherwise presented with circumstances that increase the risk the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(e) *Government lists.* Each Program shall include procedures for determining whether a customer's name appears on any list of known or suspected terrorists or terrorist organizations provided to the futures commission merchant or introducing broker by any federal government agency. Futures commission merchants and introducing brokers shall follow all federal directives issued in connection with such lists.

(f) *Customer notice.* Each Program shall include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identity.

(g) *Lack of verification.* Each Program shall include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer.

(h) *Recordkeeping.* (1) The Program shall include procedures for maintaining a record of all information obtained pursuant to the Program, including:

(i) All identifying information provided by a customer pursuant to paragraph (c) of this section, and copies of any documents that were relied on pursuant to paragraph (d)(1) of this section evidencing the type of document and any identification number it may contain;

(ii) The methods and results of any measures undertaken to verify the identity of a customer through non-documentary methods pursuant to paragraph (d)(2) of this section; and

(iii) The resolution of any discrepancy in the identifying information obtained.

(2) Futures commission merchants and introducing brokers must retain all records made or obtained when verifying the identity of a customer pursuant to a Program until five years after the date the account of the customer is closed or the grant of authority to effect transactions with respect to an account is revoked. In all other respects, the records shall be maintained pursuant to the provisions of 17 CFR 1.31.

(i) *Approval of program.* Each Program shall be approved by the futures commission merchant's or introducing broker's board of directors, managing partners, board of managers or other governing body performing similar functions or by a person or persons specifically authorized by such bodies to approve the Program.

(j) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the Commission (except futures commission merchants or introducing brokers that register pursuant to section 4f(a)(2) of the Commodity Exchange Act) or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

Dated: July 15, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

Dated: July 10, 2002.

Jean A. Webb,

Secretary of the Commodity Futures Trading Commission.

[FR Doc. 02–18195 Filed 7–22–02; 8:45 am]

BILLING CODE 4810–02–P

Federal Register

Tuesday,
July 23, 2002

Part IV

National Skill Standards Board

Solicitation of Comments; Notice

NATIONAL SKILL STANDARDS BOARD

Solicitation of Comments

AGENCY: National Skill Standards Board.

ACTION: Solicitation of comments.

SUMMARY: The National Skill Standards Board (NSSB) is building a voluntary national system of skill standards, assessments, and certification that will enhance the ability of the U.S. to compete effectively in a global economy. Industry-led, voluntary coalitions, called Voluntary Partnerships, are developing the skill standards, assessment, and certification systems within fifteen NSSB-defined industry sectors. The NSSB has developed a set of criteria for certification, against which the Board will evaluate for approval certifications developed by the Voluntary Partnerships. The NSSB seeks public comment on these criteria to ensure clarity and comprehensiveness. Comments must be submitted in writing as described in the ''Request for and Resolution of Comments'' in the **SUPPLEMENTARY INFORMATION** section below in order to be considered, and details on submitting comments via e-mail, fax, or regular mail are provided in the **ADDRESSES** section of this announcement.

DATES: The National Skill Standards Board will accept written comments on the criteria for certification on or before August 22, 2002.

ADDRESSES: Please send comments via regular mail to: NSSB, Attention: Bridget Brown, Director of Program Development, 1441 L Street, NW., Suite 9000, Washington, DC 20005–3512. To submit comments via fax, transmit to Bridget Brown, Certification Criteria, at 202–254–8646. To submit comments via the Internet, go to http://*www.nssb.org.* Click on the icon entitled ''View and Comment on Certification Criteria Here''

FOR FURTHER INFORMATION CONTACT: For further information on the Voluntary National System of Industry Skill Standards, Assessment, and Certification, contact Bridget Brown, National Skill Standards Board (NSSB): 1441 L Street, NW., Suite 9000, Washington DC 20005, 202–254–8628, *http://www.nssb.org.*

SUPPLEMENTARY INFORMATION:

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I. Background

The National Skill Standards Act of 1994 created ''a National Skill Standards Board to serve as a catalyst in stimulating the development and adoption of a voluntary national system of skill standards and of assessment and certification of attainment of skill standards' (*see* Section II below). The Act defines a skill standard as one that specifies the level of knowledge and skills required to successfully perform work-related functions within an industry cluster. Industry clusters are broad groups of industries defined by the NSSB to delineate the scope of employment covered by skill standards. They are based on the federal government's official 1997 North American Industry Classification System. Industry coalitions called Voluntary Partnerships (VPs) are developing the skill standards, assessment and certification systems within fifteen industry clusters. The skill standards, and therefore assessments and certifications, are being developed to reflect the needs of high-performance organizations.

II. Authorizing Legislation

Public Law 103–227, Title V, National Skill Standards Act of 1994.

