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Federal Register

10–17–02 Thursday
Vol. 67 No. 201 Oct. 17, 2002
Pages 64027–64306

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Presidential Documents

Title 3—

The President

Proclamation 7608 of October 11, 2002

National Cystic Fibrosis Awareness Week, 2002

By the President of the United States of America

A Proclamation

Cystic fibrosis is one of the most common fatal genetic diseases in the United States. During this week, we renew our commitment to fighting this deadly disease that affects an estimated 30,000 American men, women, and children.

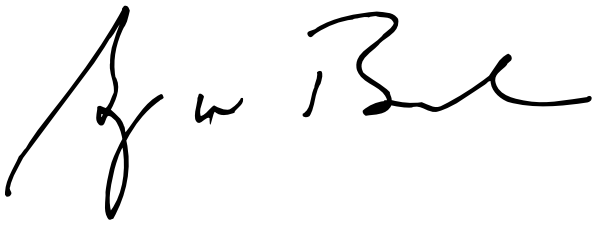
Cystic fibrosis is a genetic disorder that can be passed on directly from parents to children. Millions of Americans are unknowing, symptom-free carriers of the defective gene that can cause this disease. When both parents are carriers of the abnormal gene, their children have a 1 in 4 chance of being born with the disorder. Individuals who suffer from cystic fibrosis experience frequent lung infections and digestive problems caused by cell disorders in the lining of the lungs, small intestines, sweat glands, and pancreas.

Though there is as yet no known cure for cystic fibrosis, scientists and researchers have made great progress in understanding and treating this disease. Thanks to these efforts, the average life expectancy for people with cystic fibrosis has increased significantly in recent decades, and it is now approximately 30 years. In addition, advances in antibiotic therapy and the management of lung and digestive problems have improved the quality of life for these individuals.

Recent genetic research may also accelerate the discovery of a cure. To help advance the work to end cystic fibrosis, my Administration is dedicated to increasing Federal funding for medical research at the National Institutes of Health. Until cystic fibrosis is eliminated, we are hopeful that our research efforts will continue to extend and improve the quality of life of those stricken with this grave disease.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 13 through October 19, 2002, as National Cystic Fibrosis Awareness Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–26628
Filed 10–16–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7609 of October 11, 2002

National School Lunch Week, 2002

By the President of the United States of America

A Proclamation

The future success of our Nation depends on our children's healthy development. Since 1946, the National School Lunch Program (NSLP) has made important contributions to the well-being of our school children. As part of the NSLP, more than 96,000 schools and residential childcare institutions serve more than 27 million children each day. In addition to providing young people with nutritious meals, this program supports the academic mission of our schools and helps to ensure that all our Nation's children reach their full potential.

To avoid the formation of poor eating habits, which are generally established during childhood, we must encourage positive choices that fulfill dietary recommendations. It is critical that our children eat sufficient amounts of fruits and vegetables, reduce fat in their diets, and consume essential nutrients in an overall diet with appropriate calories. By making modest improvements to their diets and increasing physical activities, children can dramatically improve their overall health.

To help meet this goal, the Department of Agriculture launched the School Meals Initiative for Healthy Children. This plan empowers schools to serve ''kid-friendly'' meals that meet the recommendations defined in the Dietary Guidelines for Americans and the Food Guide Pyramid. Through Team Nutrition, a comprehensive, behavior-based plan, the USDA assists schools by supporting food service personnel with important training. New recipes are now created by teams of dietitians and chefs, and then taste-tested by children. As a result, more children are enjoying lunches that are lower in fat, saturated fat, and sodium.

To motivate children to make sound choices, Team Nutrition also educates them about the benefits of healthy eating. State and local governments are supplementing these programs through innovative partnerships with educators, school administrators, community organizations, the food industry, and others. Through these cooperative efforts we are addressing solutions to health problems, such as the increasing incidence of childhood obesity, and we are enhancing access to nutrition programs for needy children.

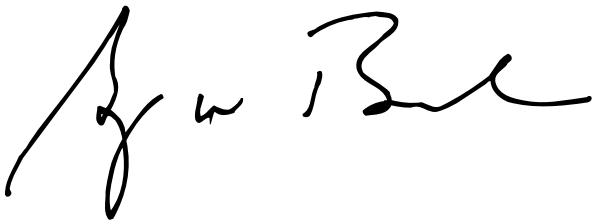
During National School Lunch Week, we recognize the hard work and dedication of the thousands of food service professionals who plan and prepare meals, and provide vital nutritional education to our young people.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of our Nation's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October of each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 13 through October 19, 2002, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program at the State

and local levels in appropriate activities and celebrations that promote all programs that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–26629
Filed 10–16–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7610 of October 11, 2002

White Cane Safety Day, 2002

By the President of the United States of America

A Proclamation

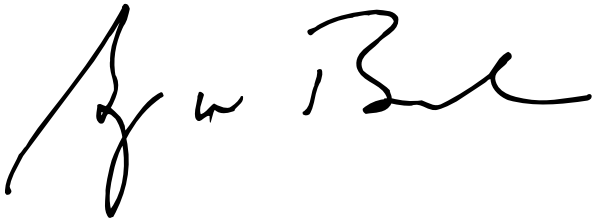
The white cane is a powerful symbol of independence and opportunity for visually impaired persons. It is also an essential tool for increasing mobility and productivity for those who are blind as well as those who suffer from severe visual impairment. On White Cane Safety Day, our Nation renews its dedication to eliminating barriers for every disabled American, especially the blind and visually impaired.

My Administration seeks to ensure that all Americans enjoy full access to employment, education, and all the blessings of freedom. Through my ''New Freedom Initiative,'' we are working to provide people with disabilities more employment opportunities and increased access to new technologies for independent living. My 2003 budget for this initiative proposes $145 million for alternative transportation and innovative transportation grants that will improve accessibility to vital aspects of society including schools, jobs, and places of worship. By implementing these and other important reforms, we can make great progress towards an America where individuals are celebrated for their talents and abilities, not judged by their limitations and disabilities.

The Congress, by joint resolution (Public Law 88–628) approved on October 6, 1964, as amended, has designated October 15 of each year as ''White Cane Safety Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2002, as White Cane Safety Day. I call upon public officials, educators, librarians, and all the people of the United States to join with me in ensuring that all the benefits and privileges of life in our great Nation are available to blind and visually impaired individuals, and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 02–26630
Filed 10–16–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG61

Industry Codes and Standards; Amended Requirements: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: On September 26, 2002 (67 FR 60520), the U.S. Nuclear Regulatory Commission (NRC) published a final rule amending its regulations to incorporate by reference a later edition and addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to provide updated rules for construction, inservice inspection (ISI), and inservice testing (IST) of components in light-water cooled nuclear power plants. This action corrects two erroneous references to the NRC's regulations made in the supplementary information accompanying the final rule.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the final rule, published on September 26, 2002 (67 FR 60520), on page 60521, in the third column, in the third full paragraph, the first and second sentences are corrected to read as follows:

In responding to this clarification, several commenters indicated that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(g)(4)(ii). The NRC does not agree that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(g)(4)(ii).

Dated at Rockville, Maryland, this 9th day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 02–26342 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AH03

Cost Recovery for Contested Hearings Involving U.S. Government National Security Initiatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow the agency to recover its costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through licensing fees assessed to the affected applicant or licensee. This final rule is a special exception to the Commission's longstanding policy of not charging this type of fee for contested hearings. In this case, the Commission will charge its contested hearing costs directly to the involved licensee or applicant rather than recovering its costs through the annual fees assessed to all licensees within the affected class.

EFFECTIVE DATE: November 18, 2002.

ADDRESSES: The comments received are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Final Action
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act

I. Background

The NRC has a longstanding policy of charging the affected applicant part 170 licensing fees to recover the agency's costs for any uncontested hearings that the NRC holds on applications to construct a power reactor or enrichment facility. These hearings are mandated by statute. However, the NRC's costs for all contested hearings [1] have been recovered through part 171 annual fees assessed to the members of the particular class of licensee to which the applicant belongs.

The NRC published the final rule establishing the part 170 and part 171 fees for FY 2002 on June 24, 2002, (67 FR 42612) after considering a comment

[1] A contested proceeding is defined in 10 CFR 2.4 as (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

from a nuclear industry group concerning the assessment of annual fees to the fuel facility class of licensees for recovery of the costs involving a contested hearing related to the application for a mixed oxide (MOX) fuel fabrication facility. The industry group commented that assessing the MOX contested hearing costs to the fuel facility fee class was unfair, and that it was a violation of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, to charge licensees for an agency activity or program from which the licensees receive no benefit. The commenter asserted that fuel facility licensees should not be responsible for bearing the costs of contested hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit.[2] The commenter added that the beneficiaries of the MOX program are the Federal government and the Nation's citizenry because it will aid in the reduction of weapons-grade plutonium. The commenter contended that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base.

The NRC responded that it must recover its hearing costs through either part 170 fees for services or through part 171 annual fees in order to recover most of its budgeted costs (less the amounts appropriated from the Nuclear Waste Fund) through fees as required by OBRA–90, as amended. The Commission's longstanding policy of recovering contested hearing costs through part 171 annual fees assessed to the affected class of licensee was confirmed repeatedly in the course of many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

However, in this case the Commission stated in the FY 2002 final fee rule that it found merit in the commenter's concern about the assessment of annual fees targeted to the fuel facility class for the MOX contested hearing costs because the NRC licensing action, which is the subject of the hearing, involves a U.S. Government national security initiative to dispose of plutonium stockpiles. Accordingly, the final fee rule provided that FY 2002 budgeted costs for the MOX contested hearing should be recovered through part 171 annual fees assessed to all classes of licensees. The final fee rule also stated it was the Commission's intent to issue a proposed rule for public comment that would recover the costs for contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee, beginning in FY 2003.

The Commission published its proposed rule for comment on July 31, 2002, in the **Federal Register** (67 FR 49623). The comment period for this rule ended August 30, 2002. After considering all comments received during the public comment period, the Commission has now adopted its proposal as a final rule.

This final rule is a special exception to the Commission's policy of not recovering contested hearing costs through part 170 fees assessed to the affected applicant or licensee. This exception only applies to contested hearings on licensing actions directly associated with U.S. Government national security initiatives, such as Presidentially-directed national security programs. The affected applicant or licensee will be responsible for the payment of the part 170 fees assessed for these types of contested hearings. However, because part 170 fees will only be assessed for contested hearings on licensing actions directly involving U.S. Government national security initiatives, the Commission generally expects that the costs will ultimately be borne by the Federal government, rather than the applicant.

In addition to the contested hearing on the MOX fuel fabrication facility application, any contested hearing on the Tennessee Valley Authority (TVA) license amendments to produce tritium at the Watts Bar and Sequoyah reactors for the Nation's nuclear weapons program would be another example of a contested hearing on a licensing action directly involving a U.S. Government national security initiative for which part 170 fees would be assessed under this final rule.

Examples of contested hearings on licensing actions that do not involve a U.S. Government national security initiative include the contested hearing on the application for a uranium recovery license filed by Hydro Resources Inc., and the contested hearing on the independent spent fuel storage installation application filed by Private Fuel Storage L.L.C. Furthermore, this final rule leaves intact the existing policy of not assessing part 170 fees for contested hearings associated with applications or licenses that are used to provide routine services to U.S. Government agencies.

It should be noted that the Independent Offices Appropriation Act (IOAA) prohibits the NRC from assessing part 170 fees to Federal agencies, except in limited circumstances, such as licensing and inspection of TVA power reactors. Therefore, in most cases, this final rule would not apply to contested hearings on licensing actions involving U.S. Government national security initiatives where a Federal agency is the applicant or licensee.

II. Response to Comments

On July 31, 2002 (67 FR 49623), the NRC published for public comment a proposed rule to recover the agency's costs for contested hearings on licensing actions directly involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee. The NRC received two comments by the close of the public comment period on August 30, 2002.

The comments and the NRC's responses, grouped according to the issues raised, are as follows:

1. *Comment.* One commenter indicated that the NRC has not provided a specific definition of what a ''U.S. Government national security initiative'' is, and that the agency's definition should be clarified so as to eliminate confusion or potential misapplication of this exception to policy. Specifically, the commenter further explained that a ''national security initiative'' should exclude proceedings and licensing actions related to individual plant security modifications.

Response. The proposed rule presented a revised definition of Special Projects in § 170.3 Definitions to include contested hearings on licensing actions directly involving U.S. Government national security initiatives. The statement of considerations for the proposed rule provided examples of contested hearings on licensing actions that would and would not be considered as these types of proceedings. The NRC also proposed to add a part 170 fee exemption provision in § 170.11(a)(2) for contested hearings. This provision will codify the Commission's past policy of not charging applicants or licensees for the costs of contested hearings, with one limited exception. Applicants or licensees involved in contested hearings that the NRC determines involve a U.S. Government national security-related initiative will be charged fees for the cost of such proceedings. The NRC cannot predict the types of future licensing actions that

[2] The MOX program is a Federal government initiative to ensure national security through the disposition of plutonium from dismantled nuclear weapons.

will involve U.S. Government national security initiatives. Consequently, the NRC will evaluate such actions on a case-by-case basis, and no further definition is being provided in this final rule. However, the Commission agrees with the commenter that licensing actions related to individual plant security modifications, including those required by Federal regulation, do not constitute a national security initiative for the purposes of part 170 fees. Accordingly, in this final rule the Special Projects definition under § 170.3 has been modified to specifically exclude contested hearings involving individual plant security modifications, including those required by Federal regulation. Similarly, the proposed language in § 170.11(a)(2) has been revised to specifically grant an exemption from the part 170 fees for contested hearings related to these individual plant security modifications.

2. *Comment.* One commenter asserted that this rulemaking should be implemented as an interim measure, and that the NRC should actively pursue whatever legislative changes are necessary, including amending the IOAA, to ensure licensees are not required to fund actions unrelated to their licensed activities.

Response. The agency is presently bound by existing legislation to recover most of its budgeted costs, including costs related to contested hearings, from NRC applicants and licensees through fees. The NRC's current policy is to recover its contested hearing costs from part 171 annual fees assessed to licensees in the affected fee class. This rulemaking modifies the existing policy such that the NRC's contested hearing costs associated with licensing actions specifically related to U.S. Government national security initiatives will be assessed directly to the affected licensee or applicant as part 170 fees. As noted in the proposed rule, the Commission generally expects that these costs would ultimately be borne by the Federal government rather than the applicant or licensee. This belief is based on the premise that U.S. Government national security-related initiatives will be sponsored by the Federal government; therefore, the sponsoring agency would reimburse the applicant or licensee for any associated costs, including NRC's costs for contested proceedings directly related to these initiatives.

Congress has taken action to remove from the fee base some of the costs for activities that raise fairness and equity concerns. However, unlike the activities that raise fairness and equity concerns related to NRC licensees having to pay the costs of activities for which they derive no benefit—the agency's activities related to contested hearings on licensing actions involving a U.S. Government national security initiative are directly related to regulating the affected applicant or licensee. Therefore, assessing the affected applicant or licensee for the NRC's costs of such contested hearings does not raise fairness and equity concerns, and as such, the Commission does not plan to pursue legislation to remove these costs from the fee base.

3. *Comment.* A commenter stated that the NRC should provide a more specific explanation of additional exceptions it plans to make to permit allocation of fees assessed for costs associated with national security-related programs to individual applicants or licensees (*e.g.*, with respect to petitions filed pursuant to 10 CFR 2.206 or allegations related to national security related programs in an NRC licensing context).

Response. As stated in the proposed rule, the Commission plans to consider recovering its costs for future activities involving U.S. Government national security-related programs, including allegations and 10 CFR 2.206 petitions, through part 170 fees assessed to the applicant or licensee in a manner consistent with this final rule. Any determination in this regard that could result in changes to the NRC's existing fee recovery policies would be published in the **Federal Register** for public comment.

4. *Comment.* Both commenters indicated the need for the NRC to clarify the intent of this rulemaking regarding the cost implications of these types of contested proceedings to petitioners. One of the commenters believed that this rule would require petitioners to pay all of the NRC's costs for contested proceedings involving U.S. Government national security initiatives.

Response. This rulemaking will not require petitioners/interveners to pay the NRC's costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives. The rule will result in the assessment of fees to the affected applicant or licensee to recover the NRC's costs for these types of contested proceedings. Moreover, the NRC has no plans to propose any further revision that would result in charging petitioners for the NRC's contested hearing costs.

5. *Comment.* One commenter inquired about the applicability of this rulemaking to the Yucca Mountain project.

Response. This rulemaking does not apply to the Yucca Mountain project because the agency's costs for this program are recovered by the NRC through appropriations from the Nuclear Waste Fund, and thus are excluded from fee recovery. Therefore, the rule will not result in the NRC assessing fees to recover the agency's costs for the Yucca Mountain proceeding.

6. *Comment.* One commenter asked who was responsible for making the ''national security'' determination.

Response. The NRC will make the final determination of whether a particular licensing action is directly related to a U.S. Government national security initiative. This decision will be made on a case-by-case basis. In those instances where the NRC decides a licensing action is related to a U.S. Government national security initiative, and the licensing process involves a contested hearing, the licensee or applicant will be assessed part 170 fees to recover the agency's costs associated with the contested proceeding.

7. *Comment.* A commenter questioned whether this rule would affect the licensing process based on a determination of a national security initiative.

Response. This rulemaking will not affect the NRC's licensing process, nor will it change how the agency executes its regulatory oversight mission. This final rule concerns an exception to the NRC's existing fee policy, and narrowly focuses on cost recovery associated with contested hearings involving U.S. Government national security initiatives.

III. Final Action

The NRC is amending 10 CFR part 170 to establish a provision for assessing part 170 fees to the affected applicant or licensee to recover the NRC's full costs of contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC. To implement this special exception to the Commission's longstanding policy of not assessing part 170 fees for contested hearing costs, the NRC is adding a fee exemption to § 170.11 for contested hearings. This provision will codify the Commission's past policy of not charging applicants or licensees for the costs of contested hearings, with one limited exception. Applicants or licensees involved in contested hearings that the NRC determines involve a U.S. Government national security-related initiative will be charged fees for the cost of such proceedings. A conforming revision is being made to § 170.11(a) to add the term special project fees to the existing list of fee types that will not be assessed under the exemption provision. The NRC is also revising the

definition of *Special Projects* in § 170.3 to include contested hearings on licensing actions related to U.S. Government national security initiatives, and is making corresponding changes to the section related to the payment of special project fees, to fee category J. of § 170.21, and to fee category 12. of § 170.31. Only those contested hearings on licensing actions directly associated with a U.S. Government national security initiative, such as those specifically related to Presidentially-directed national security programs, will be subject to cost recovery under part 170. The NRC will continue to recover its costs for those contested hearings that are exempted from part 170 fees through part 171 annual fees assessed to the affected class of licensees.

The final rule will not be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the final rule will become effective 30 days after publication in the **Federal Register**.

As stated in the proposed rule, the NRC does not plan to mail this final rule to all licensees; however, a copy of this final rule will be mailed to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov.* In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending part 170 to recover costs from applicants or licensees in contested hearings involving Commission-specified U.S. Government national security-related initiatives. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Supreme Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980).

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose a fee on a very limited number of applicants or licensees to recover the costs of contested hearings involving Commission-specified, U.S. Government national security-related initiatives, and it is unlikely that these few organizations would fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that its backfit rules do not apply to this final rule and therefore, that a backfit analysis is not required for this final rule, because these final amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter 1.

X. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Special Projects means those requests submitted to the Commission for review

for which fees are not otherwise specified in this chapter and contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC. Examples of special projects include, but are not limited to, contested hearings on licensing actions directly related to Presidentially-directed national security programs, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. Special Projects does not include those contested hearings for which a fee exemption is granted in § 170.11(a)(2), including those related to individual plant security modifications.

* * * * *

3. In § 170.11, the introductory text of paragraph (a) is revised and paragraph (a)(2) is added to read as follows:

§ 170.11 Exemptions.

(a) No application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for:

* * * * *

(2) A contested hearing conducted by the NRC on a specific application or the authorizations and conditions of a specific NRC license, certificate, or other authorization, including those involving individual plant security modifications. This exemption does not apply to a contested hearing on a licensing action that the NRC determines directly involves a U.S. Government national security-related initiative, including those specifically associated with Presidentially-directed national security programs.

* * * * *

4. In § 170.12, paragraph (d) is revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review or contested hearing. Special projects include activities such as—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review or contested hearing is completed. Each bill will identify the documents submitted for review or the specific contested hearing and the costs related to each. The fees are payable upon notification by the Commission.

* * * * *

5. In § 170.21, the introductory text is presented for the convenience of the user and Category J is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections [3]	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * * *	

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. In § 170.31, the introductory text is presented for the convenience of the user and Category 12. is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
* * * * * * *	
12. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * * *	

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

Dated at Rockville, Maryland, this 8th day of October, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–26446 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–40–AD; Amendment 39–12911; AD 2002–21–05]

RIN 2120–AA64

Airworthiness Directives; REVO, Incorporated Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain REVO, Incorporated (REVO) Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes. This AD requires you to inspect the upper and lower wing spar doublers and angles for cracks at a certain time after the incorporation of Modification Kit B–79 or FAA-approved equivalent, replace any cracked wing spar doubler or angle, and report the results of the inspection to the Federal Aviation Administration (FAA). The kit modification consists of installing a doubler kit to give the spar an adequate fatigue life. This AD is the result of an incident of a crack found at the most outboard wing attachment fitting hole on one of the affected airplanes with the modification incorporated. The actions specified by this AD are intended to prevent wing spar failure caused by cracks in the wing spar doublers or angles, which could result in the wing separating from the airplane with consequent loss of control.

DATES: This AD becomes effective on October 23, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before November 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–40–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get information related to this AD from FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received a report of a crack at the most outboard wing attachment fitting bolt hole on a REVO Model Lake LA–4–200 airplane. This airplane had incorporated the modification from AD 2000–10–22, Amendment 39–11746 (65 FR 34065, May 26, 2000), which requires the following on REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes:

—Inspection of the left and right wing upper and lower spar doublers for cracks;

—Replacement of any cracked parts; and

—Incorporation of the B–79 Modification Kit or FAA-approved equivalent.

This modification consists of installing a doubler kit to give the spar an adequate fatigue life. The repetitive inspections are no longer required after incorporation of this modification.

AD 2000–10–12 was the result of reports of a fatigue crack found at the second most inboard wing attachment bolt hole on one of the affected airplanes and similar fatigue cracking on seven more of the affected airplanes.

The most recent accident airplane had accumulated about 50 hours time-in-service (TIS) since incorporating the modification required by AD 2000–10–22.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in wing spar failure and the wing separating from the airplane with consequent loss of control.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes of the same type design;

—The affected airplanes that incorporate the modification required by AD 2000–10–22 should have the wing spar doublers and angles inspected for cracks and have any cracked parts replaced; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to accomplish the following:

—Inspect the upper and lower wing spar doublers and angles for cracks at a certain time after the incorporation of Modification Kit B–79 or FAA-approved equivalent as required by AD 2000–10–22;

—Replace any cracked wing spar doubler or angle; and

—Report the results of the inspection to FAA.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in the wing separating from the airplane with consequent loss of control, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–40–AD.'' We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

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

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–21–05 Revo, Incorporated: Amendment 39–12911; Docket No. 2002–CE–40–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the model and serial number airplanes in paragraph (a)(1) of this AD and that incorporate any of the wing spar part numbers (or FAA-approved equivalent part numbers) specified in paragraph (a)(2) of this AD:

(1) *Affected Airplanes:* This following model and serial number airplanes, certificated in any category, are affected by this AD:

Model	Serial Nos.
Lake LA–4	246 through 421, 423 through 429, 445, and 446.
Lake LA–4A	244 and 245.
Lake LA–4P	121.
Lake LA–4–200	422, 430 through 444, and all serial numbers after 446.
Lake Model 250	1 through 232.

(2) *Wing Spar Part Numbers Incorporated:* The following specifies the part numbers of the wing spars that are installed on the affected airplanes:

Wing spar parts	Part Nos.
Upper Spar Cap Angles	2–1610–015 and 2–1610–016.
Lower Spar Cap Angles	2–1610–075 and 2–1610–076.
Upper Spar Doublers	2–1610–061 and 2–1610–081 and 2–1610–065.
Lower Spar Doublers	2–1610–063 and 2–1610–083.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent wing spar failure caused by cracks in the wing spar doublers or angles, which could result in the wing separating from the airplane with consequent loss of control.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance
(1) Inspect the wing spar doublers and spar cap angles for cracks from the root end to the outboard of the wing attachment fittings, as follows: (i) From inside the wheel well, clean the upper and lower wing spar doublers and adjoining structure to the paint. Use a detergent or mineral-based solvent. (ii) Use a strong light source and a 3x magnifying glass to inspect the exposed areas of the upper and lower spar doublers and adjoining structure for cracks. Use a mirror to inspect the exposed edge of the spar cap angle behind the doubler.	Upon accumulating 25 hours time-in-service (TIS) after incorporating Modification B–79 or FAA-approved equivalent (the modification required by AD 2000–10–22) or within the next 10 hours TIS after October 23, 2002 (the effective date of this AD), whichever occurs later, unless already accomplished after accumulating 25 hours TIS after incorporating the modification required by AD 2000–10–22.
(2) Replace any doubler or angle found cracked during the inspection required by paragraphs (d)(1), (d)(1)(i), and (d)(1)(ii) of this AD. Replace with new parts that incorporate the same part numbers or FAA-approved equivalent part numbers.	Prior to further flight after the inspection.
(3) Report the results of the inspection to the FAA at the address specified in paragraph (f) of this AD. Use the inspection report that is included as Figure 1 of this AD. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056.	Within 7 days after the the inspection required by this AD or 7 days after October 23, 2002 (the effective date of this AD), whichever occurs later.