III. NSSB Criteria for Certification

The National Skill Standards Board (NSSB) will use the following specific criteria to evaluate the degree to which skill standards systems include an appropriate certification program, and the degree to which this program adheres to statutory requirements and NSSB policy on certification. Voluntary Partnerships must demonstrate adherence to the criteria in order to receive NSSB approval and ultimate endorsement of the entire system.

Criteria Related to Legal and Technical Defensibility

E1. The certification organization and program do not discriminate against any class of individuals based upon race, color, ethnicity, age, gender, religion, national origin, disability, or any other criteria covered in federal civil rights law.

E2. The certification program includes a policy specifying record retention requirements for assessment results, applications, and other key documentation required to administer the certification program.

E3. The certification program includes a process to ensure compliance with applicable laws and regulations pertaining to assessment and certification.

E4. The scoring methodology (*i.e.,* pass/fail scoring, categorical scoring, percentile scoring) for the assessment(s) is clearly documented and defensible. Where more than one assessment module, test, or subtest are used for certification, the rationale for weighting and otherwise combining these into an overall certification decision is clearly documented and supportable.

E5. The certification must be clearly based upon skill standards research approved by the NSSB.

Criteria Related to System Quality and Integrity

E6. The certification organization demonstrates sufficient staff resources, with appropriate technical training and education, to maintain the quality and integrity of the program.

E7. A written policies and procedures manual addressing the operation of the certification program is implemented.

E8. The certification program includes a process to ensure continual compliance of the certification program with all NSSB criteria to maintain approval. The certification organization must provide the NSSB with annual summaries of relevant data including, but not limited to, number of certifications pending, number of total certificants, certifications awarded during the period covered, data disaggregated by demographic categories, and pass/fail rates.

E9. Certifications are effective for a limited time period, at which time an individual must re-certify. Re-certification policies should be clearly communicated to stakeholders at the time of the initial application.

Criteria Related to Security and Protection

E10. The certification program incorporates an appeals process that provides fair and legal methods for challenging decisions on certification status and assessment results. The appeals policies and procedures are readily accessible to all stakeholders.

E11. The certification program maintains a registry of certified individuals and utilizes a formal process to provide confirmation of an individual's current certification status. Specific policies are required describing the confidentiality of assessment results and rules/conditions for access to this information. Unless required by law or regulation, information regarding candidates or certificants (other than certification status) shall not be disclosed to third parties without the written consent of the individual.

E12. Certification is awarded only to individuals who have successfully completed the required assessment(s).

E13. A security policy is established, documented, and monitored by the certifying organization. Security policies should include, but not be limited to: (1) Criteria for the selection, training, utilization, monitoring, and performance of proctors, assessors, raters and other individuals involved in administering and scoring; (2) access to item banks and various computer-based and non-computer based forms of the assessment; and (3) requirements for formal investigations of suspected misconduct in assessment centers.

V. Request for and Resolution of Comments

The National Skill Standards Board (NSSB) requests that comments submitted address one or more of the following areas:

- The adequacy and completeness of this list of criteria;
- The clarity of the criteria;
- Examples or descriptions of how the VPs can meet the criteria; and,
- Examples of how to document compliance with the criteria.

The NSSB shall review and take into consideration all comments; will respond in writing to comments as appropriate; and, will make revisions as deemed appropriate. At the end of the comment period the NSSB will post a summary of comments on the NSSB Website *http://www.nssb.org.* A summary of the response to comments and a notice of revision will be posted at a later date.

Signed at Washington DC on the 18th day of July, 2002.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 02–18567 Filed 7–22–02; 8:45 am]

BILLING CODE 4510–BF–P

Federal Register

Tuesday,
July 23, 2002

Part V

Department of Housing and Urban Development

24 CFR Part 200

FHA Appraiser Watch Initiative; Advance Notice of Proposed Rulemaking; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4744–A–01]

RIN 2502–AH81

FHA Appraiser Watch Initiative; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Administration, HUD.

ACTION: Advance Notice of proposed rulemaking.

SUMMARY: This document requests comments on issues related to the implementation of the Federal Housing Administration (FHA) Appraiser Watch Initiative. Through the Appraiser Watch Initiative, HUD plans to establish and monitor a performance standard that appraisers must meet to maintain their status on the FHA Appraiser Roster (Roster). HUD is considering an approach modeled on FHA's Credit Watch Termination Initiative that would provide for an electronic, fully computerized Appraiser Watch monitoring system, and would permit an appraiser to be removed from the Roster if the rate of defaults and claims on closed mortgages linked to the appraiser exceeds a rate established by HUD.

DATES: Comment Due Date: September 23, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Office of Single Family Program Development, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Critical Role of Appraisers in FHA-Insured Home Loans

An appraisal is required for every property purchased with an FHA-insured mortgage. The purpose of an FHA appraisal is to determine the property's eligibility for mortgage insurance on the basis of its condition and location, and to estimate the value of the property for mortgage insurance purposes. As stated in a recent Congressional report, ''With the high loan-to-value ratio of most FHA loans, an accurate appraisal is critical to minimizing HUD's insurance risk.'' (Minority Staff of the Permanent Subcommittee on Investigations of the Senate Comm. on Governmental Affairs, 107th Cong., 1st Sess., Property ''Flipping'': HUD's Failure to Curb Mortgage Fraud 56 (Committee Print 2001)). In recognition of the importance of an accurate appraisal, section 202(e)(1) of the National Housing Act requires FHA appraisals to be performed by ''individuals who have demonstrated competence and whose professional conduct is subject to effective supervision.'' The purpose of this notice is to request comments on establishing a system that will enable FHA to remove poorly performing appraisers from the Roster on the basis of high default and claim rates on loans secured by the properties appraised by such appraisers. As discussed in greater detail in section E, of this notice, HUD is specifically requesting comments on a broad range of issues being considered before a proposed rule is issued. This oversight of appraisal performance will help address the concerns that have been raised about this critical segment of the FHA single family mortgage insurance programs.

B. The FHA Credit Watch Termination Initiative As a Model Approach for Appraisers

The Appraiser Watch Initiative would implement one of several new initiatives to protect FHA. Specifically, HUD proposes to establish an ''Appraiser Watch'' system, similar to the successful Credit Watch system for FHA lenders. The benefit of following an established system is that it provides for the application of a clear, familiar and consistent approach to these closely related segments of the FHA insurance process. Such an approach would prompt these segments to work more closely and cooperatively to fulfill responsibilities held in common, attain common goals, and avoid common pitfalls.

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (the Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. Some mortgagees, however, have demonstrated high default and claim rates on their FHA-insured portfolios that, although not signifying violations of FHA requirements, are nonetheless unacceptable. As a result, HUD developed the Credit Watch Termination Initiative to identify mortgagees with unsatisfactory performance levels and take ameliorative action at an early stage.

Under the FHA Credit Watch Termination Initiative, FHA systematically reviews mortgagees' early default and claim rates, that is, defaults and claims on mortgagees' loans during the initial 24 months following endorsement. In cases of severe performance deficiencies, HUD may terminate mortgagees' loan origination approval authority. The Termination of a mortgagee's Agreement is separate and apart from any action under 24 CFR part 25 taken by HUD's Mortgagee Review Board against mortgagees for violations of FHA requirements.

C. HUD's FHA Appraiser Roster

HUD has taken various steps to ensure the integrity of FHA appraisals. On June 1, 1998, HUD launched reforms of the FHA appraisal process through its Homebuyer Protection Plan. The purpose of these reforms is to ensure that a lender and FHA receive accurate and complete appraisals of homes. In keeping with these reforms, HUD has established regulatory placement and removal procedures for the Roster. These procedures are codified in subpart G of HUD's regulations at 24 CFR part 200.

HUD's Appraiser Roster lists those appraisers who are eligible to perform FHA single family appraisals. HUD established the Roster to provide a means by which HUD can monitor the quality of appraisers who perform appraisals on single family homes with FHA single family mortgage insurance and to ensure that appraisers performing appraisals meet high competency standards. The Roster is an important part of the FHA Single Family Mortgage Insurance program because accurate, competent and professional appraisals are vital to the success of the program and HUD's ability to protect the FHA Insurance Fund.

D. Appraiser Watch Initiative

HUD is soliciting comments on using a performance-based Appraiser Watch Initiative similar to the successful Credit Watch system described above for FHA lenders. The Appraiser Watch system would rate appraisers on the performance of loans secured by properties they appraised. Appraisers who are associated with excessive default and claim rates are subject to notification of proposed removal from the Roster within 60 days. Just as a consistently higher level of poor underwriting is reasonably expected to be linked to a consistently higher level of defaults, a consistently higher level of poor appraisals may be associated with a consistently higher level of defaults, regardless of the quality of the underwriting. This is because the appraisal is a key component of the underwriting process, and when this key component is inadequate, the rest of the process is adversely affected from the onset, increasing the probability of default and claims. While poor underwriting practices also increase the probability of defaults and claims, it is reasonable to conclude that at some point, a high enough rate of defaults and claims on loans secured by properties appraised by an appraiser is indicative of inadequate performance.

Under a rule similar to Credit Watch, an appraiser may be subject to removal from the Roster if the rate of defaults and claims on closed mortgages secured by properties with appraisals performed by the appraiser exceeds the normal rate in the area of a HUD field office by a specified amount, and exceeds the national default and claim rate for closed mortgages. In the case of Credit Watch, lenders are subject to removal if the rate exceeds 200 percent of the normal rate in the field office area. Such an objective, performance-based standard allows for the most efficient use of HUD's limited resources to conduct across-the-board monitoring of appraisers.