Figure 1 to AD 2002–21–05—Inspection Report

Report the following information to: Manager, Boston Aircraft Certification Office, Engine And Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, Fax: (781) 238–7170.

Operator/Repair Station _____
Aircraft Model _____
Aircraft S/N _____
Date of Inspection _____
Aircraft Time-in Service (TIS):
Total _____
Since installation of AD 2000–10–22 Kit __

Note: Add additional pages for the following for each part inspected.

Part No. _____
Inspection
Pass _____
Fail _____

If a crack is found, indicate the approximate location on the part and the length of the crack in inches:

_____
_____

Part Time-In Service (TIS) (Hours):
Estimated _____
Actual _____
Unknown _____

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Boston Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7170.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *When does this amendment become effective?* This amendment becomes effective on October 23, 2002.

Issued in Kansas City, Missouri, on October 8, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–26371 Filed 10–16–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP St. Louis–02–005]

RIN 2115–AA97

Security Zones; Captain of the Port St. Louis, MO

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five security zones throughout the Captain of the Port St. Louis zone. These security zones are necessary to protect the Fort Calhoun Nuclear Power Station in Fort Calhoun, Nebraska, the Cooper Nuclear Station in Brownville, Nebraska, the Quad Cities Generating Station in Cordova, Illinois, the Prairie Island Nuclear Generating Facility in Welch, Minnesota, and the Clinton Power Station in Clinton, Illinois from subversive actions by any group or groups of individuals whose objective it is to cause disruption to the daily operations of these facilities. Entry into any of these security zones is prohibited unless authorized by the Captain of the Port St. Louis or designated representative.

DATES: This rule is effective beginning 8:01 a.m. on October 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP St. Louis–02–005] and are available for inspection or copying at Marine Safety Office St. Louis, Suite 8.104E, 1222 Spruce St. St. Louis, MO

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Bill Clark, Marine Safety Office St. Louis at (314) 539–3091, ext. 3500.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 11, 2002, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Security Zones; Captain of the Port St. Louis, MO'', in the **Federal Register** (67 FR 39922). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. Any delay in making this final rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to these terrorist acts and warnings the Captain of the Port St. Louis created three temporary security zones and published an NPRM proposing two additional security zones. The three temporary security zones the Captain of the Port, St. Louis established are: the Fort Calhoun Nuclear Power Station zone on the Missouri River in Fort Calhoun, Nebraska, published in the **Federal Register** March 7, 2002 (67 FR 10325) amended by 67 FR 40615; the Cooper Nuclear Station zone on the Missouri River in Brownville, Nebraska, published March 7, 2002 (67 FR 10324) amended by 67 FR 40617; and the Quad Cities Generating Station zone on the Mississippi River in Cordova, Illinois, published February 28, 2002 (67 FR 9207) amended by 67 FR 40613. We received no comments or objections concerning these temporary final rules.

Advisories regarding threats of terrorism continue. The Captain of the Port St. Louis has determined that security zones are needed for the areas covered by the NPRM and is creating five permanent security zones.

(1) *Fort Calhoun Nuclear Power Station, Fort Calhoun, Nebraska.* This zone includes all water extending 75 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 645.6 and ending at mile marker 646.0.

(2) *Cooper Nuclear Station, Brownville, Nebraska.* This zone includes all water extending 250 feet from the shoreline of the right descending bank on the Missouri River, beginning at mile marker 532.5 and ending at mile marker 532.9.

(3) *Quad Cities Generating Station, Cordova, Illinois.* This zone includes all water extending 300 feet from the shoreline of the left descending bank on the Upper Mississippi River, beginning at mile marker 506.3 and ending at mile marker 507.3.

(4) *Prairie Island Nuclear Generating Facility, Welch, Minnesota.* This zone includes all water extending 300 feet from the shoreline of the right descending bank on the Upper Mississippi River, beginning at mile marker 798.0 and ending at mile marker 798.3.

(5) *Clinton Power Station, Clinton, Illinois.* This zone in Dewitt County in East Central Illinois is bounded by a dam constructed near the confluence of Salt Creek River mile 56 and the north fork of Salt Creek. The zone extends out 600 feet from shore. Boundaries of the zone will begin at 40°10′30″ N, 88°50′30″ W; east to 40°10′30″ N, 88°49′55″ W; south to 40°10′15″ N, 88°49′55″ W; west to 40°10′15″ N, 88°5′30″ W; returning north to the origin. These coordinates are based upon [NAD 83].

These security zones are designed to reduce the potential of a waterborne attack and enhance the public health and safety by protecting the public, facilities, and surrounding areas from possible subversive actions or acts of terrorism. All persons and vessels are prohibited from entering the Prairie Island, Quad Cities and Clinton security zones unless expressly authorized by the Captain of the Port St. Louis or his designated representative. Sight surveys indicate that vessels may safely navigate around these zones with minimal interference.

Both the Fort Calhoun and the Cooper security zones contain a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or designated representative. Vessels requiring use of the channel for safe navigation are authorized entry into the zone but must remain within the channel unless otherwise expressly authorized by the Captain of the Port St. Louis or designated representative.

Discussion of Comments and Changes

We received no comments on the proposed rule or on the temporary final rules or extensions. Therefore, we have made no substantive changes to the provisions of the proposed rule.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

With the exception of the Fort Calhoun and Cooper zones the zones do not include navigable channels. Vessel traffic should be able to safely transit around these zones. The zones for Fort Calhoun Nuclear Power Station and the Cooper Nuclear Station allow deeper draft vessels to continue their transit, provided that they remain within the channel. Vessels that must transit through any of these security zones may seek permission from the Captain of the Port St. Louis or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this rule. The navigable channel remains open to all vessel traffic. We received no comments or objections regarding the previous security zones covering the same areas.

If you are a small business entity and are significantly affected by this

regulation please contact LTJG Bill Clark, Marine Safety Office St. Louis at (314) 539–3091, ext. 3500.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking processes.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.825 to read as follows:

§ 165.825 Security Zones; Captain of the Port St. Louis, Missouri.

(a) *Location.* The following areas are security zones:

(1) *Fort Calhoun Nuclear Power Station Security Zone, Fort Calhoun, Nebraska*—all waters of the Missouri River, extending 75 feet from the shoreline of the right descending bank beginning from mile marker 645.6 and ending at mile marker 646.0.

(2) *Cooper Nuclear Station Security Zone, Brownville, Nebraska*—all waters of the Missouri River, extending 250 feet from the shoreline of the right descending bank beginning from mile marker 532.5 and ending at mile marker 532.9.

(3) *Quad Cities Generating Station Security Zone, Cordova, Illinois*—all waters of the Upper Mississippi River, extending 300 feet from the shoreline of the left descending bank beginning from mile marker 506.3 and ending at mile marker 507.3.

(4) *Prairie Island Nuclear Generating Facility Security Zone, Welch, Minnesota*—all waters of the Upper Mississippi River, extending 300 feet from the shoreline of the right descending bank beginning from mile marker 798.0 and ending at 798.3.

(5) *Clinton Power Station Security Zone, Clinton, Illinois*—all waters of Lake Clinton in Dewitt County in East Central Illinois bounded by a dam constructed near the confluence of Salt Creek River mile 56 and the north fork of Salt Creek. The zone extends out 600 feet from shore. Boundaries of the zone begin at 40°10′30″ N, 88°50′30″ W; thence east to 40°10′30″ N, 88°49′55″ W; thence south to 40°10′15″ N, 88°49′55″ W; thence west to 40°10′15″ N, 88°50′30″ W; thence returning north to the origin. These coordinates are based upon [NAD 83].

(b) *Regulations.* (1) Entry into these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, St. Louis or designated representative.

(2) The Ft. Calhoun and Cooper security zones include a portion of the navigable channel of the Missouri River. All vessels that may safely navigate outside of the channel are prohibited from entering the security zone without the express permission of the Captain of the Port St. Louis or designated representative. Vessels that are required to use the channel for safe navigation are authorized entry into the zone but must remain within the channel unless expressly authorized by the Captain of the Port St. Louis or designated representative.

(3) Persons or vessels requiring the Captain of the Port St. Louis' permission to enter the security zones must contact the Coast Guard Group Upper Mississippi River at telephone number 319 524–7511 or on VHF marine channel 16 or Marine Safety Detachment Quad Cities at telephone number 309 782–0627 or the Captain of the Port, St. Louis at telephone number 314 539–3091, ext. 3500 in order to seek permission to enter the security zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, St. Louis or designated representative.

(4) Designated representatives are commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: October 1, 2002.

D.C. Haynes,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, St. Louis.

[FR Doc. 02–26460 Filed 10–11–02; 5:10 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Corpus Christi–02–003]

RIN 2115–AA97

Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX; Port of Corpus Christi Inner Harbor, Corpus Christi, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing security zones within the Port of Port Lavaca-Point Comfort and Port of Corpus Christi Inner Harbor. These security zones are needed to protect personnel, vessels, waterfront facilities, and national security interests in these ports from possible subversive actions by any group or groups of individuals whose objective it is to destroy or disrupt maritime activities. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into these zones is prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

DATES: This rule is effective beginning 8 a.m. October 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Corpus Christi–02–003] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Thomas Hopkins, Marine Safety Office Corpus Christi at (361) 888–3162 x303.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 10, 2002, the Coast Guard published a notice of proposed rule making (NPRM) entitled ''Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX; Port of Corpus Christi Inner Harbor, Corpus Christi, TX; and Port of Brownsville, Brownsville, TX'', in the **Federal Register** (67 FR 31750). We received seven letters commenting on the proposed rule, including requests for a public hearing on the proposed Port of Brownsville zone. No public hearing was held as we have decided not to implement the proposed security zone for the Port of Brownsville at this time.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The temporary final rule published in the **Federal Register** on March 18, 2002 (67 FR 11922) as amended on June 7, 2002 (67 FR 39301) expires on October 15, 2002. This rule replaces the original temporary final rule. Any delay in making this rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and continued warnings, heightened awareness for the security and safety of all vessels, ports and harbors is necessary. The Captain of the Port, Corpus Christi is establishing permanent security zones within the Port of Port Lavaca-Point Comfort, Point Comfort, TX and the Port of Corpus Christi Inner Harbor, Corpus Christi, TX.

These security zones are around highly industrialized areas with concentrated commercial facilities considered critical to national security. Restricting the access of recreational, passenger, and commercial fishing vessels increases the opportunity for detection and reduces potential methods of attack on personnel, vessels and waterfront facilities within these zones.

The security zones are designed to limit the access of vessels that do not have business to conduct with facilities or structures within these industrial areas. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into these zones is prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

Discussion of Comments and Changes

We received seven comments on the proposed rule. Six of these comments opposed the creation of a security zone in the Brownsville Ship Channel because of the impact it might have on the local fishing industry. Five of these comments addressed what they considered to be a lack of sufficient threat in this area to require a security zone. After evaluating the comments received and touring the area in question with local port and recreational fishing representatives, the Coast Guard has determined there is not a need establish the proposed security zone for the Port of Brownsville in the current threat environment.

One comment was received on the proposed security zone for Port Lavaca-Point Comfort. The commenter was under the mistaken impression that the security zone would be for the entirety of Lavaca bay. Once the concerned party was made aware of the limited location of the proposed security zone, there was no objection to the zone for this area.

There were no comments received concerning the proposed security zone

for the Port of Corpus Christi Inner Harbor.

We have made no substantive changes to the provisions of the proposed rule for Port of Point Lavaca-Point Comfort and the Corpus Christi Inner Harbor security zones.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule does not affect commercial traffic conducting business within the ports. Within these areas there are no marinas or other public businesses or docks that service recreational, passenger and commercial fishing vessels. As a result there would be little or no economic impact on recreational, passenger, and commercial fishing vessels or servicing entities. Vessels affected by this final rule may be permitted by the Captain of Port Corpus Christi to enter the security zones on a case-by-case basis.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because recreational vessels, passenger vessels, and commercial fishing vessels do not normally conduct business within these industrial areas. Should a recreational vessel, passenger vessel, or commercial fishing vessel need to enter one of these security zones to conduct business with a small entity, there is no cost and little burden associated with obtaining permission to enter from the Captain of the Port Corpus Christi via VHF Channel 16 or via telephone at (361) 888–3162.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Hopkins at (361) 888–3162 ext. 303 or at the address listed under **ADDRESSES.**

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.809 to read as follows:

§ 165.809 Security Zones; Port of Port Lavaca-Point Comfort, Point Comfort, TX and Port of Corpus Christi Inner Harbor, Corpus Christi, TX.

(a) *Location.* The following areas are designated as a security zone:

(1) *Port of Port Lavaca-Point Comfort*—all waters between the Dredge Island Bridge at 28°39′30″ N, 96°34′20″ W and a line drawn between points 28°38′10″ N, 96°33′15″ W and 28°38′10″ N, 96°34′45″ W including the Point Comfort turning basin and the adjacent Alcoa Channel. These coordinates are based upon NAD 1983.

(2) *Port of Corpus Christi Inner Harbor*—all waters of the Corpus Christi Inner Harbor from the Inner Harbor Bridge (US HWY 181) to, and including the Viola Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter these security zones unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into these security zones must contact the Captain of the Port Corpus Christi or his designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or his designated representative.

(3) Designated representatives include U.S. Coast Guard commissioned, warrant, and petty officers.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 25, 2002.

William J. Wagner, III,

Captain, U.S. Coast Guard, Captain of the Port, Corpus Christi.

[FR Doc. 02–26512 Filed 10–15–02 12:57 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Houston–Galveston–02–010]

RIN 2115–AA97

Security Zones; Ports of Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent moving security zones around cruise ships that are transiting, anchored or moored in the Ports of Houston and Galveston, Texas. These security zones are needed for the safety and security of these vessels. Entry into these zones is prohibited to all persons and vessels unless authorized by the Captain of the Port, Houston-Galveston or designated representative.

DATES: This rule is effective beginning 8 a.m. October 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of [COTP Houston-Galveston-02–010] and are available for inspection or copying at Marine Safety Office Houston-Galveston, 9640 Clinton Drive, Galena Park, TX, 77547, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 11, 2002, the Coast Guard published a notice of proposed rule making (NPRM) entitled ''Security Zones; Ports of Houston and Galveston, TX'', in the **Federal Register** (67 FR 39917). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. National security and intelligence officials continue to warn that future terrorist attacks against United States interests are likely. The temporary final rule published in the **Federal Register** on May 1, 2002 (67 FR 21578) as amended on June 11, 2002 (67 FR 39848) expires on October 15, 2002. This rule replaces the original temporary final rule. Any delay in making this rule effective would be contrary to the public interest because action is necessary to protect against the possible loss of life, injury, or damage to property.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary. Due to the increased safety and security concerns surrounding the transit of cruise ships, the Captain of the Port, Houston-Galveston established temporary security zones around these vessels [COTP Houston-Galveston-02–006]. A temporary final rule was published May 1, 2002 in the **Federal Register** (67 FR 21578). An extension of this temporary final rule was published June 11, 2002 (67 FR 39848) extending the effective date until 8 a.m. October 15, 2002. We received no comments concerning this temporary final rule.

Advisories regarding threats of terrorism continue. The Captain of the Port Houston-Galveston has determined that there is a need for this security zone to remain in effect indefinitely. The Captain of the Port Houston-Galveston is establishing permanent security zones around these vessels as they transit within the Ports of Houston and Galveston.

A moving security zone will be established when a cruise ship passes the Galveston Bay Approach Lighted Buoy ''GB'' inbound and continues through its transit, mooring, and return transit until it passes the sea buoy outbound. The establishment of moving security zones described in this rule will be announced to mariners via Marine Safety Information Broadcast. In the Ports of Houston and Galveston, no vessel may operate within 500 yards of a cruise ship unless operating at the minimum safe speed required to maintain a safe course. Except as described in this rule, no person or vessel is permitted to enter within 100 yards of a cruise ship unless expressly

authorized by the Captain of the Port Houston-Galveston. Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

The Houston Ship Channel narrows to 400 feet or less near Houston Ship Channel Entrance Lighted Bell Buoy ''18'' and continues at this width through Barbours Cut. Between these points vessels that must transit the navigable channel will have to gain permission from the Captain of the Port Houston-Galveston or designated representative, to pass within 100 yards of a cruise ship. Mariners that anticipate encountering a cruise ship in this section of the channel are encouraged to contact ''Houston Traffic'' prior to getting underway.

For the purpose of this final rule the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. This definition covers passenger vessels that must comply with 33 CFR Parts 120 and 128.

Discussion of Comments and Changes

We received no comments on the proposed rule or temporary final rule. Therefore, we have made no changes to the provisions of the proposed rule.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The impacts on routine navigation are expected to be minimal as the zone will only impact navigation for a short period of time and the size of the zone allows for the transit of most vessels with minimal delay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a narrow portion of the Houston-Galveston Ship Channel during a transit of a cruise ship in the same narrow location. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons:

1. Between the Houston-Galveston Sea buoy and Houston Ship Channel Entrance Lighted Bell Buoy ''18'' the size of the security zone allows for vessels to safely transit around or through the zone with minimal interference.

2. Between Houston Ship Channel Entrance Lighted Bell Bouy ''18'' and Barbour's Cut the channel narrows to 400 feet. In this section the Captain of the Port Houston-Galveston through Vessel Traffic Service (VTS) Houston-Galveston, ''Houston Traffic,'' and designated on scene personnel may grant vessels permission to pass within 100 yards of a cruise ship.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG George Tobey, Marine Safety Office Houston-Galveston, Texas, Port Waterways Management, at (713) 671–5100.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.813 to read as follows:

§ 165.813 Security Zones; Ports of Houston and Galveston, TX.

(a) *Location.* Within the Ports of Houston and Galveston, Texas, moving security zones are established encompassing all waters within 500 yards of a cruise ship between Galveston Bay Approach Lighted Buoy ''GB'', at approximate position 29°21′18″ N, 94°37′36″ W [NAD 83] and up to, and including, Barbours Cut. These zones remain in effect during the inbound and outbound entire transit of the cruise ship and continues while the cruise ship is moored or anchored.

(b) *Regulations.* (1) Entry of vessels or persons into these zones is prohibited unless authorized as follows.

(i) Vessels may enter within 500 yards but not closer than 100 yards of a cruise ship provided they operate at the minimum speed necessary to maintain a safe course.

(ii) No person or vessel may enter within 100 yards of a cruise ship unless expressly authorized by the Coast Guard Captain of the Port Houston-Galveston. Where the Houston Ship Channel narrows to 400 feet or less between Houston Ship Channel Entrance Lighted Bell Buoy ''18'', light list no. 34385 at approximately 29°21′06″ N, 94°47′00″ W [NAD 83] and Barbours Cut, the Captain of the Port Houston-Galveston may permit vessels that must transit the navigable channel between these points to enter within 100 yards of a cruise ship.

(iii) Moored vessels or vessels anchored in a designated anchorage area are permitted to remain within 100 yards of a cruise ship while it is in transit.

(2) Vessels requiring entry within 500 yards of a cruise ship that cannot slow to the minimum speed necessary to maintain a safe course must request express permission to proceed from the Captain of the Port Houston-Galveston, or his designated representative.

(3) For the purpose of this section the term ''cruise ship'' is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(4) The Captain of the Port Houston-Galveston will inform the public of the moving security zones around cruise ships via Marine Safety Information Broadcasts.

(5) To request permission as required by these regulations contact ''Houston Traffic'' via VHF Channels 11/12 or via phone at (713) 671–5103.

(6) All persons and vessels within the moving security zone shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: September 20, 2002.

Kevin S. Cook,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 02–26511 Filed 10–15–02; 12:57 pm]

BILLING CODE 4915–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2389, MM Docket No. 01–65; RM–10078, RM–10188 & RM–10189]

Radio Broadcasting Services; Brandon, SD; Emmetsburg, Sanborn and Sibley, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 261C3 for Channel 261A at Emmetsburg, Iowa, modifies the license for Station KEMB accordingly, and deletes vacant Channel 262A at Sibley, Iowa, in response to a petition filed by Eisert Enterprises, Inc. *See* 66 FR 15065, March 15, 2001. The coordinates for Channel 261C3 at Emmetsburg are 43–07–24 and 94–51–29. In response to the counterproposal filed by Eisert Enterprises (RM–10189), we shall allot Channel 264A at Sanborn, Iowa, at coordinates 43–10–53 and 95–39–23. The counterproposal filed by Saga Communications of Iowa (RM–10188) requesting the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota, has been denied. With this action, this proceeding is terminated.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 01–65, adopted September 25, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 261A and adding Channel 261C3 at Emmetsburg, by removing Channel 262A at Sibley, and by adding Sanborn, Channel 264A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26361 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2309; MM Docket No. 02–62; RM–10397]

Radio Broadcasting Services; De Funiak Springs and Valparaiso, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a Notice of Proposed Rule Making, 67 FR 16706 (April 18, 2002), this document reallots Channel 276C2 from De Funiak Springs, Florida to Valparaiso, Florida and provides Valparaiso with its first local FM transmission service. The coordinates for Channel 276C2 at Valparaiso are 30–30–53 North Latitude and 86–13–12 West Longitude.

DATES: Effective November 12, 2002.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–62, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Valparaiso, Channel 276C2, and removing De Funiak Springs, Channel 276C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26359 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2001–11107; Notice 2]

RIN 2127–AI28

Motor Vehicle Safety; Reimbursement Prior to Recall

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts a regulation implementing Section 6(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to include in their programs to remedy a safety-related defect or a noncompliance with a Federal motor vehicle safety standard, a plan for reimbursing owners for the cost of a remedy incurred within a reasonable time before the manufacturer's notification of the defect or noncompliance.

DATES: *Effective Date:* The effective date of the final rule is January 15, 2003. *Petitions for Reconsideration:* Petitions for reconsideration of the final rule must be received not later than December 2, 2002.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact George Person, Office of Defects Investigation, NHTSA, (202) 366–2850. For legal issues, contact Andrew J. DiMarsico, Office of Chief Counsel, NHTSA, (202) 366–5263.

SUPPLEMENTARY INFORMATION:

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I. Summary of Final Rule

Today's final rule expands manufacturers' programs for remedying safety defects and noncompliances in motor vehicles and equipment to include reimbursement plans that, at a minimum, cover certain expenditures related to the defect or noncompliance incurred before the implementation of the recall. The rule requires manufacturers to submit to the agency reimbursement plans that satisfy specific requirements and to comply with the terms of those plans.

This final rule adopts, in most respects, the proposals in the Notice of Proposed Rulemaking, 66 FR 64078 (December 11, 2001). This rule specifies a minimum period for which a manufacturer must provide reimbursement to a person who

incurred costs to obtain a remedy before the manufacturer provided notification of a safety-related defect or noncompliance with a Federal motor vehicle safety standard (FMVSS) and delineates the conditions that a manufacturer must and may place in its reimbursement plan. The determination of the starting date for the mandatory reimbursement period depends upon what led to the recall. For recalls based upon a noncompliance with an FMVSS, the start of the mandatory reimbursement period is the date of the observation of a test failure by either the manufacturer or NHTSA. For recalls based upon a safety-related defect, the start of the reimbursement period is the date NHTSA opens an engineering analysis (EA) or one year prior to the date the manufacturer submits its notice of a defect to NHTSA pursuant to 49 U.S.C. 30118(b) or (c) and 49 CFR part 573, whichever is earlier.

Unlike the start of the reimbursement period, the end date of the reimbursement period depends on whether the item being recalled is a motor vehicle or replacement equipment. The end date distinguishes between a consumer's eligibility for reimbursement and a consumer's eligibility for the recall remedy. A consumer would not be eligible for reimbursement if he or she paid for the remedy after the end date, and would only be able to obtain a free remedy if the consumer followed the manufacturer's remedy program. For motor vehicles, the end date is ten days after the date the manufacturer mailed the last of its notices to owners pursuant to 49 CFR 577.5. For replacement equipment, the end date is ten days after the date the manufacturer mailed the last of its notices pursuant to 49 CFR 577.5, or 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to 49 CFR 577.7, whichever is later.

The rule also establishes certain required provisions of reimbursement plans. For motor vehicles, reimbursable costs may not be less than the lesser of the owner's cost for the remedy or the owner's costs for parts, labor, taxes and other miscellaneous fees. For replacement equipment, reimbursable costs presumably would be the amount paid by the owner to replace the item (including taxes), but the manufacturer may limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant item that was replaced. Manufacturers must also identify the office(s) to which claims for reimbursement are to be submitted. The manufacturer must process the claim within 60 days. If the manufacturer denies the claim, it must provide a clear statement to the owner or purchaser stating the reasons for the denial.

Manufacturers will be required to take certain actions to assure that owners or purchasers are appropriately aware of the possibility of reimbursement. In recalls where there is a reasonable likelihood that some persons may have made expenditures that are eligible for reimbursement, the manufacturer would have to include language in each owner notification that refers to such possible eligibility and that advises how to obtain the details on eligibility for reimbursement and how to obtain reimbursement. This could either be an enclosure with the owner letter or a reference to a toll-free telephone number. In all cases, the manufacturer must make its reimbursement plan available upon request, and it will also be available to the public at NHTSA.

In addition, the final rule identifies the conditions that manufacturers may, but are not required to, impose upon reimbursement. Apart from the specified conditions, no other conditions or limitations are permitted. The reimbursement plan may, with some limitations, exclude reimbursement for costs incurred within the period during which the manufacturer's warranty would have provided for a free repair of the problem addressed by the recall. In regard to this permitted exclusion, a manufacturer may include an extended warranty offered by the manufacturer. However, a manufacturer may not exclude reimbursement based upon the existence of a third party's warranty, such as a service contract.

Today's final rule also permits manufacturers to exclude reimbursement if the pre-notification remedy was not the same type of remedy as the one used in the recall, did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, was not reasonably necessary to correct the defect or noncompliance, or if the owner did not provide adequate documentation to the manufacturer. Under today's final rule, adequate documentation includes the name and address of the person seeking reimbursement; identification of the product; identification of the recall; a receipt for the remedy for which reimbursement is sought; for replaced equipment; proof that the claimant owned the recalled item; and, if the remedy was obtained within the time period of a manufacturer's free warranty, documentation indicating that the warranty was not honored or the warranty repair did not correct the problem addressed by the recall.

Finally, the rule allows manufacturers to submit general reimbursement plans to the agency that may be incorporated into the Part 573 report by reference rather than providing detailed reimbursement plans to the agency for each recall. Under this option, manufacturers would provide basic information concerning the reimbursement plan, such as the entities authorized to administer reimbursement; identify acceptable documentation; and identify the manufacturer's notification procedures. Specific information regarding a particular recall, such as the identity of the remedy and the dates for the reimbursement period, would be submitted in the defect or noncompliance report to the agency pursuant to 49 CFR 573.

II. Background

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act, was enacted on November 1, 2000, Pub. L. 106–414. The statute was, in part, a response to congressional concerns related to manufacturers' inadequate responses to defects and noncompliances in motor vehicles and motor vehicle equipment. The TREAD Act authorizes the Secretary of Transportation (''the Secretary'') to issue various rules relating to a manufacturer's notification and remedy program. The authority to carry out Chapter 301 of Title 49 of the United States Code (''Safety Act''), under which rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

Under 49 U.S.C. 30118(b), the agency may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In addition, under 49 U.S.C. 30118(c), a manufacturer of a motor vehicle or replacement equipment is required to notify the agency if it determines, or in good faith should determine, that its vehicles or equipment contain a defect that is related to motor vehicle safety or do not comply with an applicable Federal motor vehicle safety standard.

49 U.S.C. 30120(a) provides that, except under certain limited circumstances, when notification of a defect or noncompliance is required under section 30118 (b) or (c), the manufacturer is required to remedy the defect or noncompliance without charge

when the vehicle or equipment is presented for remedy. That section further specifies that the remedy, at the option of the manufacturer, can be either to repair the vehicle or equipment or replace it with an identical or reasonably equivalent item or, in the case of a vehicle, refund the purchase price less depreciation. The Safety Act contains separate remedy provisions applicable to tires. 49 U.S.C. 30120(b).

49 U.S.C. 30120(d) requires a manufacturer to file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. Pursuant to 49 U.S.C. 30118 and 30119 and 49 CFR Part 577, manufacturers are required to notify owners of defects and noncompliances. In order to obtain the manufacturer's remedy at no cost, an owner has to act in accordance with the provisions in the notice from the manufacturer. Any other way of remedying the defect or noncompliance would not be free of charge.

Before the TREAD Act, section 30120(d) did not require the manufacturer to reimburse owners for any costs incurred in remedying the defect or noncompliance prior to the notification required under sections 30118 and 30119. Manufacturers often reimbursed owners for these costs, but not in a uniform way. To the extent that the costs were not covered under a warranty program, manufacturers addressed these matters under extended warranty programs, ''good will'' programs, or in resolution of claims, including lawsuits.

Section 6(b) of the TREAD Act amended 49 U.S.C. 30120(d) to require a manufacturer's remedy program to include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. 114 Stat. 1804. Section 6(b) further authorizes the Secretary to prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan. *Ibid.*

On December 11, 2001, we issued a notice of proposed rulemaking (NPRM) that would implement this section and solicited comments on the ways in which NHTSA may best implement section 6(b) (66 FR 64078).

In response to the NPRM, we received comments from a variety of sources. Motor vehicle manufacturers and associated trade organizations who commented were General Motors Corporation (''GM''), Ford Motor Company (''Ford'') and the Alliance of Automobile Manufacturers (''Alliance''). The tire industry was represented by the Rubber Manufacturers Association (''RMA''). Other motor vehicle equipment manufacturers and associated trade organizations who commented were the Juvenile Products Manufacturers Association, Inc. (''JPMA''), Delphi Automotive Systems (''Delphi''), Motor and Equipment Manufacturers Association (''MEMA'') and Original Equipment Suppliers Association (''OESA''). The National Automobile Dealers Association (''NADA'') also commented. We also received comments from Public Citizen (''PC''), Consumers Union (''CU''), Consumer Federation of America (''CFA''), the Center for Auto Safety (''CFAS'') and Advocates for Highway and Auto Safety (''Advocates''). These comments have provided us with several insights in developing this final rule.

III. Discussion

A. Application

In the NPRM, we proposed that the reimbursement rule apply to manufacturers as delineated in 49 CFR 573.3 and 49 CFR 577.3. We did not receive any comments on the proposed application of this rule. We are adopting it as proposed.

B. Period for Reimbursement

1. Definition of ''Reasonable Time''

Under section 6(b) of the TREAD Act, manufacturers need only provide reimbursement for costs incurred within a ''reasonable time'' in advance of notification. Thus, not all pre-notification remedies are covered under this provision. As we pointed out in the NPRM, Congress authorized the agency to delineate what it constituted ''reasonable time'' for reimbursement purposes. We also noted that the legislative history was not helpful in this determination, only suggesting something more than immediately prior to recall. We noted that Congress intended that the period of reimbursement be limited somewhat by the language of ''reasonable time.'' If Congress had intended reimbursement to cover all pre-notification remedies, it would have either explicitly stated that the period for reimbursement be the same as the statutory free remedy period of ten years (five years for tires) after the product is bought by the first purchaser (49 U.S.C. 30120(g)) or would not have included the limiting term ''reasonable time'' in section 6(b) of the TREAD Act. By using the term ''reasonable time,'' Congress meant something less than a reimbursement period that would cover ''all'' pre-notification remedies.

In the NPRM, we proposed that the period for mandatory reimbursement be specified as an objective, bright-line rule to minimize unnecessary complications. We said that bright-line rules would be easy to administer. They would eliminate, or at least minimize, any disputes about whether an expenditure was made in the covered period. They would also allow the agency to remain outside any disputes between owners and manufacturers over reimbursement. In addition, we proposed to relate the bright-line rules for the period of reimbursement to the agency's investigative activities with respect to alleged noncompliances and defects. Based upon our investigative processes, we proposed objectively determinable time periods for reimbursement that differ depending upon whether the recall involves a noncompliance or a defect.

With respect to a noncompliance with a FMVSS, we proposed that the period under which reimbursement would be mandatory would begin on the date of the initial test failure or the initial observation of a possible noncompliance. For noncompliance recalls that are influenced by the agency (a recall following an agency investigation), the date of the initial test failure will be apparent. With respect to noncompliance recalls that are not influenced (*i.e.*, ''uninfluenced'') by the agency (a recall initiated solely by a manufacturer), former 49 CFR 573.5(c)(7) (2001) (as recodified, 49 CFR 573.6(c)(7) [1]) requires manufacturers to identify ''the test results or other data'' that led to the manufacturer's determination. We proposed an amendment to this language to require the manufacturer to specify the date when it first identified the possibility that a noncompliance existed.

With respect to a recall based upon a safety-related defect, in the NPRM we discussed at length the Office of Defects Investigation (ODI) investigative process and how ODI attempts to complete the final stage of its investigations—engineering analyses (EA)—within one year after they are opened. On the basis of that process, we proposed two different triggering dates as the beginning of the mandatory reimbursement period depending upon the circumstances. The difference between the triggering dates depends upon whether the recall was an

[1] Section 573.5 was redesignated as Section 573.6 when the Early Warning Reporting Rule was published on July 10, 2002. See 67 FR 45822, 45872.

influenced recall or an uninfluenced recall. For uninfluenced recalls, we proposed that the reimbursement period would begin one year before the date of the manufacturer's submission of a notification of the defect to NHTSA pursuant to 49 U.S.C. 30118 and 49 CFR 573.5 (2001). For influenced recalls, we proposed that the beginning of the period for reimbursement would be the date the agency opens an EA.

In general, commenters presented divergent views on the issue of what is a ''reasonable time'' for the purposes of mandatory reimbursement. Manufacturers, while suggesting some slight modifications, generally agreed with NHTSA's proposal, while consumer advocacy groups disagreed.

Manufacturers (the Alliance, GM, Ford and JPMA) generally agreed with NHTSA's proposal that for defect-based recalls that were uninfluenced, the minimum period for reimbursement would begin one year before the manufacturer's Part 573 report. They urged NHTSA to adopt the same one-year rule for all recalls, including defect recalls undertaken after ODI has opened an investigation and all noncompliance recalls.

In our view it would not be reasonable to adopt a reimbursement period beginning date of one year before the Part 573 report across the board. For example, in the case of a noncompliance with a FMVSS, if the failing test were two years before the Part 573 report, the manufacturer should not be allowed to avoid reimbursement for the cost of the remedy made by owners during the first year after the test. Similarly, the fact that some of the agency's complex defect investigations require more than a year to complete should not curtail manufacturer's reimbursement responsibilities. The manufacturers' suggestion could reward recalcitrant manufacturers that delay the submission of their Part 573 reports to the agency. Thus, relating the time period under which reimbursement must be provided to the agency's investigative processes limits or precludes manufacturers from manipulating the period of reimbursement. On the other hand, we see no reason why the period for reimbursement should ever be longer for uninfluenced defect recalls (or for those influenced recalls that did not require an EA) than for those in which ODI's defect investigation reached the EA stage. Therefore, the final rule provides that for those recalls that took place after ODI opened an EA, the start of the reimbursement period may be no later than the date of the EA opening or one year before the defect notification to the agency, whichever is earlier.

In individual and joint comments, consumer advocacy groups (CFAS, PC, CU, CFA and Advocates, collectively ''advocacy groups'') and NADA disagreed with NHTSA's proposed approach for determining reasonable time. The advocacy groups commented that the agency's proposal for reasonable time would be confusing to consumers and would require that consumers have a basic knowledge of the statute and NHTSA's internal procedures. In addition, they asserted that the proposed rule would allow manufacturers to take advantage of the procedure by delaying their submission of a Part 573 report until it is favorable to the manufacturer to report the defect or noncompliance. Moreover, these commenters claimed that the proposed rule would frustrate the intent of Congress by penalizing consumers who act judiciously in remedying their vehicles prior to a recall, and that the rule is complex, difficult and against sound public policy. In general, they asserted that Congress intended to maximize reimbursement rights by extending the time frame for a free remedy. In their view, the ten-year/five-year time frame provided in 49 U.S.C. 30120(g)(1) is the reasonable time period for reimbursement of owners who repair defects or noncompliances prior to recall.

The advocacy groups ascribed to Congress an intent that was not expressed in the law. In the TREAD Act, Congress did not ''maximize'' the reimbursement rights of owners. What Congress did do was create an obligation to provide reimbursement for some pre-recall expenditures that was not previously in the Safety Act. Congress left it to the Secretary to define the minimum period under which such reimbursement would be required. This is evident from the TREAD Act itself. The TREAD Act states:

> A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan.

Pub. L. No. 106–414, sec. 6(b) (2000).

As to the time period, Congress did not specify that the reimbursement period be the entire statutory period remedy period under 49 U.S.C. 30120(g). First, if Congress intended that the reimbursement period be the same as the ten-year/five-year statutory remedy period, it would have explicitly said so. This Congress did not do. Second, as we stated in the NPRM and above, Congress used a limiting term to describe the length of the reimbursement period. It stated that an owner is entitled to reimbursement when he or she remedies the defect within a ''reasonable time'' prior to recall, which was meant to be longer than initial suggestions during congressional consideration of the TREAD Act that it be limited to the period ''immediately'' prior to recall. However, by using the term ''reasonable time,'' Congress must have intended that the period for reimbursement be less than ten years (five years for tires) because that would be ''any time'' prior to recall, since manufacturers are not required to provide a free remedy for vehicles or equipment older than ten years (five years for tires) at the time of a recall.

Moreover, the advocacy groups' statement that to obtain reimbursement under the proposal consumers would need a basic knowledge of the Safety Act and NHTSA's implementing regulations is incorrect. Consumers would not need to know the Safety Act or NHTSA's applicable regulations to obtain reimbursement; manufacturers would. To determine their eligibility for reimbursement, consumers would only need to read or listen to the information provided to them and follow up on it. Under today's rule, manufacturers must provide the specific dates for the period of reimbursement in their reimbursement plans and provide appropriate notice to consumers.

Although we agree with the advocacy groups that there may be some instances of intentional manufacturer delay in filing a Part 573 report, delay would not be determinative in the case of noncompliances with FMVSSs or in the case of most influenced defect-based recalls, because the reimbursement period for these would not be triggered by the date of the Part 573 report. If a manufacturer unreasonably delayed notifying NHTSA of a defect or a noncompliance, NHTSA could seek civil penalties under 49 U.S.C. 30165 for violations of section 30118(c). This should deter such potential manipulation, particularly since, in most cases, the costs of providing reimbursement for expenditures incurred before the opening of an EA or over a year prior to the recall are unlikely to be very great.

Advocates asserted that the agency's ''bright-lines'' are irrational since one consumer could be reimbursed if he/she remedied the defect on the day of the opening of the EA, while another consumer could be denied

reimbursement if he/she remedied the defect on the day before the opening of the EA. However, ''bright-line'' rules commonly have the consequence that Advocates complained about. In fact, the ten-year/five-year statutory remedy period that the advocacy groups suggested the agency adopt is a ''bright-line'' rule. Thus, even under the ten-year/five-year rule, in some cases, there could still theoretically be consumers who would be denied reimbursement while others would receive it.

NADA observed that NHTSA should set minimum periods, allowing manufacturers the flexibility to set longer periods should they choose to do so. We agree. We are setting the requirements listed in this rule as a floor, not a ceiling. Thus, the time periods set forth in this rule are the minimum requirements. In fact, Ford and GM advised that they do not limit, on the basis of time, reimbursement of expenditures by owners for pre-notification remedies. While we encourage this conduct, it is not specifically required by today's final rule.

Therefore, based upon the above, the final rule adopts the ''reasonable time'' periods for mandatory reimbursement that were proposed in the NPRM.

2. Reimbursement End Date

The NPRM proposed two different dates for the end date for the eligibility period for reimbursement. For motor vehicles, the proposed end date was ten days after the manufacturer mailed the last of its initial Part 577 notices to owners. For replacement equipment, the proposed end date was 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance. These proposed end dates were based upon the TREAD Act's language that reimbursement is for costs incurred prior to the manufacturer's notification under 49 U.S.C. 30118 and the practical difficulties of identifying the date when an individual owner actually received notice. We asked for comments whether these end dates were appropriate.

The Alliance and NADA agreed with the proposal to exclude reimbursement obligations for costs incurred more than ten days after the manufacturer mailed the last of its initial Part 577 notices. However, in the case where the notices are mailed to consumers in stages, the Alliance recommended that the reimbursement period applicable to a specific owner terminate ten days after the initial Part 577 notice was sent to that owner.

RMA recommended that the reimbursement end date for tires should not be more than five days after the notification of the recall has been sent to tire dealers. RMA asserted that this would minimize the likelihood of recalled tires being resold.

MEMA and OESA recommended that the ''ending date'' for an equipment owner's entitlement to reimbursement be changed from 30 days after the conclusion of the manufacturer's initial efforts to publicize the existence of the defect or noncompliance to:

> Thirty days after the manufacturer has mailed the last of its notifications to purchasers pursuant to part 577 of this chapter, or, if public notice is required by the Administrator or otherwise given by the manufacturer, within 30 days of such publication of the existence of the defect or noncompliance.

They reasoned that public notices have only been required of replacement equipment manufacturers when their products are marketed through identifiable consumer channels, such as chain or volume retail operations. According to MEMA and OESA, in previous recalls, if NHTSA did not require manufacturers to publicize the existence of a safety defect, the replacement part manufacturers made the requisite statutory notice by means of a letter to the most recent purchaser known to the manufacturer. Furthermore, in some situations, such as involving aftermarket distribution of heavy vehicle equipment and sales of equipment to the commercial markets, the agency has not called for public notice.

The advocacy groups criticized our ten-day end date proposal. They suggested that the reimbursement end date should be based upon the ten-year/five-year requirement already in the statute. They reasoned that the mailing date of a manufacturer's notice and the concluding date of a manufacturer's efforts to publicize a defect or noncompliance are irrelevant to an owner's right to be reimbursed for repairs made prior to a safety recall. They also argued that consumers who had the remedy performed prior to the recall should be entitled to reimbursement no matter when they receive notice of the recall.

The approach recommended by the Alliance for staged recalls presents some practical problems. The adoption of a single end date reduces potential confusion, such as could arise if an owner loses the notification letter, or if there is a dispute about whether a letter was actually received. Thus, in the case of motor vehicles, we believe ten days after the date of the last mailing of the manufacturer's letters notifying consumers that the remedy is available pursuant to 49 CFR 577.5 is the appropriate end to the reimbursement period. Manufacturers can predict this date.

RMA correctly recognized the importance of preventing the resale of recalled tires, but we do not believe that setting the end date for the reimbursement five days after tire dealers receive the notification of the recall will further this objective or would be a reasonable reimbursement condition. A tire manufacturer will normally notify its dealers of a defect or noncompliance before the manufacturer notifies owners of the recall. Thus, tire dealers will be on notice not to sell the recalled tires, be they new or used. Therefore, the end date for reimbursement purposes will have no or at most little effect on whether a recalled tire is sold by a dealer. Further, the RMA's proposal could inappropriately lead to a cut-off date before owners are notified.

We believe that the advocacy groups' comment on the end date missed the point that we were making. Under the statute, reimbursement is only required for expenditures made prior to notification of the recall. If an owner has received notification of a defect or a noncompliance under which a free remedy is offered, it is reasonable to require the owner to utilize the remedy offered by the manufacturer rather than expend funds to independently obtain a different remedy.

In the case of motor vehicle equipment, we agree with MEMA and OESA that in some cases there is no public notice of a defect or noncompliance. In that case, the mailing of the notices to owners by the manufacturer should control, as with motor vehicles. However, to be consistent with our approach with respect to vehicles, we are setting ten days after the equipment manufacturer has mailed the last of its notifications to purchasers pursuant to 49 CFR 577.5 as the appropriate end date. Where public notice is required by the Administrator or otherwise given by the manufacturer, we are retaining the 30-day period proposed in the NPRM. For those recalls with both individual and public notice, the latter of the two dates would end the reimbursement period.

C. Reasonable Conditions Allowed in the Reimbursement Plan

In the NPRM, we noted that section 6(b) of the TREAD Act did not specify in detail what is to be included in a manufacturer's reimbursement plan. Rather, the section stated, ''The Secretary may prescribe regulations establishing * * * reasonable

conditions for the reimbursement plan.'' In the NPRM, we proposed to allow manufacturers to include certain conditions or limitations in their reimbursement plans, but no others. We also noted that manufacturers could impose less stringent restrictions on reimbursement if they chose to.

We proposed several permissible conditions in the NPRM that related to: (1) The availability of free warranty coverage, (2) the nature of the pre-notice repair or replacement and its relationship to the defect or noncompliance; (3) the amount of the reimbursement, and (4) the provision of suitable documentation to obtain reimbursement. A discussion of these conditions and how they will be implemented in the final rule follows.

1. Remedies Performed Outside the Period of Free Warranty Coverage

We proposed that one condition a manufacturer may include in its reimbursement plan is that the pre-notification remedy must have been performed or obtained after the conclusion of a manufacturer's warranty that would have covered the repair at no cost to the consumer. We noted in the NPRM that many repairs to address conditions that are subsequently determined to constitute a safety defect are within the coverage provided by the manufacturer's warranty program. As we stated in the NPRM, we wanted to avoid creating a program that would duplicate the manufacturer's warranty program. We said the purpose of the reimbursement plan is to provide a program that includes reasonable conditions, to reimburse an owner who had to incur costs to obtain a repair or replacement of the product before notification that a defect or noncompliance exists. Therefore, we proposed that manufacturers could provide in their reimbursement plan that consumers would not be eligible for reimbursement if they could have obtained a free remedy from a franchised dealer or other authorized entity through the manufacturer's warranty program, but had repairs performed elsewhere.

However, we noted that the warranty availability exclusion would not be absolute. In particular, if a consumer had presented the vehicle or equipment to a person authorized to perform warranty work and that person had concluded that the problem or repair was not covered under the warranty, or the repair did not remedy the problem, the consumer would have to be reimbursed for the reasonable costs of a remedy that was subsequently obtained at a facility that was not an authorized warranty service provider.

In general, the proposal to allow the warranty exclusion condition in the reimbursement plan was well received. The Alliance agreed with this ''common sense approach.'' Some comments, while not against this approach, recommended that NHTSA consider other approaches to address the particular needs of a specific product.

JPMA advised that the child restraint industry does not have a standard warranty coverage that is comparable to the auto industry's basic warranties. It claimed that manufacturers of child restraints merge their warranty claims and consumer complaints into one database so it is difficult to distinguish between the two. Thus, JPMA recommended that NHTSA create a different exclusion for child restraint manufacturers, wherein a consumer would be eligible for reimbursement for remedies obtained from a source other than the manufacturer only if the consumer first sought assistance from the child restraint manufacturer, and was refused. JPMA claimed this is necessary to ensure that child restraint manufacturers are offered the same opportunity to remedy the problem within the company's own consumer affairs policies as vehicle manufacturers.

We disagree with JPMA that we created an ''opportunity'' for motor vehicle manufacturers with this warranty exception. The purpose of the warranty exclusion was to avoid duplication by making customers take advantage of whatever warranty the manufacturer offered. If the manufacturer has no express warranty, then it cannot place this condition in its remedy plan. Moreover, in the motor vehicle context, the general parameters of warranties are often understood and owners commonly bring vehicles to franchised dealers, which are often relatively close by, for repair work. The same does not apply to child restraints. Therefore, we decline to incorporate JPMA's recommendation.

NADA advised that most pre-announcement recall-related repairs are covered under original manufacturers' warranties, in which case customers are effectively reimbursed. In addition, NADA stated that other customers and repairs are covered under extended warranties or service contracts. It suggested that regardless of the source of coverage, all pre-announcement repairs that could have been covered by an original warranty, an extended warranty, or a service contract should be excluded from reimbursement under this rule. Lastly, it suggested any direct cash outlays by the customer, such as a deductible, should be eligible for reimbursement.

We disagree with this approach. We are limiting the warranty exclusion to the manufacturer's original warranty and any extended warranty subsequently offered by the manufacturer, including those purchased by the first owner and those provided by the manufacturer at no charge. Service contracts offered by dealers and other entities are not warranties between the manufacturer and the owner of the vehicle. The manufacturer is not a party to those service contracts. Service contracts can complicate the reimbursement process with questions over what is covered, who can perform repairs, qualifications over coverage, and deductibles. These complications can lead to disputes with manufacturers over something the manufacturer did not offer. Indeed, the manufacturers did not suggest extending the exclusion of warranty coverage to service contracts. The manufacturer should not benefit from a service contract, for reimbursement purposes, when it is not a party to it. For extended warranties, we would require the manufacturer to have provided the owner with written notice of the terms of the extended warranty coverage in order for the manufacturer to exclude any repairs that could have been made under the warranty from reimbursement.

Therefore, in regard to remedies performed within the period of free warranty coverage, today's final rule is essentially the same as proposed in the NPRM. The exclusion of repairs that would have been covered by a warranty only applies to the coverage provided by the manufacturer's warranties that the manufacturer provided in writing, either at the time of sale or by a subsequent notice. We note that this is consistent with the Early Warning Reporting Rule (67 FR 45822, July 10, 2002) under which manufacturers are not required to report claims paid on service contracts by dealers as warranty claims. We are also adopting a definition of warranty that is the same as in the Early Warning Reporting Rule. *See* 49 CFR 579.4(c) and 67 FR 45822, 45877 (July 10, 2002). Finally, we note that the warranty exclusion only applies where the manufacturer would pay in full, as opposed to providing an adjustment or credit and requiring some payment by the consumer. To make this clear, we have added the clause ''without any payment by the consumer'' to section 573.13(d)(1).