Upon receiving notification of proposed removal under Appraiser Watch, an appraiser may request an informal conference to present HUD with relevant reasons and factors, including factors beyond the appraiser's control, that may have contributed to the excessive default and claim rates. HUD may withdraw the removal notice based upon the informal conference.

Consistent with the goals of the Administration regarding the increased use of technology in government, the Appraiser Watch system being considered would allow for electronic monitoring. HUD's electronic Neighborhood Watch system, available via the FHA Connection, would be used for this purpose. Specifically, HUD would, on an ongoing basis, review the FHA mortgage default and claim rate on loans secured by properties appraised by an appraiser in the geographic region served by a HUD field office and according to the type of appraisal conducted (i.e., single family, or 2- to 4-unit, or rehabilitation). An appraiser's performance would be determined relative to the performance of other appraisers in the same geographic area conducting the same type of appraisal over the same period of time. HUD would make this information available to appraisers and the public on an ongoing basis through the Neighborhood Watch system.

To keep the public informed of the status of appraisers, HUD believes it is appropriate for any system that is adopted to provide for publication of the names of appraisers removed from the Roster pursuant to Appraisal Watch. Further, to prevent delays and disruptions in any transactions already in progress, HUD believes the appraiser should be permitted to complete any appraisal already contracted for, but not be permitted to take on any additional appraisals as of the date of removal from the Roster. Appraisers should also be permitted to apply for reinstatement. Appraiser watch is proposed to be a procedure separate and apart from the Appraiser Roster Placement and Removal procedures contained in 24 CFR part 200 subpart G. Any rule promulgated as a result of this ANPR would clearly provide that Appraiser Watch removal is in addition to and independent from any other remedies and actions available to HUD under applicable law.

E. Additional Considerations and Request for Comments

HUD seeks to establish a clear, consistent and familiar standard and procedure for an appraiser to maintain status on, or be removed from, the Roster. Because it is HUD's goal to promulgate a rule that will promote, in a fair, reasonable, and efficient manner, the highest standard of conduct and professionalism among FHA Appraisers, thereby minimizing the risk of loss to the FHA, HUD is requesting public comment on all aspects of promoting and maintaining the excellence and integrity of appraisers listed on the Roster. In particular, HUD requests comments on the following issues:

1. Whether HUD should establish a minimum number of appraisals as a threshold for any action, and if so, what number would be appropriate.
2. Whether HUD should specify the age of loans secured by appraised properties that would be considered under a standard, and what loan age would be appropriate (e.g., appraisals for loans not more than one, two or three years old, measured from the time of origination).
3. Whether a higher or lower rate than the 200 percent used in Credit Watch would provide an adequate measure of appraiser performance and level of protection for FHA.
4. What period of time over which appraisals are conducted should be used for evaluation purposes (e.g., performance over 12 months, or 18 months, or 24 months)?
5. What factors in addition to the rate of loan defaults and FHA insurance claims should HUD consider in evaluating appraiser performance?
6. Should the severity of loss be considered as a factor in evaluating an appraiser's performance?
7. If included as a factor, how should severity of loss be considered in evaluating performance?
8. What kinds of factors should be considered as mitigating for an appraiser with higher than normal default and claim rates (e.g., factors beyond the appraiser's control)?
9. How much time should be provided for an appraiser to request an informal conference after receiving notification of proposed removal (e.g., 15, 30, or 45 days)?
10. What is an appropriate period of removal from the roster before a reinstatement is permitted?
11. What are appropriate procedures and factors to consider for reinstatement?

Dated: July 17, 2002.

Sean Cassidy,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–18672 Filed 7–22–02; 11:25 am]

BILLING CODE 4210–27–P

Federal Register

Tuesday,
July 23, 2002

Part VI

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA29

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: Treasury and FinCEN are issuing an interim final rule temporarily deferring for certain financial institutions (as defined in the Bank Secrecy Act) the application of the requirements contained in section 5318(i) of title 31, United States Code, added by section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (the Act). Section 5318(i) requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons. Section 312 takes effect on July 23, 2002, whether or not Treasury has issued a final rule implementing that provision. Additionally, this interim final rule provides guidance, pending issuance of a final rule, to those financial institutions for which compliance with section 5318(i) has not been deferred.