2. The Nature of the Pre-Notification Remedy

In the NPRM, we proposed several conditions that a manufacturer may impose in the reimbursement plan regarding the nature of the pre-notification remedies that would be eligible for reimbursement.

First, we proposed that a manufacturer would be permitted to limit reimbursement to remedies that addressed the noncompliance or defect. With all recalls, the defect or noncompliance is described in Part 573 information reports and in notifications to owners. *See* 49 CFR 573.6(c)(5), (c)(8)(i); 49 CFR 577.5(e). We reasoned that manufacturers should not be required to pay for repairs that did not address the problems addressed by the recall.

A second condition we proposed was that a manufacturer could limit the extent of repairs to those that were reasonably necessary to correct the underlying problem. In the NPRM, we provided an example of a failed ignition switch to illustrate that the manufacturer would not have to pay for a replacement of a steering column unit that included the switch, unless that was the only pre-notification repair available to the owner. However, we pointed out that a manufacturer could not provide that a repair would have to be *identical* to the recall remedy. We noted that in many instances the part used in the recall would not have been available before the recall. In those circumstances, the pre-recall repair would necessarily have involved the installation of a part that was different from the remedy part, and the manufacturer could not refuse reimbursement on that basis.

Additionally, the NPRM stated that the reimbursement program could not preclude a vehicle owner from obtaining both the recall remedy free of charge and reimbursement for past expenses, where otherwise allowed. We noted for example an owner who replaced an item of original equipment that had failed with the same part. We said that if the recall remedy is to install a new part made of a material with better properties than the original part, the owner would be entitled to the free recall remedy and to be reimbursed for the cost of the pre-recall repair.

Lastly, we proposed in the NPRM that a manufacturer of a motor vehicle could limit reimbursement to costs incurred for the same type of remedy as selected by the manufacturer. This was due to the Act's scheme that permits the manufacturer to choose the remedy, in the first instance. The general categories of remedies are set forth in 49 U.S.C. 30120(a)(1). Thus, for example, a manufacturer would not have to pay for the replacement of a vehicle when the remedy offered by the manufacturer as part of the recall was to repair the vehicle.

We proposed that replacement equipment be treated differently in this regard than motor vehicles. Due to differences in the costs of vehicles and replacement equipment, and the limited ability to repair most equipment items, replacement equipment is usually replaced in its entirety by the consumer when the item of equipment is broken, while a motor vehicle is almost always repaired. In light of those circumstances, we proposed that replacement equipment manufacturers would have to reimburse an owner for the cost of a replacement following a relevant failure of an equipment item subject to the recall, regardless of the recall remedy subsequently selected by the manufacturer. However, the owner would not also be entitled to the recall remedy with respect to the original item, since the owner would have been made whole by reimbursement for the cost of the new item (unless, of course, the owner had purchased the same defective item as the replacement).

The Alliance commented that manufacturers should not pay for work beyond that which was needed to address the defect or noncompliance. GM commented that when an original equipment part is replaced, and then a subsequent recall remedy uses a different part, the original equipment part must have failed in order for a customer to obtain a remedy that includes reimbursement for the original part and the recall remedy. GM claimed that the proposed rule would not require the original equipment part to be defective in order to obtain both the recall remedy and reimbursement for replacing the original part.

With regard to these points, in general, we agree that manufacturers should pay only for work that was performed to remedy what was later determined to be a noncompliance or defect. However, the original part need not have ''failed'' in order for the owner to be reimbursed. If it was appropriate to inspect, adjust, repair or replace the original part or system in order to correct a performance problem, the manufacturer must reimburse the owner for that work. In addition, if the consumer replaced an item of equipment while an investigation was open, reimbursement would be warranted. Indeed, this very situation was a basis for the TREAD Act. In that situation, consumers replaced certain Firestone Wilderness AT tires with other tires before Bridgestone/Firestone's August, 2000 recall. The reimbursement provision was intended to assure that manufacturers provided reimbursement in situations such as this. To obtain reimbursement, one need not wait until a tire or other part begins to separate or otherwise fails. The regulatory language in section 573.13(d)(2) requires reimbursement in these circumstances. However, if the original assembly is replaced in light of characteristics that would not be within the scope of the defect, such as normal wear, then the manufacturer does not have to reimburse the owner for the cost of that work. These concerns were adequately addressed in the NPRM; therefore, we are adopting the rule as proposed.

Consistent with the proposal, the final rule permits manufacturers to set conditions in their reimbursement plans that may exclude reimbursement if the pre-notification remedy was not the same type of remedy (repair, replacement or refund of purchase price) as the recall remedy, did not address the defect or noncompliance that led to the recall, or was not reasonably necessary to correct the problem addressed by the recall. However, the final rule precludes a manufacturer's reimbursement plan from requiring that the pre-notification remedy be identical to the remedy elected by the manufacturer.

We discussed the possibility of allowing additional conditions applicable to child restraints due to the unique situations that may arise when children outgrow their child restraints. We suggested that it could be inappropriate for an owner of a recalled child restraint to receive reimbursement for the cost of replacing a restraint when the original restraint did not manifest the problem that was the subject of the recall, but was replaced due to the growth of a child. We suggested that it might be appropriate to allow child restraint manufacturers to identify situations where reimbursement would not be appropriate, as long as we could assure that manufacturers do not deny reimbursement where it is warranted. We identified three possible conditions. The first was to allow reimbursement to be conditioned on whether an owner registered the restraint with the child restraint manufacturer. The second condition was to allow a requirement that the receipt for the purchase of a replacement child restraint indicate that it is a model comparable to the original restraint. The last possible condition was to allow the manufacturer to require the owner of the recalled child restraint

to return it to the manufacturer or otherwise prove it had been destroyed in order to obtain reimbursement. We asked for comments on the practical applications of those approaches.

JPMA asserted that all the conditions on reimbursement identified in the NPRM should be adopted regarding child restraints. According to JPMA, prior registration is vital to reimbursement. JPMA commented that prior registration of the defective or noncompliant restraint would help assure that the claimant was the actual owner, because he or she would have registered the restraint before there was any reason to think that reimbursement would be available in the future. JPMA contended that a receipt is necessary, but insufficient on its own, to show that the replacement child restraint is the same type as the one replaced. According to JPMA, a receipt plus the registration card would be sufficient. Finally, JPMA noted that the return of the defective child restraint is a good alternative for consumers who cannot meet the combination of the first two conditions, and should be available as a fall back provision.

PC, CU, CFAU, and CFA jointly commented that when determining the proper way to handle the replacement of defective child restraints, the principal goal of a recall or of a reimbursement—to give a refund for, or repair or replace a defective product—must be considered. To facilitate the removal of recalled child seats from the marketplace and to encourage the repair or replacement of defective seats, the advocacy groups argued that reimbursement should only be predicated on proof of ownership and replacement of the defective restraint. They argued that the intent of the owner replacing the restraint should not be a determining factor. According to the advocacy groups, the goal should be the replacement or repair of the defective restraint. In their view, the agency's concern with preventing fraud should not supercede that goal.

Notwithstanding JPMA's comments, we have concluded that the first and third conditions on which we requested comments in the NPRM would unduly limit reimbursement. With regard to registration, under 49 CFR Part 588, child restraint manufacturers are required to keep registration forms submitted by owners so they can notify owners of any defect or noncompliance. NHTSA is undertaking an evaluation of child safety seat registration, which has not been completed. As part of that evaluation, we have conducted a survey, which estimates that the registration rate for child restraints is currently about 27 percent. Although we would like the rate to be higher, since registration facilitates notification of child restraint owners, this low rate makes it unreasonable to require an owner to have returned a registration card to the manufacturer of the recalled restraint as a predicate to reimbursement. With respect to the third possible condition, as a practical matter, an owner of a broken child restraint who still needs to use the restraint to transport a child will normally replace it rather than get it repaired. The broken child restraint will most likely be discarded. The chances of the owner keeping a broken child seat in anticipation of a future recall are low. Thus, we will not make this an allowable condition.

We have concluded, however, that reimbursement can be limited to the cost of purchasing a child restraint of the same type (*e.g.*, rear-facing, booster) as the restraint covered by the recall. For example, if a rear-facing infant seat was replaced by a toddler seat, it is reasonable to assume that the purchase was made because the child outgrew the restraint, rather than because the infant seat had broken due to a defect. In this rule, we will utilize the same three ''types'' of child restraints established in the Early Warning Reporting Rule. Under that rule, in the context of a child restraint system, we defined ''type'' to mean the category of child restraint system selected from one of the following: rear-facing infant seat, booster seat, or other. *See* 49 CFR 579.4. In today's rule, we are also including definitions of rear-facing infant seat, booster seat, or other child restraint, that are consistent with those in the Early Warning Reporting Rule.

Following issuance of the Early Warning Reporting Rule, we noticed that there was an inconsistency between the definition of ''rear-facing infant seat'' in the preamble and the definition that appeared in the regulatory text. *See* 67 FR at 45834. The definition in the preamble included the phrase ''and is designed to hold children up to 20 pounds,'' while the regulatory text did not. Based upon our experience in conducting defect investigations and monitoring defect recalls, our objective in the Early Warning Reporting Rule was to differentiate those child restraints that are commonly used as infant carriers outside a vehicle. Several models of this type of child restraint have been recalled based on defective handles. The definition in Section 579.4(c) could have been read to extend beyond those restraints to include convertible child restraints (*i.e.*, those that can be used both in a rear-facing position with relatively small children and in a forward-facing position with children up to about 40 pounds), which are not also used as infant carriers. We added the 20-pound limit to exclude the larger, convertible restraints. However, upon further consideration, we have concluded that the 20-pound weight limit in the preamble version is too restrictive, since some manufacturers of rear-facing, non-convertible child restraints now recommend their use with children up to 22 pounds or more.

To address these two matters, we have decided to take a different approach. The definition of ''rear-facing infant seat'' that we are adopting in this rule (and that we intend to adopt as part of our pending reconsideration of the Early Warning Reporting Rule) is ''a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.'' Therefore, it will not include convertible child restraints. ''Booster seat'' means, as defined in S4 of FMVSS No. 213, ''either a backless child restraint system or a belt-positioning seat;'' and ''other'' encompasses ''all other child restraint systems not included in the first two categories.''

We also believe it reasonable to allow equipment manufacturers to require that an individual seeking reimbursement for a replaced item provide proof that he or she, or a relative, owned the recalled item. For example, if the spouse or the original owner purchased the replacement, reimbursement would be required, if other conditions were met. We note that the advocacy groups supported such a condition in their comments. The filing of a registration card with the manufacturer, a copy of a registration card, or an invoice or receipt showing purchase of the recalled equipment item would be sufficient proof that the claimant had owned the item. This is addressed in section 573.13(d)(4)(vi).

D. Amount of Reimbursement

In the NPRM, we proposed requirements related to the amount of reimbursement to be provided. For vehicles, we stated that since most recalls involve repair (which could include the replacement of one or more parts), the most likely scenario would be that reimbursement will be for the costs incurred by the owner to repair or replace the component or system covered by the defect or noncompliance determination. We noted that the Act authorizes two other types of remedy for defects and noncompliances in motor vehicles—replacement and refund.

Historically, these types of remedies have been extremely rare.

In the case of repair, we proposed that the amount of reimbursement could not be less than the lesser of (a) the amount actually paid by the owner for an eligible remedy, or (b) the cost of parts for an eligible remedy, labor at local labor rates, miscellaneous fees such as disposal of wastes, and taxes. The proposed rule also limited costs of parts to the manufacturer's list retail price for authorized parts. However, the proposed rule did not allow any limitation on associated costs, such as taxes or disposal of wastes. The proposed rule also stated that not all costs of repairs of vehicles would have to be reimbursed. Custom-designed replacement parts or repairs other than that related to the recall in one service visit would not be covered by the proposed rule.

In instances where a manufacturer offered a vehicle repurchase or replacement remedy, we proposed that the owner would only be eligible for reimbursement of the costs associated with the pre-notification repairs. If the owner continued to own the vehicle, he or she would also be entitled to have the vehicle repurchased or replaced under the recall. We noted that even if an individual had sold the vehicle prior to being notified of the recall, he or she would be eligible to be reimbursed for any repair costs related to the defect or noncompliance that were incurred while he or she owned the vehicle.

With regard to replacement equipment, as noted in the NPRM and above, replacement is the most common recall remedy. The amount of reimbursement ordinarily would be based upon the amount paid by the owner for the replacement item, as indicated on a receipt, up to the total of the retail price of the item, labor, if any, and taxes. The NPRM proposed that in cases in which the owner purchased a brand or model different from the equipment that was the subject of the recall, the manufacturer would be permitted to limit the amount of reimbursement to the ordinary retail price of the defective or noncompliant model that was replaced, plus taxes.

Finally, the NPRM stated that manufacturers would not be responsible to customers for reimbursement for consequential injuries and damages such as personal injuries, property damage, rental vehicles, or missed employment. The NPRM stated that the proposed rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that resulted from the problem that was remedied by the owner.

We received only a few comments on the amount of reimbursement. The Alliance agreed with NHTSA's view on reimbursement for consequential injuries or damages.

NADA suggested that the rule require manufacturers to reimburse actual labor, parts, or ''menu'' repair costs, plus associated costs (taxes, waste disposal fees, *etc.*) incurred directly by customers to address defects or noncompliances and not allow manufacturers to place a limitation upon reimbursement. NADA further asserted that the rule should state that dealerships are entitled to reimbursement for the cost of any covered pre-announcement repairs made at no cost to the customer as a matter of dealership policy. NADA also observed that dealers should be reimbursed for any extraordinary, unbillable costs they incur directly due to pre-announcement repairs, such as special tool purchases. We agree with some of NADA's comments regarding the costs of reimbursement. We agree that a manufacturer should be required to reimburse actual labor, parts, and other repair costs, plus associated costs incurred directly by customers. We believe the final rule addresses NADA's concerns in this regard.

We disagree with NADA regarding its suggestions that under this rule dealerships should be eligible for reimbursement of pre-announcement repairs made at no cost to the customer as a matter of dealership policy and that dealers should be reimbursed for any extraordinary, unbillable costs they incur directly due to pre-announcement repairs. Section 6(b) of the TREAD Act specifically addressed reimbursing owners and purchasers, not dealers. In any event, the Act already requires that manufacturers provide fair reimbursement to dealers for providing a remedy without charge as part of a recall. 49 U.S.C. 30120(f). Reimbursement for costs made as a result of repairs done as a matter of dealership policy or any extraordinary costs incurred are matters between the dealer and the manufacturer. The final rule does not, and is not intended to, require manufacturers to reimburse dealers for costs that are a result of remedies performed as a matter of dealership policy.

Therefore, this aspect of the final rule remains essentially the same as we proposed in the NPRM. Reimbursement is required only for those costs that were reasonably related to the repairs that addressed the problem that was ultimately determined to constitute a safety-related defect or noncompliance. Manufacturers would not have to provide reimbursement for consequential injuries and damages such as personal injuries, property damages, rental vehicles, or missed employment. Again, similar to the NPRM, the final rule would not affect an aggrieved party's right to bring a civil action for any consequential damages that may arise as a result of the problem that was remedied by the owner.

E. How To Obtain Reimbursement

1. Documentation Necessary To Obtain Reimbursement

In the NPRM, we proposed that manufacturers may require a person seeking reimbursement to present documentation that shows: (1) The name and mailing address of the claimant;[2] (2) product identification information, which means (a) for vehicles, the vehicle make, model year (MY) and model as well as the vehicle identification number (VIN), (b) for replacement equipment other than tires, a description of the equipment, including model and size as appropriate, and (c) for tires, the model, size, and DOT number (TIN) of the replaced tire(s); (3) identification of the recall (either the NHTSA recall number or the manufacturer's recall number); (4) a receipt (an original or a copy) that provides the amount of reimbursement sought (for repairs, this would include a breakdown of the amounts for parts, labor, other costs and taxes; for replacements, this would include the cost of the replacement item and associated taxes; where the receipt covers work other than to address the defect or noncompliance, the manufacturer may require the claimant to separately identify the costs that are eligible for reimbursement); and (5) if the claimant seeks reimbursement for costs incurred within the warranty period, documentation to support either the denial of a repair under warranty or of the failure of a warranty repair followed by a repair at another facility. The manufacturer could provide that, to receive reimbursement, costs must be itemized by parts and labor on a receipt. *See* 66 FR 64082, 64086.

We proposed those documentation provisions in light of the objective of ensuring, reasonably effectively, that the

[2] In the discussion in the preamble of the NPRM we discussed the operation of the reimbursement plan in terms of the ''owner,'' but in the proposed regulatory text of the NPRM we referred to reimbursement of ''owners and purchasers'' (*e.g.*, proposed § 573.5(c)(8)), to ''owners'' (*e.g.*, proposed § 573.13(d)(4)), and ''claimants'' (*e.g.*, proposed § 573.13(g)(2)). In today's rule, we are generally using the term ''claimant,'' which refers to the person submitting a claim for reimbursement. We are defining a claimant as a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

vehicle or equipment is covered by a recall, that the reimbursement sought is related to the defect or noncompliance and not to other expenses, that multiple claims for the same work are not presented, and that the reimbursable costs are identified. We requested comments on appropriate documentation provisions, including any reasonable provisions related to prevention of fraud. Additionally, we requested comments on whether a receipt will provide sufficient information to a manufacturer to determine if the remedy addressed the defect and whether it was reasonable, and, if not, what other information would be appropriate.

GM commented that under its current procedures it requires owners to provide the repair order, proof of payment, and proof of ownership of the vehicle at the time the repair was made. The Alliance recommended that one condition that NHTSA should consider is that the person claiming reimbursement prove that s/he was the owner of the vehicle at the time the repair cost was incurred, rather than just the owner at the time of the recall. According to the Alliance, this would prevent manufacturers from reimbursing two people for one repair. It claimed the proof required should be the receipt.

NADA added that it is reasonable for NHTSA to require that ''proper receipts'' support reimbursement. It also commented that there should be no provision requiring itemization of receipts because some receipts will not be itemized. We are unsure what NADA meant by ''proper receipts'' since it did not define the term, but we believe that it is appropriate to allow manufacturers to require itemization. If not required, the manufacturer might have to reimburse costs that were not directly related to the repair of the defect or noncompliance. If necessary, the claimant could obtain a supplemental statement from the repair or other facility.

We do not agree with comments recommending that we limit reimbursement to owners. Section 6(b) of the TREAD Act refers in part to purchasers who incurred the cost of the remedy. In general, the manufacturer should reimburse the person who paid to have the pre-notification repairs performed or who paid for a replacement. In most situations, the owner of the motor vehicle or replacement equipment will be the person who incurred the pre-notification repair or replacement costs. However, in other situations, other persons will have paid for the repair or replacement (*e.g.*, a lessee or a relative of the owner). In still other cases, the owner of a vehicle at the time of the repair will have sold it prior to the announcement of the recall.

In light of these considerations, we have decided that the approach advocated by GM and the Alliance is too restrictive in the context of vehicle recalls. The rule provides for reimbursement of claimants—those who paid for the pre-notification remedy. The rule further avoids duplicate reimbursements by not providing a separate right to owners who did not incur the cost of the remedy. In addition, we believe that for vehicles duplicate and/or fraudulent claims can be prevented by requiring the claimant to submit an invoice or receipt showing the VIN and an identification of the owner of the recalled vehicle at the time that the pre-notification remedy was obtained. Manufacturers will be able to cross check on this basis. Also, the rule provides that manufacturers are not required to provide reimbursement based on fraudulent claims. For example, if someone presents a duplicate claim or one based on a doctored receipt, the manufacturer would not be required to pay it.

Equipment items present a more difficult issue, since there is no unique VIN, and any purchaser of an equipment item similar to one that had been recalled could allege that he or she had previously owned (and discarded) a recalled item that had failed due to the defect. Therefore, consistent with the approach described in Section II.C of this notice, for equipment items we will allow manufacturers to limit reimbursement to individuals who can demonstrate that they or a relative owned the recalled item. Moreover as we discussed above, child restraints would have to be replaced with the same type of restraint.

In the context of recalled tires, RMA recommended that we require a claimant to produce an invoice or a copy of the tire registration card for the recalled tire. While these are both sufficient methods to demonstrate ownership, we believe that they are not exclusive. For example, a consumer would not have either of these documents if the tire that was replaced had been installed on his or her vehicle at the time the vehicle was purchased. Tire manufacturers could not reject valid documentation demonstrating that a claimant had replaced a recalled tire that was on a vehicle that he or she or a relative owned.

Receipts for repairs of vehicles often summarize the customer's concern or request and provide part-by-part and labor itemization. This level of detail does not appear on all repair receipts. As long as the receipt indicates that the repair addressed the problem that was addressed by the recall and the claimant can satisfy the other conditions in the reimbursement plan, reimbursement must be provided by the manufacturer.

2. Where Documents Are To Be Submitted

In the NPRM, we proposed that the documentation had to be submitted directly to the manufacturer. However, based upon our review of the comments, we have reconsidered our approach.

Manufacturers asserted that they should not be required to handle reimbursement themselves because it would be too costly. The Alliance commented that manufacturers should not be required to provide resources to handle reimbursement functions that are already being handled well at dealerships that are authorized to process the reimbursement. The Alliance recommended that the regulation permit manufacturers to manage the reimbursement program through dealers and not require manufacturers to handle the reimbursement themselves. GM concurred with the Alliance's recommendation and commented that by allowing dealers to handle reimbursement, a customer has face-to-face contact with a manufacturer's representative that can answer questions and provide information. GM stated that this method is preferable to exchanging letters or telephone calls to resolve problems as proposed in the NPRM. GM added that its system of reimbursement through dealers is quick, efficient and satisfactory to its customers. Ford echoed these comments.

On the other hand, NADA contended that the rule should provide that any manufacturer using dealers to assist with reimbursement claims should be required to reimburse those dealers for the fair and reasonable administrative costs they incur. As a general proposition, we agree that dealers should be reimbursed for such costs, but do not believe that this issue needs to be addressed in this rule, since it is already covered by 49 U.S.C. 30120(f).

The statute refers to manufacturers' reimbursement plans. Accordingly, we believe that the obligation to assure adequate reimbursement under this rule rests with manufacturers. Nonetheless, we will permit manufacturers to use franchised dealers or other authorized facilities to reimburse owners under their reimbursement plans in the final rule if the franchised dealers or other authorized facilities have agreed to do so. The costs of processing

reimbursement claims would have to be worked out between manufacturers and dealers and any other authorized entities. If the manufacturer does not have authorized dealers or facilities, it must designate the office(s) that will administer claims for reimbursement. In addition, there must be a mechanism for mailing requests for reimbursement to the manufacturer or its designee. Some people live a substantial distance from a franchised dealer or authorized facility and others cannot conveniently visit such an entity. It would not be reasonable to make them travel to a dealer to obtain reimbursement. Furthermore, manufacturers must make the reimbursement plans available to the public upon request. The final rule will reflect these changes.

3. Cut-Off Date for Reimbursement Claims

In the NPRM, we proposed to allow (but not require) manufacturers to establish a cut-off date for reimbursement claims. We identified two possible approaches. The first was based on the period during which the recall campaign is subject to quarterly reporting pursuant to 49 CFR 573.6 (2001). That section requires each manufacturer that conducts a defect or noncompliance campaign to provide a quarterly report to NHTSA for six consecutive calendar quarters beginning with the quarter in which the campaign was initiated. The second approach was to set a fixed period applicable to all recalls; e.g., 90 days after the end of the reimbursement period. Manufacturers would have to identify the deadline for the submission of claims for reimbursement in their remedy plans. We proposed that the outside end date for the submission of claims for reimbursement be 90 days from the date of the last notification letter sent to owners under Part 577, but asked for comments on whether a different period would be more appropriate.

We did not receive many comments on this particular condition. JPMA asserted that the cut-off date after which a consumer cannot obtain reimbursement should be shortened from 90 days until 45 or 60 days. JPMA claimed that a manufacturer needed to ''close the books'' on the reimbursement process. NADA suggested that the time for submitting claims should be limited only by the ten-year/five-year limitation set out in 49 U.S.C. 30120(g). The advocacy groups agreed with NADA. However, section 30120(g) has no relevance to this issue; it applies retrospectively from the date of the defect or noncompliance determination, and has no applicability to future events.

Ford and GM did not suggest a specific cut-off date, but implied that they did not restrict reimbursement on the basis of when a claim was submitted.

Based upon these comments, we have reconsidered our position. We believe a claim for reimbursement should be treated the same as a claim for a free remedy under a recall. Under the Safety Act, once a recall is announced, an owner is entitled to a free remedy. He or she is not required to submit his vehicle or replacement equipment to the manufacturer's franchised dealer or authorized facility within 90 days in order to receive the free remedy. Moreover, at least two major vehicle manufacturers do not currently impose any such limits. Therefore, under today's final rule, manufacturers will not be allowed to establish a cut-off date for the submission of reimbursement claims.

4. When and How a Claimant Receives Reimbursement

In the NPRM, we proposed to require manufacturers to act upon reimbursement claims within a reasonable time from the date a complete claim is submitted. We proposed a period of 60 days and said the manufacturer must either grant or deny the claim for reimbursement within that period.

We also suggested reasonable times for notification by manufacturers that claims were incomplete. We proposed that in the event that a manufacturer receives a claim for reimbursement for a pre-notification remedy that contains deficient documentation, the manufacturer would be required to advise the claimant within 30 days that his or her claim is deficient, provide an explanation of the documents that are needed to make the claim complete, and state that such supplemental documents must be submitted within an additional 30 days. We proposed that if the claimant did not provide the required information within that 30-day period, the manufacturer could deny the claim.

We also proposed that if the manufacturer determines that a claim for reimbursement will not be paid in full, it must clearly advise the claimant, in plain language, of the reasons for the denial.

The comments focused on increasing the time period manufacturers have in responding to a deficient reimbursement claim. MEMA and OESA, the Alliance, GM and Delphi suggested that the 30-day deficiency notice and claimant resubmission periods in the proposed rule should both be increased to 60 days to provide both consumers and manufacturers reasonable time to act on such deficient claims for reimbursement. Based upon the comments, we are extending the 30-day periods proposed in the NPRM to 60 days.

RMA suggested that the manufacturer's time to act upon a request for reimbursement should begin after the manufacturer received the claim, rather than from the date the claimant mailed the claim. The NPRM used the term ''submitted.'' We had meant for that term to refer to the date the claim was received by the manufacturer, and we will clarify that in the final rule.

Although the NPRM did not explicitly discuss the form that reimbursement must take, we are adding a clarifying provision to require manufacturers to provide reimbursement in the form of a check or cash from the manufacturer's office, authorized dealer, or facility that is designated by the manufacturer to administer the reimbursement plan.

F. Owner Notification

We stated in the NPRM, and continue to believe, that the inclusion of a reimbursement plan in a manufacturer's remedy program would have little effect unless consumers were aware of their right to obtain such reimbursement. We proposed to require manufacturers to include information about the availability of reimbursement for the costs of pre-notification remedies in the notification to owners required under 49 CFR part 577 and identified several possible approaches. One approach was to require manufacturers to include a copy of the complete plan in each notification sent to owners. A second approach was to require manufacturers to describe their reimbursement plans using their own language, and a third approach would require particular language that manufacturers would have to use in their owner notifications.

Letters from manufacturers to owners of defective or noncompliant vehicles and equipment emphasize the importance of remedying their vehicle or equipment. It is important that owners are not distracted from this central objective. We were concerned that a great deal of detail regarding reimbursement in the main body of the owner notification could obscure the safety-critical information about the defect or noncompliance itself. Moreover, as a practical matter, the reimbursement provision would be irrelevant to most recipients because only a small fraction of consumers would have expended funds for repair

or replacement of the recalled product. Thus, we proposed that the owner notification letter contain a limited amount of information regarding the manufacturer's reimbursement plan. The notification would have to explain that reimbursement was available, specify the reimbursement period, and identify ways that consumers could timely obtain information about the reimbursement program.

To assure that manufacturers' reimbursement plans were available to owners, we proposed that the notification would have to identify an Internet Web site address maintained by the manufacturer where the plan applicable to the recall in question was to be found, and would have to state that the plan could be obtained by calling the manufacturer at a specified (toll-free) telephone number or by writing to the manufacturer at a specified address. (We also proposed to require each manufacturer to specify the date by which the owner would have to request the plan in order to receive it in time to complete the claim for reimbursement in a timely manner, but this issue is now moot, since we have decided to prohibit manufacturers from limiting the period in which reimbursement claims may be filed.)

We requested comments on whether this proposal provided owners with adequate information about the possibility of reimbursement for the cost of pre-recall remedies, and whether the proposal could be improved. We also sought comment on whether this or the other identified approaches were reasonable ways to advise owners of the possible availability of and requirements for reimbursement; *i.e.*, would the reader understand how to obtain reimbursement? We also sought comments concerning alternatives that might be preferable to those approaches identified in the NPRM with the reasons for, and information relating to, any alternatives. Finally, we sought comments on whether a Web site and a toll-free telephone number would provide consumers with sufficient, clear information.

The majority of commenters (the Alliance, GM, Ford, MEMA & OESA, and JPMA) disagreed with the ''boilerplate'' language we proposed for the Part 577 notifications. They argued that the language we proposed is difficult to read and stylistically inconsistent with many manufacturers' Part 577 notifications. GM also argued that notification regarding possible reimbursement is unnecessary for many recalls, such as label errors, noncompliances that can only be detected with measuring devices or disassembly of the vehicle, and safety defects or noncompliances that have no effect other than on occupant protection in a crash. GM alleged that in these types of recalls, an owner would be confused by a letter that has information regarding reimbursement when, in fact, reimbursement was not available.

In addition, the Alliance and GM observed that, pursuant to 49 CFR 573.5(c)(10) (2001), NHTSA has the opportunity to review every Part 577 owner notification before it is mailed to owners and to require appropriate modifications to the language. They argued that NHTSA can decide if a manufacturer's notification needs to include language regarding reimbursement and whether the language proposed by the manufacturer is adequate. The Alliance commented that ''one-size fits all'' language would not work because the owner notification should be tailored to the facts of each recall. Thus, they suggested that, as with other aspects of owner notification, language regarding reimbursement should be developed by the manufacturer, subject to NHTSA review.

Ford was the only commenter that provided a specific alternative to the NPRM's proposed Part 577 language. Ford contended that the proposed language would confuse many customers because it had a ''readability'' index at a 12th grade level. As an alternative, Ford recommended the following:

> If you paid to have this service done *before* the date of this letter, Ford is offering a full refund. For the refund, please give your paid original receipt to your dealer. To avoid delays, do not send receipts to Ford Motor Company.

Ford claimed that its recommendation has a readability index of the 6th or 7th grade and would be easier to understand than NHTSA's proposed language. Ford also asserted that an owner could obtain the manufacturer's complete reimbursement plan from an authorized dealer. Ford also suggested that rather than specifying language that must be included in owner letters, the final rule list the types of information that must be included. It noted that in cases where it is appropriate to include language about reimbursement, ODI can review the manufacturer's draft owner letter pursuant to section 573.5(c)(10).

Based upon our consideration of the comments, and our experience in reviewing manufacturers' owner notifications under section 573.5(c)(10) (recently renumbered as section 573.6(c)(10)), we are making some adjustments to our proposal. *See* 49 CFR 577.11. First, we have decided that manufacturers will not be required to include any reference to reimbursement in owner notifications for recalls where there is no reasonable possibility that anyone would be eligible for reimbursement. As suggested by GM, these include recalls to correct labeling errors. However, we do not agree with GM's suggestion to exclude recalls involving occupant protection in crashes, since owners may well replace defective components that perform that function, such as seat belt retractors and buckles and air bags. In addition, we are not adopting GM's suggestion to exclude all recalls that address noncompliances that can only be detected with a measuring device or disassembly of the vehicle. GM's comment is conclusory and does not explain the range of noncompliances that would be covered by its recommendation. Moreover, while it may not be possible to prove the existence of a noncompliance with a FMVSS without testing using a measuring device, it may be possible to sense an irregular condition that the owner may decide to remedy. The owner should be reimbursed if it turns out that a part or system that was replaced or repaired did not comply with a standard.

Second, we will not require vehicle manufacturers to refer to reimbursement in an owner notification if we conclude that all of the vehicles covered by the recall are clearly covered by a manufacturer's original warranty. For example, if a manufacturer offers a three year/36,000 mile warranty on a particular vehicle model, and that model is the subject of a recall that commences one month after the first covered vehicle was manufactured, one would expect that all of the recalled vehicles would still be covered by the manufacturer's warranty, so the manufacturer would not have to provide any reimbursement under this rule (except under extraordinary circumstances in which a repair under warranty was refused or inadequate). However, if some of the vehicles were two years old at the time a defect is determined to exist, the owner notification would have to include reimbursement language, since it is likely that at least some two-year-old vehicles would have been driven over 36,000 miles. (We have decided that if it is likely that any of the vehicles covered by the recall would be outside the manufacturer's warranty coverage, all owners would have to be advised of the potential for reimbursement, since it would be too difficult to administer a system in which different owners received different letters, and such a

scenario could lead to consumer confusion.)

For those recalls where there is a reasonable possibility that some consumers will be entitled to reimbursement, the main body of the owner notification must include a concise reference to the right to reimbursement for the cost of repair or replacement, along with a description of where consumers who believe they may be entitled to such reimbursement can obtain further information about reimbursement. However, if a manufacturer has information leads it to believe that no individual would be eligible to receive reimbursement in connection with a particular recall (for example, if the recall involved a noncompliance or a defect that could not have been remedied prior to the manufacturer's recall campaign because there was no repair or replacement available), it may request us, in writing, to exempt it from notifying the public of the possibility of reimbursement. Such a request would have to be submitted at or before the time the manufacturer provides us with a draft of its owner notification letter pursuant to section 573.6(c)(10), together with supporting information, views, and arguments. If we find that no one would be eligible for reimbursement under this rule, the notification provisions of section 577.11 would not apply. This is addressed in section 577.11(e).

Rather than require all manufacturers to utilize identical language, we will allow each manufacturer to use its own words, subject to our review. This process has worked with respect to other aspects of owner notifications, which we review under section 573.6(c)(10), and we believe it that it will work in the reimbursement context as well. We are amending section 573.6(c)(10) to explicitly require that the manufacturer submit reimbursement provisions, including attachments, for NHTSA's review under that section. However, if a manufacturer submits a notice that does not meet the requirements of today's rule and NHTSA's staff does not note the deficiency in their review, a manufacturer may not subsequently attempt to justify the failure on the basis that it relied on the agency review.

With respect to our proposal regarding how supplemental information would be made available, several manufacturers (the Alliance, GM, Ford, MEMA and OESA) opposed our proposal to require information about reimbursement on a special website and through a toll-free telephone number. They argued that such requirements would increase costs due to the set up, monitoring, and staffing of these services. The Alliance argued that NHTSA should not mandate that a manufacturer host a special website since NHTSA's regulations now allow individual manufacturers to decide how to conduct a recall (except for a limited amount of required language in the Part 577 letter). Furthermore, the Alliance claimed that NHTSA did not provide justification for such a requirement, nor did it provide any estimated costs involved in setting up and maintaining a website and toll-free telephone line. In addition, MEMA and OESA noted that some small manufacturers do not have toll-free numbers or even an Internet presence and suggested that this be optional.

Based on these comments, we are not at this time requiring manufacturers to maintain information about reimbursement on an Internet Web site. Rather, we are allowing two options. First, a manufacturer may utilize a toll-free telephone number (with or without a corresponding Internet Web site) through which consumers could obtain the needed information. There would have to be TTY capability for the use of hearing-impaired consumers. Alternatively, the manufacturer could include a separate enclosure with its owner notification letter that would set forth all of the required information.

For notifications of equipment recalls that are in a form other than a letter to a specific owner or purchaser (*e.g.*, a placard in a retail outlet or an advertisement in a magazine), the manufacturer would not be able to utilize the second option. However, to avoid imposing a significant financial burden on those small manufacturers of motor vehicle equipment that do not otherwise maintain a toll-free telephone number for the use of consumers, we have decided that public (non-letter) notifications by such manufacturers may refer consumers to a regular (non-toll-free) telephone number with TTY capability, as long as they also specify a mailing address at which owners can obtain the relevant supplemental information.

The supplemental information must describe all of the relevant components of the manufacturer's reimbursement plan, as specified in today's final rule. Thus, it must identify the vehicles and equipment covered by the recall, identify the type of remedy eligible for reimbursement, identify any limits on the period in which the repair or replacement must have occurred, identify any restrictions on eligibility that the manufacturer is imposing, specify all necessary documentation that must be submitted, and explain how to and where to submit or mail a claim. This is consistent with some manufacturers' practices. For example, we have placed in the docket for this rulemaking a document that Mazda Motor Corporation utilized in a recent campaign that describes its reimbursement plan.

G. General Plans for Reimbursement

In the NPRM, we proposed to allow manufacturers to submit to the agency one or more general reimbursement plans that could be incorporated by reference into any recalls associated with their products, rather than submitting a separate reimbursement plan for each recall. The reimbursement plan would remain on file with the agency and be available to consumers for their review. We also proposed that the manufacturer would have to update such plans at least every two years to provide the agency consumers with current information.

GM suggested that NHTSA permit manufacturers to submit reimbursement plans in advance and then to include information about approved plans in owner's manuals or warranty documents GM provides to its customers. In GM's view, owner notification would be simpler under this approach because the letter would simply refer the owner to his or her owner's manual or warranty documents.

Based on those comments, we have concluded that manufacturers will have the option of filing a general reimbursement plan with the agency every two years rather than submitting a plan with each Part 573 report. The general reimbursement plan must set forth the general procedures for reimbursement. Information specific to a particular recall (*e.g.*, any cut-off dates established by the manufacturer) would be submitted with the Part 573 report.

We are not requiring manufacturers to incorporate the general reimbursement plan in each vehicle's owner's manual or in warranty papers, but they have the option of doing so.

H. Nonapplication

In the NPRM, we proposed that to be consistent with the statutory limitation found in 49 U.S.C. 30120(g), the requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment, it was bought by the first purchaser more than 10 calendar years, or in the case of a tire, including an original equipment tire, it was bought by the first purchaser more than 5 calendar years, before notice is given under 49 U.S.C. 30118(c) or an order is

issued under section 49 U.S.C. 30118(b). We did not receive any comments on this proposal and accordingly adopt it in the final rule.

I. Effective Date

Although the NPRM did not propose a date after the final rule was published, GM contended that, unless ''major changes'' are made to the rule, it estimates it would require six months to make the necessary preparations. However, GM did not provide an explanation on what constituted ''major changes.'' From GM's other comments, we infer ''major changes'' to mean that NHTSA permit manufacturers to utilize their franchised dealers for the reimbursement process. We do not believe that six months is necessary. GM already has a reimbursement program. Moreover, GM has recognized in its comments that reimbursement plans would not be required for most recalls because they are within the warranty period.

This rule does not impose significant new administrative burdens. It allows manufacturers flexibility to utilize their dealers to process reimbursement claims. In addition, manufacturers have options in notifying consumers and will not have to set up any Internet Web sites. Nevertheless, we have decided to provide a somewhat longer period than we proposed in the NPRM. The rule will become effective 90 days after its publication in the **Federal Register** and will apply to all recalls for which Part 573 reports are submitted to the agency after that date.

IV. Regulatory Analyses

A. 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 as ''significant 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 government 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 final rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking is not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reimbursement of eligible expenses to owners who paid to remedy a defect or noncompliance prior to the recall notification.

We estimate that the additional economic impact of this rule upon manufacturers will be small. First, although we cannot precisely estimate the number of owners who have made recall-related repairs prior to a manufacturer's defect or noncompliance determination, we believe the number is relatively small. One indicator would be the number of complaints received by the manufacturer. Our review of a sample of Part 573 reports for uninfluenced recalls from the past year indicates that manufacturers generally have not received many complaints from owners about the problem prior to making a defect determination, and rarely, if ever, do they receive complaints prior to a noncompliance determination. Second, most manufacturers already provide voluntary reimbursement for pre-recall repairs, at least under some circumstances.

Generally, vehicle manufacturers offer a warranty program that covers at least 36 months or 36,000 miles. History indicates that most recalls occur within the period of coverage under warranty programs. In 2000, vehicle manufacturers conducted 476 recalls. Of these, only 102 (approximately 20%) occurred more than 36 months after the date the oldest covered vehicle was sold. And in almost all of those recalls, only a small number of the covered vehicles were outside the warranty period (based on the number of months following sale at the time of the determination). For 2001, the relevant numbers were 411 and 104, or approximately 25 percent.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance.

We have considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves motor vehicle and equipment manufacturers that have submitted defect or noncompliance reports. The majority of recalls are not initiated by small entities. The primary impact of this rule will be felt by the major vehicle manufacturers. Even this impact will be minor since it only involves owners of vehicles and motor vehicle equipment who have paid to remedy a defect or noncompliance prior to recall in a manner that warrants reimbursement under the rule. This number is expected to be small for the reasons stated in the prior section of this notice.

C. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

D. Paperwork Reduction Act

NHTSA has determined that this proposed rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). We are preparing a notice for publication in the **Federal Register** requesting public comment on our estimate of those burdens.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' 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.'' The E.O. defines this phrase 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 proposed rule, which would require that manufacturers include a reimbursement plan in their remedy program for owners who have remedied a defect or noncompliance prior to a recall notification under either section 30118(b) or 30118(c) of the Safety Act, will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. This rulemaking does not have those implications because it applies only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), and not to the States or local governments.

F. Civil Justice Reform

This final rule would not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule would not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require 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 the rule easier to understand?

We believe that this final rule meets the requirements of E.O. 12866 regarding plain language.

List of Subjects in 49 CFR Parts 573 and 577

Motor vehicle safety, defect, noncompliance, tire, reimbursement, reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA amends 49 CFR parts 573 and 577 as set forth below.

PART 573—DEFECT AND NONCOMPLIANCE REPORTS

1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2–3. Section 573.6 is amended by revising paragraphs (c)(7), (c)(8)(i), and (c)(10) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(c) * * *

(7) In the case of a noncompliance, the test results and other information that the manufacturer considered in determining the existence of the noncompliance. The manufacturer shall identify the date of each test and observation that indicated that a noncompliance might or did exist.

(8)(i) A description of the manufacturer's program for remedying the defect or noncompliance. This program shall include a plan for reimbursing an owner or purchaser who incurred costs to obtain a remedy for the problem addressed by the recall within a reasonable time in advance of the manufacturer's notification of owners, purchasers and dealers, in accordance with § 573.13 of this part. A manufacturer's plan may incorporate by reference a general reimbursement plan it previously submitted to NHTSA, together with information specific to the individual recall. Information required by § 573.13 that is not in a general reimbursement plan shall be submitted in the manufacturer's report to NHTSA under this section. If a manufacturer submits one or more general reimbursement plans, the manufacturer shall update each plan every two years, in accordance with § 573.13. The manufacturer's remedy program and reimbursement plans will be available for inspection by the public at NHTSA headquarters.

* * * * *

(10) Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions and attachments related to reimbursement, to the Office of Defects Investigation (''ODI'') no fewer than five Federal Government business days before it intends to begin mailing it to owners. Submission shall be made by any means which permits the manufacturer to verify promptly that the copy of the proposed letter was in fact received by ODI and the date it was received by ODI.

* * * * *

4. Section 573.13 is added to read as follows:

§ 573.13 Reimbursement for pre-notification remedies.

(a) Pursuant to 49 U.S.C. 30120(d) and § 573.6(c)(8)(i) of this part, this section specifies requirements for a manufacturer's plan (including general reimbursement plans submitted pursuant to § 573.6(c)(8)(i)) to reimburse owners and purchasers for costs incurred for remedies in advance of the manufacturer's notification of safety-related defects and noncompliance with Federal motor vehicle safety standards under subsection (b) or (c) of 49 U.S.C. 30118.

(b) Definitions. The following definitions apply to this section:

(1) *Booster seat* means either a backless child restraint system or a belt-positioning seat.

(2) *Claimant means* a person who seeks reimbursement for the costs of a pre-notification remedy for which he or she paid.

(3) *Pre-notification remedy* means a remedy that is performed on a motor vehicle or item of replacement equipment for a problem subsequently addressed by a notification under subsection (b) or (c) of 49 U.S.C. 30118 and that is obtained during the period for reimbursement specified in paragraph (c) of this section.

(4) *Other child restraint system* means all child restraint systems as defined in 49 CFR 571.213 S4 not included within the categories of rear-facing infant seat or booster seat.

(5) *Rear-facing infant seat* means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

(6) *Warranty* means a warranty as defined in § 579.4(c) of this chapter.

(c) The manufacturer's plan shall specify a period for reimbursement, as follows:

(1) The beginning date shall be no later than a date based on the underlying basis for the recall determined as follows:

(i) For a noncompliance with a Federal motor vehicle safety standard, the date shall be the date of the first test or observation by either NHTSA or the manufacturer indicating that a noncompliance may exist.

(ii) For a safety-related defect that is determined to exist following the opening of an Engineering Analysis (EA) by NHTSA's Office of Defects Investigation (ODI), the date shall be the date the EA was opened, or one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part, whichever is earlier.

(iii) For a safety-related defect that is determined to exist in the absence of the opening of an EA, the date shall be one year before the date of the manufacturer's notification to NHTSA pursuant to § 573.6 of this part.

(2) The ending date shall be no earlier than:

(i) For motor vehicles, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter.

(ii) For replacement equipment, 10 calendar days after the date on which the manufacturer mailed the last of its notifications to owners pursuant to part 577 of this chapter (where applicable) or 30 days after the conclusion of the manufacturer's initial efforts to provide public notice of the existence of the defect or noncompliance pursuant to § 577.7, whichever is later.

(d) The manufacturer's plan shall provide for reimbursement of costs for pre-notification remedies, subject to the conditions established in the plan. The following conditions and no others may be established in the plan.

(1) The plan may exclude reimbursement for costs incurred within the period during which the manufacturer's original or extended warranty would have provided for a free repair of the problem addressed by the recall, without any payment by the consumer unless a franchised dealer or authorized representative of the manufacturer denied warranty coverage or the repair made under warranty did not remedy the problem addressed by the recall. The exclusion based on an extended warranty may be applied only when the manufacturer provided written notice of the terms of the extended warranty to owners.

(2) (i) For a motor vehicle, the plan may exclude reimbursement:

(A) If the pre-notification remedy was not of the same type (repair, replacement, or refund of purchase price) as the recall remedy;

(B) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance; or

(C) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(A).

(3)(i) For replacement equipment, the plan may exclude reimbursement:

(A) If the pre-notification remedy did not address the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance;

(B) If the pre-notification remedy was not reasonably necessary to correct the defect or noncompliance that led to the recall or a manifestation of the defect and noncompliance; or

(C) In the case of a child restraint system that was replaced, if the replacement child restraint is not the same type (*i.e.*, rear-facing infant seat, booster seat, or other child restraint system) as the restraint that was the subject of the recall.

(ii) However, the plan may not require that the pre-notification remedy be identical to the remedy elected by the manufacturer pursuant to 49 U.S.C. 30120(a)(1)(B).

(4) The plan may exclude reimbursement if the claimant did not submit adequate documentation to the manufacturer at an address or location designated pursuant to § 573.13(f). The plan may require, at most, that the following documentation be submitted:

(i) Name and mailing address of the claimant;

(ii) Identification of the product that was recalled:

(A) For motor vehicles, the vehicle make, model, model year, and vehicle identification number of the vehicle;

(B) For replacement equipment other than child restraint systems and tires, a description of the equipment, including model and size as appropriate;

(C) For child restraint systems, a description of the restraint, including the type (rear-facing infant seat, booster seat, or other child restraint system) and the model; or

(D) For tires, the model and size;

(iii) Identification of the recall (either the NHTSA recall number or the manufacturer's recall number);

(iv) Identification of the owner or purchaser of the recalled motor vehicle or replacement equipment at the time that the pre-notification remedy was obtained;

(v) A receipt for the pre-notification remedy, which may be an original or copy:

(A) If the reimbursement sought is for a repair, the manufacturer may require that the receipt indicate that the repair addressed the defect or noncompliance that led to the recall or a manifestation of the defect or noncompliance, and state the total amount paid for the repair of that problem. Itemization of a receipt of the amount for parts, labor, other costs and taxes, may not be required unless it is unclear on the face of the receipt that the repair for which reimbursement is sought addressed only the pre-notification remedy relating to the pertinent defect or noncompliance or manifestation thereof.

(B) If the reimbursement sought is for the replacement of a vehicle part or an item of replacement equipment, the manufacturer may require that the receipt identify the item and state the total amount paid for the item that replaced the defective or noncompliant item;

(vi) In the case of items of replacement equipment that were replaced, documentation that the claimant or a relative thereof (with relationship stated) owned the recalled item. Such documentation could consist of:

(A) An invoice or receipt showing purchase of the recalled item of replacement equipment;

(B) If the claimant sent a registration card for a recalled child restraint system or tire to the manufacturer, a statement to that effect;

(C) A copy of the registration card for the recalled child restraint system or tire; or

(D) Documentation demonstrating that the claimant had replaced a recalled tire that was on a vehicle that he, she, or a relative owned; and

(vii) If the pre-notification remedy was obtained at a time when the vehicle or equipment could have been repaired or replaced at no charge under a manufacturer's original or extended warranty program, documentation indicating that the manufacturer's dealer or authorized facility either refused to remedy the problem addressed by the recall under the warranty or that the warranty repair did not correct the problem addressed by the recall.

(e) The manufacturer's plan shall specify the amount of costs to be

reimbursed for a pre-notification remedy.

(1) For motor vehicles:

(i) The amount of reimbursement shall not be less than the lesser of:

(A) The amount paid by the owner for the remedy, or

(B) The cost of parts for the remedy, plus associated labor at local labor rates, miscellaneous fees such as disposal of waste, and taxes. Costs for parts may be limited to the manufacturer's list retail price for authorized parts.