DATES: This interim final rule is effective July 23, 2002. Written comments may be submitted on or before August 22, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 312 Interim Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 312 Interim Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480; the Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: Treasury and FinCEN are exercising the authority under 31 U.S.C. 5318(a)(6) to temporarily defer the application of 31 U.S.C. 5318(i) to certain financial institutions pending issuance by Treasury and FinCEN of a final rule outlining the scope of coverage, duties, and obligations under that provision. Additionally, for those financial institutions for which compliance with section 5318(i) has not been deferred entirely, interim guidance is provided for compliance with the statute pending issuance of a final rule. Although this interim final rule and the guidance contained herein may be relied upon by financial institutions until superseded by a final regulation or subsequent guidance, no inference may be drawn from this rule concerning the scope and substance of the final regulation that Treasury will issue concerning section 5318(i).

I. Background

Section 312 of the Act adds new subsection (i) to 31 U.S.C. 5318, the Bank Secrecy Act (BSA). This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-U.S. person to take certain anti-money laundering measures with respect to such accounts. In particular, financial institutions must establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through those accounts.

In addition to this general requirement, which applies to all correspondent and private banking accounts for non-U.S. persons, section 312 of the Act specifies additional standards for correspondent accounts maintained for certain foreign banks. For a correspondent account maintained for a foreign bank operating under an offshore license or a license granted by a jurisdiction designated as being of concern for money laundering, a financial institution must take reasonable steps to identify the owners of the foreign bank, to conduct enhanced scrutiny of the correspondent account to guard against money laundering, and to ascertain whether the foreign bank provides correspondent accounts to other foreign banks and, if so, to conduct appropriate related due diligence.

Section 312 also sets forth minimum standards for the due diligence requirements for a private banking account for a non-U.S. person. Specifically, a financial institution must take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the private banking account, as necessary to guard against money laundering. The institution must also conduct enhanced scrutiny of private banking accounts requested or maintained by or on behalf of senior foreign political figures (or their family members or close associates). Enhanced scrutiny must be reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

Section 312(b)(2) provides that subsection 5318(i) takes effect on July 23, 2002, regardless of whether Treasury has issued a final rule by that date. Furthermore, it indicates that subsection 5318(i) applies to all accounts, regardless of when they were opened.

1. The Proposed Rule

On May 30, 2002, Treasury and FinCEN published in the **Federal Register** a proposed rule implementing section 312. See 67 FR 37,736 (May 30, 2002). In that proposed rule, Treasury sought to take the broad statutory mandate of section 312 and translate it into specific regulatory directives for financial institutions to apply. Like the statute itself, the rule proposed by Treasury is far reaching, seeking to require a wide range of U.S. financial institutions [1] to apply due diligence and enhanced due diligence procedures to a diverse array of foreign financial institutions [2] that maintain ''correspondent accounts'' or ''private

[1] Treasury proposed that the following financial institutions would be covered by the regulation: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant registered, or required to register, under, and an introducing broker as defined in § 1a23 of, the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); a casino (as defined in § 103.11(n)(5)); a mutual fund (as defined in § 103.130); a money services business (as defined in § 103.11(uu)); and an operator of a credit card system (as defined in § 103.135).

[2] Foreign financial institutions include foreign banks and any other foreign person that, if organized in the United States, would be required to establish an anti-money laundering program pursuant to §§ 103.120 through 103.169 of this part.

banking accounts'' in the U.S. The proposed rule sets forth a series of due diligence procedures that financial institutions covered by the rule may, and in many cases must, apply to correspondent accounts and private banking accounts. Because section 5318(i) takes effect on July 23, 2002, regardless of whether Treasury has issued a final implementing regulation, Treasury imposed a 30-day period in which public comments on the proposed rule would be accepted.

2. The Final Rule

A final rule implementing section 312 cannot reasonably be completed by the statutory effective date of July 23, 2002. Without question, the proposed rule implementing section 312 is the furthest reaching proposed regulation issued under Title III of the Act thus far. The requirements placed on financial institutions under this provision are significant, and commenters have raised substantial and important concerns about the scope of the regulation as well as the major definitions applicable to this section. For example, commenters consistently noted that the definitions of ''correspondent account,'' ''covered financial institution,'' and ''foreign financial institution,'' were overly broad and difficult to implement. Likewise, commenters expressed concerns regarding the definition of ''senior foreign political figure.'' Moreover, the statute does not define many important terms with respect to financial institutions other than banks, leaving the task for Treasury and FinCEN. Additional time is necessary to consider carefully these definitions and the text of the proposed rule in light of comments received to determine whether these terms should be further defined with respect to each financial institution.

Treasury anticipates issuing a final rule no later than October 25, 2002.

3. Deferral of Application to Certain Financial Institutions

Although section 312 is self-executing, in the absence of a final rule, many classes of financial institutions, in particular, non-bank financial institutions, would not have clear notice of, or guidance regarding, their compliance obligations. More pointedly, without regulations defining key terms for financial institutions other than banks, these financial institutions would not have sufficient guidance to comply with all facets of section 312. This situation necessarily stems from the fact that the statute seeks to cover a diverse universe of financial institutions and seeks to address a multitude of issues arising from the panoply of financial relationships that can exist with various foreign financial institutions. Treasury's role in this process is to draft a regulation, after obtaining public comment, that provides clear and unequivocal direction to financial institutions covered by the provision. Without clarifying appropriate terms for the various industries, enforcement of section 5318(i) against the full range of financial institutions proposed to be covered by section 312 will be difficult. Therefore, deferral is necessary and appropriate.

Nor would it be appropriate for Treasury to insist on compliance with the terms of the proposed rule pending the completion of a final rule. We are still reviewing and analyzing the comments received and formulating the terms and scope of the final rule. Were Treasury to require strict compliance with the proposed rule, not only would it undermine the administrative process, but also it might require financial institutions to incur substantial costs to comply with provisions of the proposed rule that may be altered or eliminated.[3] Without suggesting that such changes will be made, such a result is untenable.

Accordingly, invoking the authority under section 5318(a)(6) of the BSA, this interim final rule defers the application of all provisions of section 5318(i) to financial institutions other than banks, securities brokers and dealers, futures commission merchants, and introducing brokers.[4] Banks must comply with all provisions of section 5318(i). Securities brokers and dealers, futures commission merchants, and introducing brokers must comply with the provisions of section 5318(i) relating to due diligence and enhanced due diligence for ''private banking accounts,'' but they are exempted from provisions related to correspondent accounts. The reason for this distinction is a practical one-the Act does not define a ''correspondent account'' for financial institutions other than banks, and Treasury needs time to consider whether the definition in the proposed rule is appropriate. In contrast, the definition of a private banking account in section 5318(i) is not limited to banks and is both applicable and commonly understood with the securities and futures industries. Moreover, to the extent these financial institutions offer this type of account, the risks of money laundering are similar to the risks posed by banks offering such accounts. As a result, they will be required to comply with the provisions of section 5318(i) regarding private banking accounts pending Treasury's issuance of a final rule, consistent with the guidance set forth below.

In summary:

- Banks must comply with section 5318(i) pending Treasury's issuance of a final rule. For the purposes of this interim final rule, these include: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); [5] a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; and a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).[6]
- Securities brokers and dealers registered, or required to register, with the Securities and Exchange Commission (SEC), and futures commission merchants and introducing brokers registered, or required to register, with the Commodity Futures Trading Commission (CFTC) must comply with provisions relating to private banking accounts, but their compliance with the remaining provisions of section 5318(i) is deferred.
- Financial institutions subject to deferment of all obligations under section 5318(i) include: Casinos; money services businesses; mutual funds; operators of credit card systems; and all remaining financial institutions defined in the BSA that are not banks, securities brokers and dealers, futures commission merchants, or introducing brokers.[7]

[3] *Cf. CFTC* v. *Schor,* 478 U.S. 833, 845 (1986) (noting the important distinction between a proposed rule and a final rule drafted based on a review of public comment).

[4] ''Introducing brokers'' refers to those registered, or required to register, with the Commodity Futures Trading Commission.

[5] This group of covered entities was drawn from the list of ''covered financial institutions'' in the proposed rule. Treasury is evaluating whether to add uninsured national trust banks to this list at the final rule stage as these entities are currently required to have anti-money laundering programs. See 12 CFR 21.21. Treasury also will consider whether non-federally regulated, state chartered, uninsured trust companies and trust banks, and non-federally insured credit unions should be added to the list to the extent that they maintain correspondent or private banking accounts for non-U.S. persons.

[6] For purposes of complying with section 5318(i) pending Treasury's issuance of a final rule, foreign branches of insured banks are deemed to be foreign banks rather than covered financial institutions.

[7] The remaining financial institutions include: dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; trust companies; state chartered credit unions that are not federally regulated; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment companies; commodity pool operators; and commodity trading advisors.

II. Compliance Obligations Pending Publication of the Final Rule

Under the Act, Treasury is authorized to interpret and administer section 312. This interim final rule provides guidance to those financial institutions for which the application of section 5318(i) has not been deferred. Pending issuance of a final rule, Treasury expects compliance with section 5318(i) as set forth below. Treasury does not expect compliance with the terms and conditions of the proposed rule except to the extent they coincide with the express requirements of the statute. However, the interim compliance measures set forth in this guidance should not be construed as an indication of the obligations that will be imposed by the final rule.