(ii) Any associated costs, including, but not limited to, taxes or disposal of wastes, may not be limited.

(2) For replacement equipment:

(i) The amount of reimbursement ordinarily would be the amount paid by the owner for the replacement item.

(ii) In cases in which the owner purchased a brand or model different from the item of motor vehicle equipment that was the subject of the recall, the manufacturer may limit the amount of reimbursement to the retail list price of the defective or noncompliant item that was replaced, plus taxes.

(iii) If the item of motor vehicle equipment was repaired, the provisions of paragraph (e)(1) of this section apply.

(f) The manufacturer's plan shall identify an address to which claimants may mail reimbursement clams and may identify franchised dealer(s) and authorized facilities to which claims for reimbursement may be submitted directly.

(g) The manufacturer (either directly or through its designated dealer or facility) shall act upon requests for reimbursement as follows:

(1) The manufacturer shall act upon a claim for reimbursement within 60 days of its receipt. If the manufacturer denies the claim, the manufacturer must send a notice to the claimant within 60 days of receipt of the claim that includes a clear, concise statement of the reasons for the denial.

(2) If a claim for reimbursement is incomplete when originally submitted, the manufacturer shall advise the claimant within 60 days of receipt of the claim of the documentation that is needed and offer an opportunity to resubmit the claim with complete documentation.

(h) Reimbursement shall be in the form of a check or cash from the manufacturer or a designated dealer or facility.

(i) The manufacturer shall make its reimbursement plan available to the public upon request.

(j) Any disputes over the denial in whole or in part of a claim for reimbursement shall be resolved between the claimant and the manufacturer. NHTSA will not mediate or resolve any disputes regarding eligibility for, or the amount of, reimbursement.

(k) Each manufacturer shall implement each plan for reimbursement in accordance with this section and the terms of the plan.

(l) Nothing in this section requires that a manufacturer provide reimbursement in connection with a fraudulent claim for reimbursement.

(m) A manufacturer's plan may provide that it will not apply to recalls based solely on noncompliant or defective labels.

(n) The requirement that reimbursement for a pre-notification remedy be provided to an owner does not apply if, in the case of a motor vehicle or replacement equipment other than a tire, it was bought by the first purchaser more than 10 calendar years before notice is given under 49 U.S.C. 30118(c) or an order is issued under section 49 U.S.C. 30118(b). In the case of a tire, this period shall be 5 calendar years.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

1. The authority citation for Part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. Part 577 is amended by adding § 577.11 to read as follows:

§ 577.11 Reimbursement notification.

(a) Except as otherwise provided in paragraph (e) of this section, when a manufacturer of motor vehicles or replacement equipment is required to provide notice in accordance with §§ 577.5 or 577.6, in addition to complying with other sections of this part, the manufacturer shall notify owners that they may be eligible to receive reimbursement for the cost of obtaining a pre-notification remedy of a problem associated with a defect or noncompliance consistent with the manufacturer's reimbursement plan submitted to NHTSA pursuant to §§ 573.6(c)(8)(i) and 573.13 of this chapter.

(b) The manufacturer's notification shall include a statement, following the items required by § 577.5 or § 577.6, that

(1) Refers to the possible eligibility for reimbursement for the cost of repair or replacement; and

(2) Describes how a consumer may obtain information about reimbursement from the manufacturer;

(c) The information referred to in § 577.11(b)(2) of this part shall be provided in one of the following ways:

(1) In an enclosure to the notification under § 577.5 or § 577.6 that provides the information described in § 577.11(d), consistent with the manufacturer's reimbursement plan; or

(2) Through a toll-free telephone number (with TTY capability) identified in the notification that provides the information described in § 577.11(d), consistent with the manufacturer's reimbursement plan.

(3) For notifications of defects or noncompliances in item of motor vehicle equipment that are in a form other than a letter to a specific owner or purchaser, if the manufacturer does not otherwise maintain a toll-free telephone number for the use of consumers, the manufacturer may refer claimants to a non-toll-free telephone number (with TTY capability) if it also specifies a mailing address at which owners can obtain the relevant information regarding the manufacturer's reimbursement plan.

(d) The information to be provided under paragraph (c) of this section must:

(1) Identify the vehicle and/or equipment that is the subject of the recall and the underlying problem;

(2) State that the manufacturer has a program for reimbursing pre-notification remedies and identify the type of remedy eligible for reimbursement;

(3) Identify any limits on the time period in which the repair or replacement of the recalled vehicle or equipment must have occurred;

(4) Identify any restrictions on eligibility for reimbursement that the manufacturer is imposing (as limited by § 573.13 (d) of this chapter);

(5) Specify all necessary documentation that must be submitted to obtain reimbursement;

(6) Explain how to submit a claim for reimbursement of a pre-notification remedy; and

(7) Identify the office and address of the manufacturer where a claim can be submitted by mail and any authorized dealers or facilities where a claimant may submit a claim for reimbursement.

(e) The manufacturer is not required to provide notification regarding reimbursement under this section if NHTSA finds, based upon a written request by a manufacturer accompanied by supporting information, views, and arguments, that all covered vehicles are under warranty or that no person would be eligible for reimbursement under § 573.13 of this chapter.

Issued on: October 8, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–26290 Filed 10–16–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 101102A]

Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the 2002 Pacific halibut prohibited species catch (PSC) limit specified for trawl gear in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 13, 2002, until 1200 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut PSC limit for vessels using trawl gear was established as 2,000 metric tons (mt) by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 16, 2002). The Administrator, Alaska Region, has determined, in accordance with § 679.21(d)(7)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the 2002 Pacific halibut PSC limit. Therefore, NMFS is closing the directed fishery for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2002 halibut bycatch allowance specified for trawl gear in the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 11, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26423 Filed 10–11–02; 4:26 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 201
Thursday, October 17, 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 LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB24

Labor Certification and Petition Process for the Temporary Employment of Nonimmigrant Aliens in Agriculture in the United States; Modification of Fee Structure; Withdrawal of Proposed Rule; Correction

AGENCY: Employment and Training Administration.

ACTION: Withdrawal of proposed rule; correction.

SUMMARY: This document corrects the proposed rule withdrawal document which was published Thursday, September 24, 2002, (67 FR 59797), concerning the temporary employment of nonimmigrant farmworkers.

DATE: The proposed rule was withdrawn as of September 24, 2002.

FOR FURTHER INFORMATION CONTACT: Charlene G. Giles, (202) 693–2950 (not a toll-free call).

SUPPLEMENTARY INFORMATION: In FR proposed rule document 02–24190 beginning on page 59797 in the issue of Tuesday, September 24, 2002, make the following corrections: On page 59797 in the first column, the **Federal Register** publication date was listed as July 13, 2001 due to a typographical error. The date should be changed to read July 13, 2000.

Signed at Washington DC, this 9th day of October 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 02–26382 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 301

[REG–116644–01]

RIN 1545–BA18

Receipt of Multiple Notices With Respect to Incorrect Taxpayer Identification Numbers; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under sections 3406 and 6724 of the Internal Revenue Code. The proposed regulations clarify the method of determining whether the payor has received two notices that a payee's taxpayer identification number (TIN) is incorrect.

DATES: The public hearing originally scheduled for October 22, 2002, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on July 3, 2002, (67 FR 44579), announced that a public hearing was scheduled for October 22, 2002, at 10 a.m., in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 3406 and 6724 of the Internal Revenue Code. The public comment period for these proposed regulations expired on October 1, 2002.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of October 10, 2002, no one has requested to speak. Therefore, the public hearing scheduled for October 22, 2002, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–26451 Filed 10–16–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA36

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Insurance Companies Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains an amendment to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendment requires insurance companies to report suspicious transactions to the Department of the Treasury. The amendment constitutes a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before December 16, 2002. *See* the Proposed Effective Date heading of the **SUPPLEMENTARY INFORMATION** for further dates.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''ATTN: Section 352—Insurance Company Regulations.'' Comments (preferably an original and four copies) also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: Section 352—Insurance Company Regulations. Comments

should be sent by one method only. 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 Compliance and Regulatory Enforcement, FinCEN, (202) 354–6400; and Office of Chief Counsel, FinCEN, at (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act (BSA), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA Patriot Act, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that

> [i]f a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' *Id.* at subsection (g)(4)(B).

The provisions of 31 U.S.C. 5318(h), also added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury ''[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs.'' 31 U.S.C. 5318(h)(1). Those programs may include ''the development of internal policies, procedures, and controls'; ''the designation of a compliance officer'; ''an ongoing employee training program'; and ''an independent audit function to test programs.'' 31 U.S.C. 5318(h)(A–D).

Section 352 of the USA Patriot Act amended section 5318(h) to mandate compliance programs for all financial institutions defined in 31 U.S.C. 5312(a)(2). Section 352 of the USA Patriot Act became effective April 24, 2002. In April 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to the insurance industry. 67 FR 21110 (April 29, 2002). The purpose of the deferral was to provide Treasury time to study the insurance industry and to consider how anti-money laundering controls could best be applied to that industry, taking into account differences in size, location, and services within the industry. In September 2002, FinCEN issued a notice of proposed rulemaking prescribing minimum standards applicable to insurance companies regarding the establishment of anti-money laundering programs. 67 FR 60625 (September 26, 2002). That proposed rule applies to businesses offering life insurance policies, annuity contracts, and other insurance products with similar features, and only requires insurance companies, rather than their agents or brokers, to establish and maintain an anti-money laundering program. This focused approach is reflected in the proposed rule contained in this document regarding the reporting of suspicious transactions.

B. Overview of Insurance Companies

Insurance can generally be described as ''a contract by which one party (the insurer), for a consideration that is usually paid in money, either in a lump sum or at different times during the continuance of the risk, promises to make a certain payment, usually of money, upon the destruction or injury of 'something' in which the other party (the insured) has an interest.''[4] In other words, the purpose of insurance is to transfer risk from the insured to the insurer. Insurance companies act as financial intermediaries by providing a financial risk transfer service that is funded by the payment of insurance premiums that they receive from policyholders.

The insurance industry in the United States can generally be divided into

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the USA Patriot Act), Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the Money Laundering Suppression Act), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.''

[4] Lee R. Rus & Thomas F. Segalla, *Couch on Insurance* § 1:6, at 1–11 (3d ed.).

three major sectors based on a company's line of business: (1) life; (2) property/casualty; and (3) health.[5] Life insurance provides protection against the death of an individual in the form of payment to a beneficiary. Life insurance may also offer ''living benefits'' in the form of a cash surrender value or income payments. Recently, life insurers have developed products that offer a variety of investment components, such as interest indexed universal life (which has interest credits linked to external factors) and variable life (where the amount and duration of benefits are linked to investment experience), and that offer the insured the ability to overpay the premium for a fixed rate of return. Such products are marketed to investors as part of a diversified portfolio, often with tax benefits. Annuities, which are generally considered part of the life insurance sector, are purchased to provide a stipulated income stream over a period of time, and are frequently used for retirement planning purposes. Property insurance indemnifies an insured whose property is stolen, damaged, or destroyed by a covered peril. Casualty insurance provides coverage primarily for the liability of an individual or organization that results from negligent acts and omissions that cause bodily injury and/or property damage to a third party. Health insurance covers the costs of health care. Many insurance companies, particularly the larger ones, offer more than one kind of insurance product.

An insurance company may offer its products through a number of different distribution channels. Some insurance companies sell their products through direct response marketing in which the insurance company sells a policy directly to the insured. Other companies employ agents, who may either be captive or independent. Captive agents represent only one insurance company; independent agents may represent a variety of insurance carriers. Insurance may also be purchased through other third parties, all of whom must be licensed insurance agents, but may describe themselves to customers as financial planners or investment advisors. A limited number of companies offer certain types of policies via the Internet. A customer also may employ a broker (*i.e.*, a salesperson who searches the marketplace for insurance in the interest of the customer rather than the insurer) to obtain insurance.

The insurance industry in the United States has traditionally been subject to state, rather than federal, regulation.[6] Matters that are subject to state regulation include the overall organization and capitalization of insurance companies, permissible investments, licensing of insurance companies and insurance agents, and the form and content of policies. In some states, insurance companies are already subject to anti-money laundering statutes, currency reporting requirements, and/or suspicious activity reporting requirements. According to an unpublished survey conducted by the National Association of Insurance Commissioners (NAIC) of state statutes or rules applicable to insurance companies, thirty-eight states have money laundering statutes, twenty-one have currency reporting requirements, and one has a suspicious activity reporting requirement.

C. Importance of Suspicious Transaction Reporting in Treasury's Counter-Money Laundering Program

The Congressional authorization for requiring the reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, it is to financial institutions that money launderers must go, either initially, to conceal their illegal funds, or eventually, to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification (or in the case of gaming establishments, transactions that appear to lack a reasonable relationship to legitimate wagering activities) or that otherwise cannot be explained as constituting a legitimate use of the insurance company's financial services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, relates to the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, have made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions, including insurance companies, in attempts to launder funds. Indeed, many non-banks have already recognized the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering (the FATF)[7] is that ''[i]f financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.'' *Financial Action Task Force Annual Report* (June 28, 1996), Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[8]

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

[5] In 2000, the insurance industry in the United States consisted of more than 7000 domestic insurance companies and total gross direct premiums exceeded $956 billion. Net premiums written in both the life and property/casualty sectors grew annually between 1992 and 2000. In 2000, the insurance industry, including insurance companies, agents, brokers, and service personnel, employed approximately 2.3 million people. National Association of Insurance Commissioners, *2000 Insurance Department Resources Report.*

[6] *See* the McCarran-Ferguson Act, codified at 15 U.S.C. 1011 *et seq. See also* the Gramm-Leach-Bliley Act, Public Law 106–102, sections 104(a) and 301.

[7] The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[8] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either ''*permitted or* required'' to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[9] All of these documents also recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions, are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8).

The international consensus is that insurance companies are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing.* Special Recommendation Four provides that:

> [i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF's Special Recommendation Four, the term ''financial institutions'' is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, insurance companies.[10] Similarly, in January 2002, the International Association of Insurance Supervisors (IAIS)[11] issued anti-money laundering guidance for insurance supervisors and insurance entities stating that:

> [f]inancial institutions including insurance entities, have become major targets of money laundering operations because of the variety of services and investment vehicles offered that can be used to conceal the source of money. Money laundering poses significant reputational and financial risk to insurance entities, as well as the risk of criminal prosecution if insurance entities become involved in laundering of the proceeds of crime.[12]

D. Money Laundering and Terrorist Financing Risks Associated With Insurance Companies

FinCEN believes that the most significant money laundering and terrorist financing risks in the insurance industry are found in life insurance and annuity products because such products allow a customer to place large amounts of funds into the financial system and seamlessly transfer such funds to disguise their true origin. Permanent life insurance policies that have a cash surrender value are particularly inviting money laundering vehicles. Such cash value can be redeemed by a money launderer or can be used as a source of further investment of his tainted funds—for example, by taking out loans against such cash value. Term life insurance policies also pose a significant risk of money laundering because they possess elements of stored value and transferability that make them attractive to money launderers.[13] Similarly, annuity contracts also pose a significant money laundering risk because they allow a money launderer to exchange his illicit funds for an immediate or deferred income stream. The elements described above generally do not exist in insurance products offered by property and casualty insurers, much less by title or health insurers, although, to the extent that these sectors develop products with similar investment features, or features of stored value and transferability, the proposed rule includes a functional definition intended to include them within its scope.[14] FinCEN does not believe that money laundering risk should be predicated solely on the existence of an ability to obtain a refund on a purchased financial product. Rather, the focus should be on the ability of a money launderer to use a particular financial product to store and move illicit funds through the financial system. Therefore, the proposed rule captures only those insurance products with investment features, and insurance products possessing the ability to store value and to transfer that value to another person.

The identified instances of money laundering through insurance companies generally have been confined to life insurance products. Such products appear to have been particularly attractive to narcotics money launderers. For example, as a result of a joint investigation into the narcotics trafficking and money laundering activities of Colombian drug cartels, federal law enforcement authorities have discovered that these cartels have been hiding their illicit proceeds by, among other things, purchasing life insurance policies. The money laundering scheme involves the purchase, through several insurance brokers, of life insurance policies with cash surrender values in an offshore jurisdiction. Cartel associates are named as beneficiaries to such policies. The life insurance policies are funded by narcotics proceeds that are forwarded to the insurance companies by third parties from all over the world. Although the cash surrender value of the life insurance policies is often far less than the amount invested because of liquidation penalties, particularly if the policies only have been in existence for a few years, the beneficiaries soon elect to liquidate the policies for their cash surrender value. Although the beneficiaries thereby suffer a substantial financial loss, the funds received, in the form of insurance proceeds, are effectively laundered.[15] In another case, the U.S. Customs Service obtained the forfeiture of illicit drug money paid to purchase three term life insurance policies in Austin, Texas. The purchase

[9] The Organization of American States (OAS) reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

[10] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire,* Special Recommendation Four, paragraph 19 (March 27, 2002).

[11] The IAIS is an international association representing insurance regulatory authorities from more than 100 jurisdictions. Established in 1994, the IAIS was formed to promote cooperation among insurance regualtors, set international standards for insurance supervision, provide training to members, and coordinate work with regulators in other financial sectors and international financial institutions.

[12] *IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities,* January 2002, at 4.

[13] For example, a narcotics trafficker based in a foreign jurisdiction can purchase a term policy from a U.S. insurer with one large, up-front premium made up of illicit funds using an elderly or ill front person as the insured, and collect the cleansed proceeds when the insured dies.

[14] Theoretically, a money launderer could purchase property or casualty insurance for a business with tainted funds, and transfer the business to a confederate who could cancel the policy and obtain a refund of the cleansed funds. However, this does not mean that such products possess the elements of stored value and transferability that pose a significant money laundering risk. Underwriting practices generally would prevent the conveyance of a property and casualty insurance policy upon the purchase of a business, except in the case of a change in control of a public company, in which the costs and regulatory disclosures required to change control would appear to far outweigh any potential benefit to a would-be launderer. Moreover, as property and casualty insurers determine premiums by the value of the insured property and the perceived risk, the products they issue are not effective vehicles for laundering predetermined sums.

[15] *United States* v. *The Contents of Account No. 400941058 At JP Morgan Chase Bank, New York, New York,* Mag. Docket No. 02–1163 (S.D.N.Y. 2002) (Warrant of Seizure).

had been made with a number of structured monetary instruments, followed shortly afterward by an attempted redemption of the policies.[16] Law enforcement also has seen similar attempts to launder funds through the purchase of variable annuity contracts.[17] In addition, some financial institutions have reported to FinCEN suspicious transactions involving the structured purchase of life insurance and annuities, followed by the receipt of checks from life insurance companies, and the wiring of the funds to foreign countries.

The international community also has focused on life insurance policies and those insurance products with investment features as the target of anti-money laundering measures. The interpretative note to Recommendation 8 of the FATF Forty Recommendations, relating to the establishment of anti-money laundering programs, states that ''[t]he FATF [Forty] Recommendations should be applied in particular to life insurance and other investment products offered by insurance companies.'' In addition, the IAIS, in its anti-money laundering guidance to insurance businesses, states that such guidance is ''primarily aimed at life insurance business[es] which [are] the predominant class being used by money launderers.'' [18]

FinCEN understands that many insurance products are sold through agents of insurance companies. Because of their direct contact with customers, insurance agents are in a unique position to observe the kind of activity that may be indicative of money laundering. In some cases, suspicious activity detected by agents—such as the lump-sum purchase of a life insurance policy with multiple money orders or the purchase of annuity contracts by customers who express little or no interest in the details of such products, like surrender charges—may not be information that is normally known by the insurance company. This may be especially true when insurance agents sell investment products that do not need to be thoroughly scrutinized by the insurance company for underwriting purposes because they lack a health or death contingency. Thus, the proposed rule requires an insurance company to obtain all the relevant information necessary from its agents and brokers for purposes of filing reports of suspicious transactions. Whether an insurance company sells its products directly or through agents, FinCEN believes that it is appropriate to place on the insurance company (which develops the products and bears their risks) the responsibility for obtaining all relevant information necessary to comply effectively with a suspicious transaction reporting requirement.

31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions, but also by ''any director, officer, employee, or agent of any financial institution.'' This proposed rule addresses reporting by insurance companies, but not by individual employees or agents of an insurance company. FinCEN does not intend to reduce in any way the obligations of an insurance company's employees or agents, within the context of an insurance company's general regulatory or specific BSA compliance programs, but wants simply to avoid at this time creating an obligation on the part of insurance company employees and agents independent of those general obligations.

FinCEN anticipates that the measures currently employed by insurance companies to detect and combat fraud may assist such companies when implementing programs to detect and report suspicious transactions. However, insurance companies should note that the risks associated with fraud and money laundering are not identical, and that combating money laundering will necessarily require the establishment of additional measures. An anti-fraud policy is concerned that premium payments clear, not with whether they are made with structured instruments or from suspicious sources. Moreover, although a person who purchases a life insurance policy with a single, lump-sum payment and subsequently redeems the policy for its cash value may not inflict any economic harm on the insurance company, such a person can use this process to cleanse his illicit funds in exchange for paying the requisite penalty or fee.

II. Section-by-Section Analysis

Section 103.16(a) defines the key terms used in the proposed rule. The definition of an insurance company reflects Treasury's determination that a suspicious transaction reporting requirement should be imposed on those sectors of the insurance industry that pose the most significant risk of money laundering and terrorist financing. The definition of an insurance company therefore includes any person engaged within the United States as a business in: (1) The issuing, underwriting, or reinsuring of a life insurance policy; (2) the issuing, granting, purchasing, or disposing of any annuity contract; or (3) the issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person. The sectors of the insurance industry offering life insurance and annuity products are both covered by the definition. The last category incorporates a functional approach, and encompasses any business offering currently, or in the future, any insurance product with an investment feature, and any insurance product possessing both stored value and transferability.[19]

The definition of an insurance company does not include insurance agents or brokers. Agents and brokers would therefore not be required under the rule independently to report suspicious transactions. However, as explained in greater detail below, an insurance company would be required to obtain all the relevant information necessary from its agents and brokers in order to comply with its requirement to report suspicious transactions. Comments are specifically invited on whether the above definition is appropriate in light of money laundering risks in the industry. Comments also are specifically invited on whether the final rule also should require insurance agents and brokers, or any subsets of agents or brokers, to report suspicious transactions.

Section 103.16(b) contains the rules setting forth the obligation of insurance companies to report suspicious transactions that are conducted or attempted by, at, or through an insurance company and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable under

[16] *In the Matter of Seizure of the Cash Value and Advance Premium Deposit Funds, Case No. 2002–5506–000007.* (W.D. Tex. 2002).

[17] *See* Steven Brostoff, *Variable Product Companies Cautioned to be Vigilant On Money Laundering,* National Underwriter, July 1, 2002, at 40.

[18] *IAIS Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities,* January 2002, at 6.

[19] The definition of an insurance company is not intended to include those entities that offer annuities or similar products as an incidental part of their business—*e.g.,* tax-exempt organizations that offer charitable gift annuities (as defined in section 501(m)(5) of the Internal Revenue Code) as a vehicle for planned charitable giving, and that would not otherwise fall within the definition of an insurance company. FinCEN intends this exclusion to apply to the definition of an insurance company for purposes of its proposed rule requiring insurance companies to establish anti-money laundering programs. *See* 67 FR 60625 (September 26, 2002). Comments are specifically invited on the appropriate scope of the definition of an insurance company.

this rule and 31 U.S.C. 5318(g) whether or not they involve currency.[20]

Section 103.16(b)(1) contains the general statement of the obligation to file reports of suspicious transactions. The obligation extends to transactions conducted or attempted by, at, or through the insurance company. The second sentence of section 103.16(b)(1) is designed to encourage the reporting of transactions that appear relevant to violations of law or regulation, even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $5,000 threshold in the rule.

Section 103.16(b)(2) specifically describes the four categories of transactions that require reporting. An insurance company is required to report a transaction if it knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part): (i) Involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (ii) is designed, whether through structuring or other means, to evade the requirements of the BSA; (iii) has no business or apparent lawful purpose, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts; and (iv) involves the use of the insurance company to facilitate criminal activity. The final category of reportable transactions is intended to ensure that transactions involving legally derived funds that the insurance company suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[21]

A determination as to whether a report is required must be based on all the facts and circumstances relating to the transaction and customer of the insurance company in question. Different fact patterns will requires different judgments. In some cases, the facts of the transaction may indicate the need to report. Some examples of ''red flags'' associated with existing or potential customers include, but are not limited to, the following:

- The purchase of an insurance product that appears to be beyond a customer's normal pattern of business;
- Any unusual method of payment, particularly by cash or cash equivalents;
- The purchase of an insurance product with monetary instruments in structured amounts;
- The early termination of an insurance product, especially at a loss, or where cash was tendered and/or the refund check is directed to a third party;
- The transfer of the benefit of an insurance product to an apparently unrelated third party;
- Little or no concern by a customer for the performance of an insurance product, but much concern about the early termination of the product;
- The reluctance by a customer to provide identifying information when purchasing an insurance product, or who provides minimal or fictitious information; and
- The borrowing of the maximum cash surrender value of an insurance policy soon after paying for the policy.

The means of commerce and the techniques of money laundering are continually evolving, and there is no way to provide an exhaustive list of suspicious transactions. FinCEN expects to continue its dialogue with the insurance industry about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

Section 103.16(b)(3) provides that the obligation to identify and properly and timely to report a suspicious transaction rests with the insurance company involved in the transaction. Insurance agents and brokers are not independently required to report suspicious transactions. Section 103.16(b)(3) also states that to the extent that a transaction is conducted through an insurance agent or broker, an insurance company shall obtain all the relevant information necessary to ensure its compliance with the requirements of this section. As explained above, an insurance company's assessment of customer-related information, such as methods of payment, is a key component to an effective anti-money laundering program. Thus, an insurance company must obtain and assess all the relevant information necessary to comply effectively with its obligation to report suspicious transactions. Such information includes, but is not limited to, relevant customer information collected and maintained by the insurance company's agents and brokers, including observations and assessments by agents and brokers at the point-of-sale. The specific means to obtain such information is left to the discretion of the insurance company, although Treasury anticipates that the insurance company may need to amend existing agreements with its agents and brokers to ensure that the company receives necessary customer information.

The proposed rule is intended to require that an insurance company evaluate customer activity and relationships for money laundering risks, and design a suspicious transaction monitoring program that is appropriate for the particular insurance company in light of such risks. FinCEN anticipates that the design and implementation of such a program, rather than solely individual instances of non-reporting, will be instrumental when examining an insurance company for compliance with the requirements of the rule.

An insurance company's suspicious transaction monitoring program must ensure that the company is provided with customer information at the point-of-sale. FinCEN understands that obtaining such information will necessarily entail the cooperation of entities that are separate from an insurance company—namely, the company's independent agents and brokers. Comments are specifically invited on this approach, and the extent to which it may be necessary for FinCEN to place a direct obligation upon insurance agents and brokers for the purpose of ensuring an effective suspicious transaction reporting requirement.

Section 103.16(c) sets forth the filing procedures to be followed by insurance companies making reports of suspicious transactions. Within 30 days after an insurance company becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report by Insurance Companies (SAR–IC) and filing it in a central location, to be determined by FinCEN. The SAR–IC will resemble the SAR used by banks to report suspicious transactions, and a draft form will be made available for comment by publication in the **Federal Register**.

Supporting documentation relating to each SAR–IC is to be collected and maintained separately by the insurance

[20] Many currency transactions are *not* indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (*See* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions, (for example, funds transfers) *can* indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

[21] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA Patriot Act to make it clear that the requirement to report suspicious activity encompasses the reporting of transactions in which legally derived funds are used for criminal activity, such as the financing of terrorism.

company and made available to law enforcement and regulatory agencies upon request. Special provision is made for situations requiring immediate attention, in which case insurance companies are to telephone the appropriate law enforcement authority in addition to filing a SAR–IC.

Section 103.16(d) provides an exception to the reporting requirement for false information submitted to the insurance company to obtain a policy or support a claim, unless such activity is related to money laundering or terrorist financing. Comments specifically are invited on whether the final rule should contain an express exception from reporting for any other particular activity in order to avoid unnecessary, duplicative reporting, or for any other reason.

Section 103.16(e) provides that filing insurance companies must maintain copies of SAR–ICs and the original related documentation for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and other appropriate law enforcement and regulatory authorities, on request.

Section 103.16(f) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the proposed rule or is filed voluntarily). *See* 31 U.S.C. 5318(g)(2). Thus, the paragraph specifically prohibits persons filing SAR–ICs from making any disclosure, except to appropriate law enforcement and regulatory agencies, about either the reports themselves or supporting documentation. 31 U.S.C. 5318(g), as amended by the USA Patriot Act, provides protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting. Section 351 of that Act clarifies that the safe harbor applies to the voluntary reporting of suspicious transactions, and the proposed rule reflects this clarification.

Section 103.16(g) notes that compliance with the obligation to report suspicious transactions will be examined, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations.

Section 103.16(h) provides that the new suspicious activity reporting rule is effective 180 days after the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**.

Finally, section 103.16(i) states that an insurance company that is registered or is required to register with the Securities and Exchange Commission (SEC) shall be deemed to have satisfied the requirements of this section for those activities regulated by the SEC to the extent that the company complies with the suspicious activity reporting requirements applicable to such activities that are imposed under 31 CFR 103.19. Thus, for example, an insurance company that is required to register as a broker-dealer in securities because it sells variable annuities may satisfy the suspicious transaction reporting requirements under the proposed rule for that activity by complying with the suspicious transaction reporting requirements applicable to such activity that are under 31 CFR 103.19. To the extent that the issuance of annuities, or any other activity by an insurance company, is not addressed by 31 CFR 103.19, then such activity would be subject to the suspicious transaction reporting requirements of the proposed rule.

Proposed Effective Date

The suspicious transaction reporting rule would be effective 180 days after the date on which the final regulation to which this notice of proposed rulemaking relates is published in the **Federal Register**.

III. Request for Comments

FinCEN invites comment on all aspects of the proposed regulation, and specifically seeks comment on the following issues:

1. Whether the scope of the definition of an insurance company is appropriate in light of money laundering risks in the industry.
2. Whether the rule also should require insurance agents (captive, independent, or both), or any subset of agents, to report suspicious transactions to FinCEN.
3. Whether the rule also should require insurance brokers, or any subset of insurance brokers, to report suspicious transactions to FinCEN.
4. Whether any reporting dollar threshold, including the $5,000 threshold in the proposed rule, is appropriate.
5. Whether the exception from reporting for routine insurance fraud unrelated to money laundering or terrorist financing is appropriate, and whether any other exceptions should be included in the rule.

IV. Regulatory Flexibility Act

It is hereby certified, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed rule is not likely to have a significant economic impact on a substantial number of small entities. The BSA authorizes Treasury to require financial institutions to report suspicious activities. The proposed rule requires insurance companies, rather than their agents or brokers, to file reports of suspicious transactions. Most insurance companies are larger businesses. In addition, Treasury has issued a separate proposed rule that requires insurance companies to establish and maintain anti-money laundering programs. 67 FR 60625 (September 26, 2002). Treasury anticipates that compliance with an anti-money laundering program requirement, in particular, the requirement for an insurance company to obtain all the relevant information necessary from its agents and brokers to make its program effective, will assist greatly in the reporting of suspicious transactions. Moreover, all insurance companies, in order to remain viable, have in place policies and procedures to prevent and detect fraud. Such anti-fraud measures should assist insurance companies in reporting suspicious transactions.

In drafting the rule, FinCEN carefully considered the importance of suspicious transaction reporting to the administration of the BSA. Congress considers suspicious transaction reporting a ''key ingredient in the anti-money laundering effort.'' [22] Moreover, the legislative history of the BSA demonstrates that money launderers will shift their activities away from more regulated to less regulated financial institutions.[23] Finally, there is no alternative mechanism for the government to obtain this information other than by requiring insurance companies to detect and report suspicious activity.

V. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information 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

[22] H.R. Rep. No. 438, 103d Cong., 2d Sess. 15 (1994).

[23] ''It is indisputable that as banks have been more active in prevention and detection on money laundering, money launderers have turned in droves to the financial services offered by a variety of [non-bank financial institutions].'' *Id.* at 19.

jlackeyj@omb.eop.gov), with a copy to FinCEN by mail or the Internet at the addresses previously specified. Comments on the collection of information should be received by December 16, 2002. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 1,200 suspicious activity reports by insurance companies. This result is an estimate based on the estimated number of respondents under the rule.

Description of Respondents: Insurance companies as defined in 31 CFR 103.16(a).

Estimated Number of Respondents: 1,200.

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.16 will be reflected in the burden of the form used by insurance companies to report suspicious transactions. The recordkeeping burden of 31 CFR 103.16 is estimated as an average of 3 hours per form, which includes internal review of records to determine whether the activity requires reporting.

Estimated Total Annual Recordkeeping Burden: 3,600 hours.

FinCEN specifically invites comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of FinCEN, and whether the information will have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, 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 maintain the information.

In addition the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate and requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

VI. Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Insurance companies, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

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 FINANCIAL TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart B of part 103 is amended by adding new § 103.16 to read as follows:

§ 103.16 Reports by insurance companies of suspicious transactions.

(a) *Definitions.* For purposes of this section:

(1) *Annuity contract* means any agreement between the insurer and the insured whereby the insurer promises to pay out a stipulated income or a varying income stream for a period of time.

(2) *Insurance company.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the term ''insurance company'' means any person engaged within the United States as a business in:

(A) The issuing, underwriting, or reinsuring of a life insurance policy;

(B) The issuing, granting, purchasing, or disposing of any annuity contract; or

(C) The issuing, underwriting, or reinsuring of any insurance product with investment features similar to those of a life insurance policy or an annuity contract, or which can be used to store value and transfer that value to another person.

(ii) An insurance company shall not mean an agent or broker of any business described in paragraph (a)(2)(i) of this section.

(3) *Life insurance policy* means an agreement whereby the insurer is obligated to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured, including any investment component of the policy.

(b) *General.* (1) Every insurance company shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An insurance company may also file with FinCEN, by using the form specified in paragraph (c)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an insurance company, and involves or aggregates at least $5,000 in funds or other assets, and the insurance company knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the insurance company knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the insurance company to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with the insurance company involved in the transaction. To the extent that a transaction involving an insurance

company is conducted through an insurance agent or broker, the insurance company shall obtain all the information necessary to ensure its compliance with the requirements of this section.

(c) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report by Insurance Companies (SAR–IC), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–IC shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–IC.

(3) *When to file.* A SAR–IC shall be filed no later than 30 calendar days after the date of the initial detection by the insurance company of facts that may constitute a basis for filing a SAR–IC under this section. If no suspect is identified on the date of such initial detection, an insurance company may delay filing a SAR–IC for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the insurance company shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–IC. Insurance companies wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–IC if required by this section.

(d) *Exception.* An insurance company is not required to file a SAR–IC to report the submission to it of false or fraudulent information to obtain a policy or make a claim, other than where such submission relates to money laundering or terrorist financing.

(e) *Retention of records.* An insurance company shall maintain a copy of any SAR–IC filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–IC. Supporting documentation shall be identified as such and maintained by the insurance company, and shall be deemed to have been filed with the SAR–IC. An insurance company shall make all supporting documentation available to FinCEN, any other appropriate law enforcement agencies, or state regulators upon request.

(f) *Confidentiality of reports; limitation of liability.* No insurance company, and no director, officer, employee, or agent of any insurance company, that reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–IC or the information contained in a SAR–IC, except where such disclosure is requested by FinCEN or another appropriate law enforcement or regulatory agency, shall decline to produce the SAR–IC or to provide any information that would disclose that a SAR–IC has been prepared or filed, citing this paragraph (f) and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. An insurance company, and any director, officer, employee, or agent of such insurance company, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(g) *Compliance.* Compliance with this section shall be audited by the Department of the Treasury, through FinCEN or its delegees, under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(h) *Effective date.* This section applies to transactions occurring 180 days after publication of the final rule based on this document.

(i) *Suspicious transaction reporting requirements for insurance companies registered or required to register with the Securities and Exchange Commission.* An insurance company that is registered or is required to register with the Securities and Exchange Commission shall be deemed to have satisfied the requirements of this section for those activities regulated by the Securities and Exchange Commission to the extent that the company complies with the suspicious activity reporting requirements applicable to such activities that are imposed under § 103.19.

Dated: October 10, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–26365 Filed 10–16–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA34

Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Requirement That Currency Dealers and Exchangers Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is proposing to amend the Bank Secrecy Act regulations to require currency dealers and exchangers to report suspicious transactions to the Department of the Treasury, and to require all money services businesses to which the suspicious transaction reporting rule applies to report transactions involving suspected use of the money services business to facilitate criminal activity. The proposed amendments constitute a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States, as a part of the counter-money laundering program of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before December 16, 2002.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183–0039, *Attention:* NPRM—Suspicious Transaction Reporting—Currency Dealers and Exchangers. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov,* with the caption in the body of the text, ''*Attention:* NPRM—Suspicious Transaction Reporting—Currency Dealers and Exchangers.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected, 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: David K. Gilles, Acting Assistant

Director, Office of Compliance and Regulatory Enforcement, FinCEN, (202) 354–6400; and Judith R. Starr, Chief Counsel, and Christine L. Schuetz, Attorney-Advisor, Office of Chief Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document contains a proposed rule that would amend 31 CFR 103.20(a)(1) to require currency dealers and exchangers to report suspicious transactions to FinCEN. FinCEN has determined that such reports have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and in the conduct of intelligence and counterintelligence activities, including analysis, to protect against international terrorism. The proposed rule also would amend 31 CFR 103.20(a)(2) by adding a fourth reporting category for transactions that are suspected to involve use of the money services business to facilitate criminal activity. Finally, under the proposed rule, the telephone number for FinCEN's Financial Institutions Hotline (1–866–556–3974) would be added to 31 CFR 103.20(b)(3). The suspicious transaction reporting rule would be effective 180 days after the date on which the final regulation to which this notice of proposed rulemaking relates is published in the **Federal Register**.

II. Background

A. Statutory Provisions

The Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311–5314, 5316–5332) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With the enactment of 31 U.S.C. 5318(g) in 1992,[2] Congress authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions. As amended by the USA PATRIOT ACT, subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2)(A) provides further that:

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—
>
> (i) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and
>
> (ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, other than as necessary to fulfill the official duties of such officer or employee.

Subsection (g)(3)(A) provides that neither a financial institution, nor any director, officer, employee, or agent of any financial institution

> that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[3] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.'' *Id.,* at subsection (g)(4)(B).

B. Suspicious Activity Reporting by Money Services Businesses

By final rule published August 20, 1999, FinCEN revised the definitions of certain non-bank financial institutions for purposes of the Bank Secrecy Act and grouped the revised definitions together in a separate category called ''money services businesses.''[4] A ''money services business'' includes each agent, agency, branch, or office within the United States of any person (except a bank or person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission) doing business in one or more of the following capacities:

- Currency dealer or exchanger;
- Check casher;
- Issuer of traveler's checks, money orders, or stored value;
- Seller or redeemers of traveler's checks, money orders, or stored value;
- Money transmitter; and
- The United States Postal Service (except with regard to the sale of postage or philatelic products).

Persons who do not exchange currency, cash checks, or issue, sell, or redeem traveler's checks, money orders, or stored value in an amount greater than $1,000 to any person on any day in one or more transactions are not money services businesses for purposes of the Bank Secrecy Act.

On March 14, 2000, FinCEN published a final rule requiring certain money services business to report suspicious transactions to FinCEN beginning January 1, 2002 (the ''MSB SAR rule'').[5] Under the terms of the

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107–56.

[2] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

[3] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.''

[4] *See* 64 FR 45438 (August 20, 1999), and 31 CFR 103.11(uu).

[5] *See* 65 FR 13683 (March 14, 2000). Banks, thrift institutions, and credit unions have been subject to the suspicious transaction reporting requirement since April 1, 1996 pursuant to regulations issued concurrently by FinCEN and the federal bank supervisors (the Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), the Office of Thrift Supervision (''OTS''), and the National Credit Union Administration (''NCUA'')). *See* 31 CFR 103.18 (FinCEN); 12 CFR 208.62 (Federal Reserve Board); 12 CFR 21.11 (OCC); 12 CFR 353.3 (FDIC); 12 CFR 563.180 (OTS); and 12

MSB SAR rule, found at 31 CFR 103.20, issuers, sellers, and redeemers (for monetary value) of traveler's checks and money orders, money transmitters, and the United States Postal Service, are required to report suspicious transactions to FinCEN.[6] A money services business to which the MSB SAR rule applies must file a report of any transaction conducted or attempted by, at, or through the money services business, involving or aggregating at least $2,000 (or $5,000 to the extent that the identification of transactions required to be reported is derived from a review of clearance records of money orders or traveler's checks that have been sold or processed), when the money services business knows, suspects, or has reason to suspect that the transaction falls into one of three categories.

The first reporting category contained in the MSB SAR rule, described in 31 CFR 103.20(a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second category, described in 31 CFR 103.20(a)(2)(ii), involves transactions designed to evade the requirements of the Bank Secrecy Act. The third category, described in 31 CFR 103.20(a)(2)(iii), involves transactions that appear to have no business purpose or that vary so substantially from normal commercial activities or activities appropriate for the particular customer or type of customer as to have no reasonable explanation. Although the rule does not require the filing of multiple reports of suspicious activity by both a money services businesses and its agent with respect to the same reportable transaction, the obligation to identify and report suspicious transactions rests with each money services business involved in a particular transaction.

In accordance with paragraph 103.20(b) of the MSB SAR rule, money services businesses must report a suspicious transaction within 30 days after the money services business becomes aware of the suspicious transaction, by completing a Suspicious Activity Report-MSB (''SAR–MSB''). FinCEN published for comment on July 25, 2002 a draft SAR–MSB, which is now final and available for use.[7] FinCEN has made special provision for situations requiring immediate attention (*e.g.*, where delay in reporting might hinder law enforcement's ability to fully investigate the activity), in which case money services businesses are immediately to notify, by telephone, the appropriate law enforcement authority in addition to filing a SAR–MSB. Reports filed under the terms of the MSB SAR rule are lodged in a central database. Information contained in the database is made available electronically to federal and state law enforcement and regulatory agencies, to enhance their ability to fight financial crime and terrorism.

Paragraph 103.20(c) of the MSB SAR rule requires money services businesses to maintain copies of each filed SAR–MSB for five years. In addition, money services businesses must collect and maintain for five years supporting documentation relating to each SAR–MSB and make such documentation available to law enforcement and regulatory agencies upon request.

Paragraph 103.20(d) of the MSB SAR rule incorporates the terms of 31 U.S.C. 5318(g)(2) and (g)(3), and specifically prohibits persons filing reports in compliance with the MSB SAR rule (or voluntary reports of suspicious transactions) from disclosing, except to appropriate law enforcement and regulatory agencies, that a report has been prepared or filed. The paragraph also restates the BSA's broad protection from liability for making reports of suspicious transactions (whether such reports are required by the MSB SAR rule or made voluntarily), and for declining to disclose the fact of such reporting. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because FinCEN recognized the importance of these statutory provisions in the overall effort to encourage meaningful reports of suspicious transactions and to protect the legitimate privacy expectations of those who may be named in such reports, they are repeated in the rule to remind compliance officers and others of their existence.

Paragraph 103.20(e) of the MSB SAR rule provides that compliance with the MSB SAR rule will be audited by the Department of the Treasury through FinCEN or its delegee. Failure to comply with the rule may constitute a violation of the Bank Secrecy Act regulations, which may subject non-complying money services businesses to enforcement action under the Bank Secrecy Act.

C. Importance of Suspicious Transaction Reporting in Treasury's Counter Money-Laundering Program

The Congressional authorization of reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and counter-financial crime programs. First, to realize full use of their ill-gotten gains, money launderers at some point must turn to financial institutions, either initially to conceal their illegal funds, or eventually to recycle those funds back into the economy. Second, the employees and officers of those institutions are often more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as constituting a legitimate use of the financial institution's products and services.

The importance of extending suspicious transaction reporting to all relevant financial institutions, including non-bank financial institutions, derives from the concentrated scrutiny to which banks have been subject with respect to money laundering. This attention, combined with the cooperation that banks have given to law enforcement agencies and banking regulators to root out money laundering, has made it far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed. As it has become increasingly difficult to launder large amounts of cash through banks, criminals have turned to non-bank financial institutions in their attempts to launder funds. Indeed, many non-bank financial institutions increasingly have come to recognize the increased pressure that money launderers have placed upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also recognized as essential to an effective counter-money laundering program in the international consensus on the prevention and

CFR 748.1 (NCUA). On July 1, 2002, FinCEN published a final rule, found at 31 CFR 103.19, requiring broker-dealers to file reports of suspicious transactions beginning after December 30, 2002. *See* 67 FR 44048. On September 26, 2002, FinCEN published a final rule, found at 31 CFR 103.21, requiring casinos and card clubs to file reports of suspicious transactions. *See* 67 FR 60722.

[6] The rule requires money services businesses described in 31 CFR 103.11(uu)(3) (the money services business category that includes issuers of traveler's checks, money orders, or stored value), 103.11(uu)(4) (sellers or redeemers of traveler's checks, money orders, or stored value), 103.11(uu)(5) (money transmitters), and 103.11(uu)(6) (the United States Postal Service) to file reports of suspicious activity. However, given the infancy of the use of stored value products in the United States at the time of issuance of the final rule, issuers, sellers, and redeemers of stored value were explicitly carved out of the final MSB SAR rule. *See* 31 CFR 103.20(a)(5).

[7] *See* 67 FR48704 (July 25, 2002). The SAR–MSB and advice on how to complete it can be viewed on FinCEN's website (www.fincen.treas.gov) under the categories of ''What's New'' and ''Regulatory.''

detection of money laundering. One of the central recommendations of the Financial Action Task Force Against Money Laundering (''FATF'') is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[8] Annex 1 (Recommendation 15). The recommendation applies equally to banks and non-banks.[9]

Similarly, the European Community's *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[10] All of these documents also recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to recognize that non-bank providers of financial services as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g.*, *Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8).

D. Suspicious Activity Reporting by Currency Dealers and Exchangers

The MSB SAR rule currently does not apply to either check cashers or to currency dealers/exchangers. As FinCEN explained in the preamble to the final MSB SAR rule, ''[b]ecause the operations of check cashers and currency exchangers generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services.''[11] However, FinCEN noted that it would continue to examine issues relating to the appropriate extension of suspicious transaction reporting to the full range of financial institutions subject to the Bank Secrecy Act.

FinCEN has determined that it is now appropriate to extend to currency dealers and exchangers the requirement to report suspicious transactions.[12] An effective anti-money laundering program must cover a broad range of financial institutions to make it increasingly difficult for criminals to evade detection by re-routing illicit transactions through financial institutions or products that are subject to a narrower scope of anti-money laundering rules than other types of financial institutions. The proposed rule is intended to foster detection and reporting of illegal activity involving the use of currency dealer/exchange services, including, among other things, money laundering and terrorist financing. In addition, the proposed rule is intended to contribute to international efforts to combat the abuse of currency dealers and exchangers by criminals.

Although currency dealers and exchangers offer products and services predominantly used for legitimate purposes, they can be abused by criminals seeking to obscure the source of illegally-derived funds. For example, small denomination bills may be exchanged for large denomination bills in order to aid in the smuggling of cash, or to disguise the origin of the cash.[13] In addition, currency dealers and exchangers have been used to launder narcotics proceeds being transferred between the United States and Latin America.[14]

The international consensus is that currency dealers and exchangers are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing.* Special Recommendation Four provides that:

> [i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF's Special Recommendation Four, the term ''financial institutions'' is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, bureaux de change.[15] On December 4, 2001, the European Parliament and the Council of the European Union issued *Directive 2001/97/EC amending Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* for the purpose of, among other things, reinforcing that anti-money laundering provisions should apply to currency exchange offices given expression of concern by the European Parliament regarding the vulnerability of such entities to money laundering. Finally, the experience of foreign governments with the use of currency dealers and exchangers in money laundering schemes emphasizes the importance of mandating suspicious activity reporting by currency dealers and exchangers.[16]

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[8] The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[9] This recommendation revises the original recommendation, issued in 1990, that required institutions to be either ''*permitted or* required'' to report. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

[10] The Organization of American States (''OAS'') reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

[11] 65 FR 13683, 13689 n. 26 (March 14, 2000).

[12] The terms currency ''dealer'' in 31 CFR 103.11(uu)(1) were intended to be interchangeable to ensure that the regulation captured the same type of activity whether denominated as exchanging or dealing—the physical exchange of currency for retail customers.

[13] *See e.g., U.S.*, v. *Farese, 248 F.3d 1056*, 1059 (11th Cir. 2001) (exchanging large-denomination bills for small-denomination bills facilitates money laundering by reducing the volume of the bills.)

[14] *See, e.g., U.S.* v. *All Monies in Account No. 90–3617–3,* 754 F. Supp. 1467 (D. Hi. 1991) (describing how drug traffickers laundered narcotics proceeds through a currency exchanger located in Peru, which had bank accounts in the United States).

[15] *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire,* Special Recommendation Four, paragraph 19 (March 27, 2002). FATF defines ''bureaux de change'' as ''institutions which carry out retail foreign exchange operations.'' *See also Financial Action Task Force Annual Report, supra,* Annex 1 (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change).