1. Due Diligence for Correspondent Accounts—Banks Only

With respect to correspondent accounts, section 5318(i)(1) requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts established, maintained, administered, or managed in the United States for a foreign financial institution. In the interim period before the issuance of a final rule, a due diligence program under section 5318(i)(1) will be reasonable in Treasury's view if it focuses compliance efforts on the correspondent accounts that pose a high risk of money laundering based on an overall assessment of the money laundering risks posed by the foreign correspondent institution. It is the expectation of Treasury that a bank will accord priority to conducting due diligence on high-risk foreign banks for which it maintains correspondent deposit accounts or their equivalents, and will focus foremost on correspondent accounts used to provide services to third parties. Treasury also expects banks to give priority to conducting due diligence on high-risk correspondent accounts maintained for foreign financial institutions other than foreign banks, such as money transmitters. In all cases, Treasury expects that a bank will accord priority in applying due diligence to accounts opened on or after July 23, 2002.

Treasury acknowledges that, as a practical matter, banks will be unable to craft and implement final comprehensive due diligence policies and procedures pursuant to the dictates of section 5318(i)(1) until Treasury issues a final rule. However, in the interim, a reasonable due diligence policy, in Treasury's view, is one that comports with existing best practices standards for banks that maintain correspondent accounts for foreign banks,[8] and evidences good faith efforts to incorporate due diligence procedures for correspondent accounts maintained for foreign financial institutions posing an increased risk of money laundering.

2. Enhanced Due Diligence for High Risk Foreign Banks—Banks Only

Section 5318(i)(2) requires U.S. financial institutions to establish enhanced due diligence policies and procedures applicable when opening or maintaining a correspondent account in the United States for certain foreign banks designated as high risk. Sections 5318(i)(2)(B)(i) through (iii) further specify requirements that must be incorporated into a financial institution's enhanced due diligence policies and procedures.

An enhanced due diligence program will be reasonable under section 5318(i)(2)(B), in Treasury's view, if first, it comports with existing best practice standards for banks that maintain correspondent accounts for foreign banks.[9] Second, the program must also focus enhanced due diligence measures on those correspondent accounts that are maintained by a foreign correspondent bank deemed high risk by section 5318(i)(2)(A) posing a particularly high risk of money laundering based on the bank's overall assessment of the risk posed by the foreign correspondent bank. As with the previous provision, it is the expectation of Treasury that a bank will accord priority in applying enhanced due diligence to accounts opened on or after July 23, 2002.

Within these priorities, as required by the statute, banks must take reasonable steps to comply with directives described in sections 5318(i)(2)(B)(i) through (iii). For purposes of section 5318(i)(2)(B)(i), an owner is deemed to be any person who directly or indirectly owns, controls, or has voting power over 5 percent or more of any class of securities of a foreign bank, the shares of which are not publicly traded.

3. Due Diligence for Private Banking Accounts—Banks, Securities Brokers and Dealers, Futures Commission Merchants, and Introducing Brokers

Sections 5318(i)(1) and (3) set forth due diligence requirements for U.S. financial institutions that maintain private banking accounts in the United States for non-U.S. persons.[10] Under the Act, a private banking account is an account (or any combination of accounts) that requires minimum aggregate deposits of at least $1 million, that is established for one or more individuals, and that is assigned to or administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as liaison between the financial institution and the direct or beneficial owner of the account. Section 5318(i)(3)(A) requires financial institutions, as needed to guard against money laundering, to take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the account. Additionally, the statute requires enhanced scrutiny of private banking accounts maintained by or on behalf of senior foreign political figures, an immediate family member, or close associate, to guard against laundering the proceeds of foreign corruption.

As with the requirements for correspondent accounts, a private banking due diligence program under sections 5318(i)(1) and (3) must be reasonably designed to detect and report money laundering and the existence of the proceeds of foreign corruption. Treasury believes that a due diligence private banking program would be reasonable, pending adoption of final regulations to implement section 5318(i), if the program is focused on those private banking accounts that present a high risk of money laundering. A program that is consistent with applicable government guidance on private banking accounts, such as the guidance on sound practices for private banking issued by the Federal Reserve (SR 97–19 (SUP) ''Private Banking Activities'' (June 30, 1997) at *www.federalreserve.gov*) and the guidance on enhanced scrutiny for transactions that may involve the proceeds of foreign corruption issued jointly by Treasury, the bank regulators, and the State Department in January 2001 (at *http://www.treas.gov/press/releases/docs/guidance.htm*) would be reasonable, so long as it incorporates the

[8] *See, e.g.,* New York Clearing House Association, L.L.C., ''Guidelines for Counter Money Laundering Policies and Procedures in Correspondent Banking,'' (March 2002) at *www.nych.org;* Basel Committee on Banking Supervision, ''Customer Due Diligence for Banks'' (October 2001) at *www.bis.org.* A due diligence program that does not adopt all of the best practices and standards described in industry and other available guidance also could be considered reasonable if there is a justifiable basis for not adopting a particular best practice or standard, based on the particular type of accounts held by the institution.

[9] *See supra* note 7.

[10] For purposes of this interim final rule, a non-U.S. person means an individual who is neither a United States citizen nor a lawful permanent resident as defined in 26 U.S.C. 7701(b)(6).

requirements of section 5318(i)(3).[11] Treasury expects that an institution will accord priority in applying enhanced due diligence to accounts opened on or after July 23, 2002.

III. Analysis of the Interim Final Rule

A. Banks, Savings Associations, and Credit Unions—Section 103.181

The following financial institutions are not subject to the deferral contained in this interim final rule and must take steps, in light of the guidance provided above, to comply with the requirements of section 5318(i) pending issuance of a final implementing regulation: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; and a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

B. Securities Brokers and Dealers, Futures Commission Merchants, and Introducing Brokers—Section 103.182

Securities brokers and dealers registered, or required to register, with the SEC, and futures commission merchants and introducing brokers registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) are subject to the requirements of section 5318(i) relating to due diligence and enhanced due diligence relating to private banking accounts. They must take steps, in light of the guidance provided above, to comply with the requirements of section 5318(i) relating to private banking accounts pending issuance of a final implementing regulation. Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily defer the application of all other requirements contained in section 5318(i) for securities brokers and dealers, futures commission merchants, and introducing brokers.

C. All Other BSA Financial Institutions—Section 103.183

Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily defer the application of all requirements contained in section 5318(i) for all other financial institutions. This temporary deferment applies to casinos; money services businesses; mutual funds; operators of credit card systems; dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers;[12] trust companies; state chartered credit unions that are not federally insured; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment companies; commodity pool operators; and commodity trading advisors.

This temporary deferral does not in any way relieve any financial institution from compliance with the existing anti-money laundering and anti-terrorism requirements imposed by law, regulation, or rule of a self-regulatory organization. Quite to the contrary, the obligations contemplated by section 312 will serve to augment and improve the existing anti-money laundering activities of financial institutions. To that end, Treasury and FinCEN expect financial institutions proposed to be subject to the regulation implementing section 312 to begin immediately the process of evaluating their due diligence procedures when correspondent accounts or private banking accounts are opened or maintained on behalf of non-U.S. persons.

IV. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(i), requiring due diligence programs for certain foreign accounts, become effective July 23, 2002. This interim rule exempts certain financial institutions from these requirements and provides interim compliance guidance for those financial institutions not exempted. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

VI. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5332; title III, secs. 312, 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. Add new undesignated centerheading ''Anti-Money Laundering Programs'' to subpart I immediately before § 103.120.

3. Add new undesignated centerheading and §§ 103.181 through 103.183 to subpart I to read as follows:

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

Sec.

103.181 Special due diligence programs for banks, savings associations, and credit unions.
103.182 Special due diligence programs for securities brokers and dealers, futures commission merchants, and introducing brokers.
103.183 Deferred due diligence programs for other financial institutions.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts

§ 103.181 Special due diligence programs for banks, savings associations, and credit unions.

The requirements of 31 U.S.C. 5318(i) shall apply, effective July 23, 2002, to a financial institution that is:

(a) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(b) A commercial bank;

(c) An agency or branch of a foreign bank in the United States;

(d) A federally insured credit union;

(e) A thrift institution; or

(f) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

[11] *See also,* Wolfsberg Group, ''Global Anti-Money-Laundering Guidelines for Private Banking: Wolfsberg AML Principles'' (1st Revision May 2002) at *www.wolfsberg-principles.com.* A program that does not follow all of the best practices outlined in this government guidance would be reasonable if there is a justifiable basis, based on the particular circumstances of the institution involved, for not following these practices.

[12] A private banker under the BSA refers to state chartered banking entities that are not organized as a corporation. Generally, such entities are organized as partnerships. A private banker does not refer to those who offer private banking accounts.

§ 103.182 Special due diligence programs for securities brokers and dealers, futures commission merchants, and introducing brokers.

(a) *Private banking accounts.* The requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for private banking accounts shall apply, effective July 23, 2002, to a financial institution that is:

(1) A broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) A futures commission merchant or introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

(b) *Correspondent accounts.* A financial institution described in paragraph (a) of this section is exempt from the requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for certain correspondent accounts.

(c) *Other compliance obligations of financial institutions unaffected.* Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

§ 103.183 Deferred due diligence programs for other financial institutions.

(a) *Exempt financial institutions.* Except as provided in § 103.181 and § 103.182, a financial institution defined in 31 U.S.C. 5312(a)(2) and (c)(1) or § 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i).

(b) *Other compliance obligations of financial institutions unaffected.* Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

Dated: July 19, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–19743 Filed 7–22–02; 8:45 am]

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