[16] *See, e.g.*, London Men Found Guilty of Laundering £3 Million Through Bureaux De Change, *HM Customs and Excise* (October 9, 2001); Legislative Summary for Bill C–22: An Act to

III. Specific Provisions

A. Reporting Institutions

FinCEN proposes amending paragraph 103.20(a)(1) to add currency dealers and exchangers to the list of money services businesses to which the MSB SAR rule applies. As explained above, this reflects growing concern on the part of FinCEN and the international community about the vulnerability of currency dealers and exchangers to money laundering and potentially to terrorist financing. It should be noted that, under the terms of the MSB SAR rule and the amendments to the rule proposed in this document, a money services business is subject to suspicious transaction reporting only with respect to transactions that involve or relate to the business activities described in 103.11(uu) (1), (3), (4), (5), or (6). Thus, for example, a currency dealer or exchanger (a money services business described in 103.11(uu)(1)) that is also a check casher (a money services business described in 103.11(uu)(2)) would not be required to report under the MSB SAR rule with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, a suspicious currency exchange.[17]

B. Reportable Transactions

FinCEN is proposing to amend the MSB SAR rule by adding a fourth reporting category, described in proposed paragraph (a)(2)(iv), involving the use of a money services business to facilitate criminal activity. The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the money services business suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.[18] The addition of this reporting category is not intended to effect a substantive change in the rule. Such transactions should be reported under the broad language contained in the third reporting category, requiring the reporting of transactions with ''no business or apparent lawful purpose.'' FinCEN believes that this broad language should be interpreted to require the reporting of transactions that appear linked to any form of criminal activity. Nevertheless, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule.

C. Filing Instructions

This document proposes amending paragraph 103.20(b)(3) to include FinCEN's Financial Institution Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Money services businesses reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–MSB to the extent required by 31 CFR 103.20.

IV. Submission of Comments

An original and four copies of any written hard copy comment (but not of comments sent via E-Mail), must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The average currency exchange is approximately $300, an amount which is substantially below the $2000 threshold that triggers reporting under the proposed amendments to 31 CFR 103.20. Thus, FinCEN believes the rule will not have a significant economic burden on small entities.

VI. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VII. Paperwork Reduction Act

Recordkeeping Requirements of 31 CFR 103.20. The collection of information contained in this notice of proposed rulemaking is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia 22183. Comments on the collection of information should be received by December 16, 2002. In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 103.20 is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if adopted as proposed, would result in the annual filing of a total of 3,100 SAR–MSB forms by currency dealers and exchangers. This result is an estimate, based on a projection of the size and volume of the industry.

Description of Respondents: Currency dealers and exchangers.

Estimated Number of Respondents: 3,100.

Frequency: As required.

Estimate of Burden: The reporting burden of 31 CFR 103.20 will be reflected in the burden of the form, Suspicious Activity Report-MSB. The recordkeeping burden of 31 CFR 103.20 is estimated as an average of 20 minutes per form.

Estimate of Total Annual Recordkeeping Burden on Respondents: Recordkeeping burden estimate = 1,033 hours.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information

Facilitate Combatting the Laundering of Proceeds of Crime, to Establish the Financial Transactions and Reports Analysis Centre of Canada and to Amend and Repeal Certain Acts in Consequence Thereof, LS–355E (May 5, 2000) (''Foreign currency-exchange houses are the second most common vehicle for money laundering. In addition to being less regulated than chartered banks, they provide services such as converting small denominations of cash into larger, less suspicious, denominations.''); *Financial Action Task Force 1997–1998 Report on Money Laundering Typologies,* (February 12, 1998) (In a typologies exercise conducted by FATF for the purpose of providing law enforcement and regulators a forum to discuss trends in money laundering, FATF found an increase in the use of currency exchangers in money laundering operations); *Financial Action Task Force Annual Report, supra,* Annex 1 (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change) (Abuse of currency exchangers by money launderers has lead FATF to conclude that ''*bureaux de change should be subject to the same anti-money laundering regulations as any other financial institution** * * Of particular importance are those on identification requirements, suspicious transaction reporting, due diligence and record-keeping.'').

[17] FinCEN is continuing to review whether it is appropriate to extend the suspicious activity reporting requirement to other categories of money services businesses not currently subject to the rule.

[18] The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT ACT to make this point clear. *See* 31 CFR 103.19, and 103.21.

is necessary for the proper performance of the mission of FinCEN, including whether the information will have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, Banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR part 103 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 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart B, amend § 103.20 as follows:

a. Revise the first sentence of paragraph (a)(1),

b. Add new paragraph (a)(2)(iv), and

c. Add a new sentence to the end of paragraph (b)(3).

The additons and revisions read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, described in § 103.11(uu) (1), (3), (4), (5), or (6), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. * * *

(2) * * *

(iv) Involves use of the money services business to facilitate criminal activity.

* * * * *

(b) * * *

(3) * * * Money services businesses wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–MSB if required by this section.

* * * * *

Dated: October 10, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–26364 Filed 10–16–02; 8:45 am]

BILLING CODE 4810–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2319; MB Docket No. 02–295; RM–10580]

Radio Broadcasting Services; Gonzales, Louisiana; Hattiesburg, Mississippi; Houma and Westwego, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* requests comments on a petition for rule making filed jointly on behalf of Capstar TX Limited Partnership, licensee of Station WUSW(FM), Channel 279C, Hattiesburg, Mississisppi, and Clear Channel Radio Licenses, Inc., licensee of Station KFXN(FM), Channel 281C, Houma, Louisiana, (''Joint Petitioners''). The Joint Petitioners propose to downgrade Channel 279C, Station WUSW, to Channel 279C0 and change the community of license of Station WUSW from Hattiesburg, Mississippi, to Westwego, Louisiana. In addition, the Joint Petitioners propose to downgrade Channel 281C, Station KFXN, to Channel 281CO and move Station KFXN from Houma to Gonzales. The coordinates for requested Channel 279C0 at Westwego, Louisiana, are 29–54–52 NL and 89–54–34 WL with a site restriction of 22.5 kilometers (14 miles) east of Westwego. The coordinates for requested Channel 281C0 at Gonzales are 29–52–55 NL and 90–56–07 WL, with a site restriction of 39.5 kilometers (24.6 miles) south of Gonzales.

Joint Petitioner's reallotment proposals for Stations WUSW and KFXN comply with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 279C0 at Westwego, Louisiana, or the use of Channel 281C0 at Gonzales, Louisiana, or require the Joint Petitions to demonstrate the availability of additional equivalent class channels for use by other parties.

DATES: Comments must be filed on or before November 18, 2002, and reply comments on or before December 3, 2002.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Joint Petitioners' counsel, as follows: Mark N. Lipp, Esq., J. Thomas Nolan, Esq., and Tamara Y. Brown, Esq., Shook, Hardy & Bacon; 600 14th Street, NW., Suite 800; Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–295, adopted September 11, 2002, and released September 27, 2002. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW, CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. §§ 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Gonzales, Channel 281C0, and Westwego, Channel 279CO, and removing Channel 281C at Houma.

3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 279C at Hattiesburg.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–26360 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 67, No. 201

Thursday, October 17, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–.

Form Number: N/A.

Title: Certification Agreement.

Type of Submission: New.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual Reporting Burden

Respondents: 1,100.

Total annual responses: 5,500.

Total annual hours requested: 3,700 hours.

Dated: October 7, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–26404 Filed 10–16–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agriculture Service

Notice of Termination of the Trade Leads Polling Service and Removal of Trade Leads From the Internet

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice provides details of changes that will affect the distribution of Trade Leads to U.S. exporters of food, agricultural, seafood and forest products.

DATES: Effective date of changes being implemented is December 16, 2002. Comments on this notice must be received by 45 days from date of publication in the **Federal Register** to be assured of consideration.

REQUESTS FOR COMMENTS: Send comments regarding the proposed changes to the AgExport Services Division of the Foreign Agricultural Service (FAS). These changes pertain to the distribution of Trade Leads via e-mail and the Fax Broadcast medium. Comments should be sent to Dan Berman, Director, Ag Export Services Division, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1052, Washington, DC 20250–1052. All written comments received will be available for public inspection at the above address Monday thru Friday between 8 a.m. to 5 p.m. Phone (202) 720–6343, Fax: (202) 690–0193.

SUPPLEMENTARY INFORMATION:

Title: Trade Leads Distribution.

The Trade Leads program has served as an effective tool to expand U.S. agricultural exports by helping U.S. companies sell their products outside of the United States. FAS overseas offices collect the Trade Lead notices. Trade Leads provide detailed information on U.S. products that are being sought by foreign buyers. The leads are forwarded to the AgConnections office of the AgExport Services Division. After editing the leads, they are disseminated using the Internet, Fax Polling, by e-mail to qualified exporters, and to U.S. multiplier groups. These leads are offered to both new and experienced exporters.

AgExport Services Division is proposing to change how Trade Leads are to be disseminated in the future. Following the suggestions and comments by many of the FAS overseas offices, FAS will discontinue distribution of Trade Leads by the fax polling method and through the Internet. Written notice will be provided to all individuals and companies that currently access leads through either of these methods. The notice will include instructions on how to obtain the information after the service is discontinued. AgExport Services Division will continue to distribute leads to FAS multiplier groups with no interruption in service. Changing FAS dissemination methods will give qualified U.S. exporters of agricultural, food, seafood and forest products priority and immediate access to export sales opportunities from foreign buyers that are seeking U.S. products.

FAS will collect e-mail addresses from exporters that wish to receive this information. As an alternative for those companies that do not currently have an e-mail address, AgExport Services Division will ascertain a fax number for dissemination purposes. Only U.S. companies will be eligible to receive daily Trade Leads inquiries. All comments to this notice will become a matter of public record.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 02–26400 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Crupina Vegetation Management, Okanogan and Wenatchee National Forests, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of treating populations of *Crupina vulgaris,* an aggressive, non-native plant species invading the north shore of Lake Chelan, Washington, using an integrated weed management approach. Approximately 500 acres of Crupina would be treated in the Lake Chelan-Sawtooth Wilderness and areas adjacent to the wilderness, and along the North Shore of Lake Chelan, including private land where landowners are willing. An additional 4,500 acres could potentially be treated in the Rex Creek Fire area. Treatment would include manual, mechanical, cultural and chemical methods.

ADDRESSES: Send written comments to Crupina Project, Chelan Ranger District, 428 West Woodin Avenue, Chelan, Washington 98816.

FOR FURTHER INFORMATION CONTACT: Jim Archambeault, Crupina Project Team Leader, Okanogan-Wenatchee National Forest, Forest Service, (509) 997–9738 or Mallory Lenz, Wildlife Biologist, Chelan Ranger District (509) 682–2576.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to contain and, if possible, ultimately eradicate *Crupina vulgaris* (Crupina) from the current area of infestation, thus preventing Crupina from further compromising the wilderness resource, other resource values, and ecosystem integrity and also preventing expansion of the current area of infestation. The need for this action is the result of the 55,000 acre Rex Creek fire of 2001. The fire burned over the entire infested area and created favorable conditions for the continued spread of Crupina by reducing vegetation. Modeling of potential favorable habitat shows that there is approximately 4500 acres available for further weed invasion.

Crupina vulgaris (Crupina) is an aggressive, non-native Class A noxious weed (eradicate were found) that has invaded the north shore of Lake Chelan, including portions of the Lake Chelan Sawtooth Wilderness, developed National Forest recreation sites, and private lands. In addition, the potential exists for Crupina to spread outside of the current infested areas onto the Lake Chelan National Recreation Area, other parts of the National Forest, and further infest additional private agriculture areas. The Rex Creek Fire of 2001 burned the entire infested area, reducing the vegetative cover and generally improving and expanding site conditions or an annual weed species such as Crupina. Since Crupina prefers unshaded sites, reduction of canopy cover, due to fires in 2001, has created thousands of acres of additional potentially suitable habitat for Crupina.

This weed threatens the wilderness resource and other resource values because it displaces native plants, and changes plant community structure and function. Changes in plant community structure may alter fuel characteristics and ecosystems processes including: plant succession, nutrient cycling, hydrologic function and productivity.

Over the last 15 years, 60–100 acres of the approximately 500 infested acres have been treated by repeated hand pulling along the Lakeshore Trail corridor to reduce plant populations and seed production. These control efforts have successfully prevented Crupina from spreading outside the infested area. However, attempts to eradicate the entire infestation have been unsuccessful due to lack of consistent multiyear funding, ineffectiveness of hand pulling as the primary treatment method, and incomplete treatments where herbicide spraying was done on private land. The Wenatchee National Forest has previously entered into a memorandum of understanding with the State of Washington wherein WNF has agreed to comply with state law, which includes eradication of all Class A noxious weeds.

Most treatment would occur within the Congressionally-designated Lake Chelan-Sawtooth Wilderness. Regulations identify the objective of Wilderness administration to preserve and protect wilderness character while allowing for public use, and state that wilderness resources shall be managed to promote, perpetuate and, where necessary, restore the wilderness character (36 CFR 293.2).

According to the Wenatchee National Forest Land and Resource Management Plan (Forest Plan), existing populations of noxious weeds should be contained, controlled or eradicated as budget allows, with priority given to Class A weeds. The first priority for treatment is to be given to projects adjacent to agricultural lands, with second priority given to areas within or threatening Wilderness, both of which are present in the treatment area (Forestwide Standards and Guidelines, pages IV–89 and IV–92). The Forest Plan's goal for Wilderness is in part to preserve and protect the natural character for future generations. The Forest Plan also gives additional Wilderness direction to rehabilitate degraded sites caused by management activities or visitor use (Forest Plan, pages IV–227 and IV–230).

Some additional treatment is proposed in the Dispersed Recreation, Unroaded, Non-motorized (RE–3) Management Area, adjacent to the Lake Chelan-Sawtooth Wilderness along the North Shore of Lake Chelan at Prince Creek and Moore Point. The goal for RE–3 is to provide dispersed recreation opportunities in a non-motorized setting where landscape changes are not generally evident with a natural or natural-appearing environment. All treatment areas along the lakeshore and other riparian areas are subject to riparian reserve standards and guidelines. Herbicides will be applied in a manner consistent with Aquatic Conservation Strategy objectives.

In order to accomplish the goals set forth in the Wenatchee Forest Plan, the desired condition is to contain and ultimately eradicate Crupina from the current area of infestation, and create conditions where native plants will re-colonize the treated areas to support wilderness and recreation management objectives. Treatments would be designed to prevent Crupina from further compromising the wilderness resource, other resource values, and ecosystem integrity and also prevent expansion of the current area of infestation.

Proposed Action

The proposal is to develop and implement a multi-year integrated weed management approach to treat approximately 500 acres of the Class A noxious weed *Crupina vulgaris* (Crupina) located within and adjacent to the Lake Chelan-Sawtooth Wilderness on the north shore of Lake Chelan in Washington State. Up to 4500 acres of new infestation could also be treated within the Rex Creek Fire Area. Within the proposed treatment area, Crupina occurs as scattered patches in predominantly non-forested sites between Prince Creek and Hunt's Bluff. The Crupina patches occur at elevations ranging between the shore of Lake Chelan (11000 feet) up to 3000 feet, and occasionally up to 4000 feet. Patch size varies between 55 acres and approximately 400 square feet. Surrounding the areas of historic infestation are approximately 4500 acres of potentially suitable habitat. This habitat, all of which lies within the Rex Creek fire area, has been modeled using suitable habitat characteristics: aspect (south, southwest, and west), soils (generally rocky outcrops and alluvial fans), slope (0–60%), and elevation (1100′ to 4000′).

The treatment methods for each infested site would include some combination of the following methods:

- Chemical: Spot application (backpack spraying) of herbicides: picloram in upland areas, glyphosate near waterways
- Manual: Hand pulling, grubbing
- Mechanical: Heat treatment (propane heated disk), helicopter staging of personnel and materials
- Cultural: Reseeding treated areas, using native seed, where the other non-native vegetation might re-occupy the treated areas.

The appropriate treatment method for each site will be selected based on the following criteria:

- Proximity of Threatened, Endangered and Sensitive plants (hand pull only) that would be impacted by chemical spray or drift
- Riparian areas (hand pulling and/or glyphosate)
- Sensitive or erodible soils (herbicide treatment to minimize foot traffic)
- Composition of existing native plant community (herbicide/reseed where native plant population is already compromised)
- Accessibility for foot traffic (prioritize treatment in adjacent areas). Treatment priority will be placed on sites with the greatest risk of spread.

Possible Alternatives

Additional alternative to be analyzed is the use of all treatment methods listed in the proposed action except herbicides or mechanical. All action alternatives will consider treatments on adjacent private lands, which would require cooperation from willing landowners.

Scoping Process

Scoping is an ongoing process throughout the planning process. A scoping letter was mailed in early June to individuals and organizations on the Chelan Ranger District's mailing list and adjacent landowners. The Chelan District Ranger has been on the local radio and the local paper has covered the project. The draft EIS will be circulated to those who indicated an interest in this specific project.

Preliminary Issues

Previous environmental analysis and decisions made in previous Environmental Assessments have provided a preliminary list of issues, and these have been reviewed and supplemented by Forest staff. These issues include:

- The potential continued spread of this weed, particularly in light of conditions created by the Red Creek Fire of 2001.
- Concern about the use of, and application methods of, herbicides and the effects on surrounding vegetation and other resources.
- The project area is located mostly in the Lake Chelan-Sawtooth Wilderness and the use of mechanical methods of control and the presence of control personnel could affect wilderness resources.
- Concern that, based on the results of past control measures, the proposed control measures might not be effective.
- Concern that mechanical and manual control efforts could cause soil disturbance.
- Concern about the effects of treatments on recreation use in the project area and adjacent areas.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft EIS will be released for public comment November 2002. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The final EIS is to be released in January 2003.

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 a draft EIS 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 EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. (40 CFR 1501.7 and 1508.22).

The Forest Service is the lead agency. The Regional Forester for the Pacific Northwest Region is the Responsible Official. The Responsible Official will decide which, if any, of the proposed projects will be implemented. The Crupina Vegetation Management decision and the reasons for the decision will be documented in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: October 9, 2002.

Richard W. Sowa,

Acting Deputy Regional Forester.

[FR Doc. 02–26381 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Modoc Resource Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Wednesday, November 13, 2002, in Alturas, California for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting November 13th begins at 4 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include approval of September 11, 2002 minutes, nomination and selection of a new chairperson for the new fiscal year 2003, reports from subcommittees, review and selection through roll call votes of Fiscal Year 2003 projects that will improve the maintenance of existing infrastructure, implement stewardship objectives that enhance forest ecosystems, and restore and improve health and water quality that

meet the intent of Pub. L. 106–393. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Kathleen Jordan, Acting Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Elizabeth Cavasso,

Acting Forest Supervisor.

[FR Doc. 02–26369 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou Resource Advisory Committee (RAC) will meet on Thursday, November 7, 2002. The meeting will begin at 9 a.m. and conclude at approximately 4:30 p.m. This meeting will be held at the Harbor Sanitary Building, at 16408 Lower Harbor Road, in Harbor, Oregon. The tentative agenda includes: (1) The proposed FY 03 RAC administrative budget, (2) FY 02 projects update, (3) review and recommendation of FY 03 projects, and (4) Public Forum. The public forum is scheduled to begin at 11:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the public forum. The written comments may be submitted prior to the November 7 meeting by sending them to the Designated Federal Official Scott D. Conroy at the address given below.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official Scott D. Conroy; Rogue & Siskiyou national forests; P.O. Box 520, Medford, Oregon 97501; (541) 858–2200.

Dated: October 10, 2002.

Scott D. Conroy,

Forest Supervisor, Rogue River and Siskiyou National Forests.

[FR Doc. 02–26375 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: October 23–24, 2002.

Place: Iberville Suites, 910 Iberville Street, New Orleans, Louisiana 70112.

Time: 7:30 am—5:00 pm on October 23, and 7:30am—12:00 (Noon) on October 24, 2002.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include a review and discussion of GIPSA's financial status and of the future proposal for a new fee structure; and updates on FGIS' program plans; on the Artificial Neural Networking (ANN) pilot program, and process verification proposal. Discussions also will be provided on future inspection equipment alternatives, wheat end-use functionality research, FGIS' Central Monitoring Laboratory, recent and planned inspection procedural changes, and on any other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: October 10, 2002.

Donna Reifschneider,

Administrator.

[FR Doc. 02–26399 Filed 10–16–02; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

[Docket No. 021007230–2230–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of New Privacy Act System of Records: Commerce/National Oceanic and Atmospheric Administration System 14: Dr. Nancy Foster Scholarship Program.

SUMMARY: The Department of Commerce is creating a new system of records listed under the Dr. Nancy Foster Scholarship Program: Scholarship Recipients. We invite public comment on the system announced in this position.

DATES: *Effective Date:* The system will become effective without further notice on November 18, 2002 unless comments dictate otherwise.

Comment Date: To be considered, written comments must be submitted on or before November 18, 2002.

ADDRESSES: Comments should be sent to the Dr. Nancy Foster Scholarship Program, *Attention:* Privacy Act Comments, Office of the Assistant Administrator, National Ocean Service, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster Scholarship Program, Attention: Privacy Act Comments, Office of the Assistant Administrator, National Ocean Service, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910, or by phone at (301) 713–3074.

SUPPLEMENTARY INFORMATION: The Dr. Nancy Foster Scholarship Program provides support for outstanding scholarship and encourages independent graduate-level research in oceanography, marine biology, or maritime archaeology, particularly by women and members of minority groups. For fall 2002, Dr. Nancy Foster Scholarships will carry a 12-month stipend for each student of $20,000 and an annual tuition allowance of up to $12,000.

COMMERCE/NOAA–14

SYSTEM NAME:

Dr. Nancy Foster Scholarship Program.

SYSTEM LOCATION:

The National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Scholarship applicants and recipients of scholarship awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application Packages, including: General Information Sheet, Statement of Intent, Institute Certification, Transcripts, and Letters of Recommendation; Annual Progress Reports; Tuition Statements and Receipts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513 sec. 318).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records will be used to track scholarship recipients' academic progress and to make annual financial awards.

The following routine uses apply:

1. A record from this system of records may be disclosed to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement information, or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

2. A record from this system of records may be disclosed to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring, or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

4. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

5. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

6. A record in this system may be transferred to the Office of Personnel Management for personnel research purposes, as a data source for management information; for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained; or for related manpower studies.

7. A record from this system of records may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder or distributed to individuals and management; microfilm and electronic storage media.

RETRIEVABILITY:

Scholarship recipient files will be alphabetized by recipient's last name. Documents may be retrieved by the individual's name.

SAFEGUARDS:

Buildings employ security systems. Records are maintained in areas accessible only to authorized personnel who are properly screened and cleared.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the agency's records disposition schedule.

SYSTEM MANAGER AND ADDRESS:

Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

NOTIFICATION PROCEDURE:

Information may be obtained from: Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Program Administrator, Dr. Nancy Foster Scholarship Program, National Ocean Service, Office of the Assistant Administrator, 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910–3281.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4B. Use above address.

RECORD SOURCE CATEGORIES:

Scholarship applicants and recipients.

Dated: October 9, 2002.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–26239 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

[Docket No. 021007231–2231–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new System of Records: Commerce/NOAA System-15: Alaska Region-North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.

SUMMARY: This notice announces the Department's proposal for a new system of records under the Privacy Act. The system is entitled ''Commerce/NOAA System-15: Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.'' The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) is creating a new system of records for monitoring the performance of observers in the North Pacific groundfish fisheries. All observers hired by contractors and deployed on board vessels and at shoreside processing facilities that participate in the Alaska groundfish fisheries must satisfactorily execute their duties according to NMFS standards of observer conduct. This record system is designed to: (1) Monitor the performance of these observers; (2) ensure satisfactory compliance with NMFS standards of observer conduct; and (3) continue the

collection of data for the management of the North Pacific groundfish fisheries.

DATES: The system will become effective without further notice on November 15, 2002 unless comments dictate otherwise.

Written comments must be submitted on or before November 15, 2002.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, *Attn:* Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska, 99802.

FOR FURTHER INFORMATION CONTACT: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION: Pursuant to the implementation of the North Pacific Groundfish Observer Program (50 CFR 679.50), contractors hiring and deploying observers on board vessels and at shoreside processing facilities that participate in the Alaska groundfish fisheries are required to monitor observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS standards of observer conduct. This monitoring is best accomplished through access to the observer performance evaluations conducted by NMFS for each completed deployment by each observer. A new system of records is being created by NMFS, Alaska Region, to maintain this monitoring. This record system will be listed under Commerce/NOAA System 15-Alaska Region—North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.

NMFS finds no probable or potential adverse effects of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, electronic data will be stored securely with access limited to those NMFS employees whose official duties require access. Paper copies of records are made to fax information to the contractors included in this system of records. The paper copies are maintained in personnel folders in locked file cabinets in rooms accessible only to authorized personnel.

COMMERCE/NOAA–15

SYSTEM NAME:

Alaska Region-North Pacific Groundfish Observer Program: Certified Domestic Observer Final Evaluations.

SYSTEM LOCATION:

The National Marine Fisheries Service, Alaska Fisheries Science Center, North Pacific Groundfish Observer Program, 7600 Sand Point Way NE, Building 4, Seattle, Washington 98115–0070.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NMFS-certified groundfish observers and NMFS-certified contractors (observer provider companies).

Categories of Records in the System:

Certified Domestic Observer Final Evaluations are completed by North Pacific Groundfish Observer Program staff for each NMFS-certified observer upon the completion of each deployment. A deployment is a period of time not to exceed 90 days when an observer is assigned to work aboard a fishing vessel or in a shoreside processor. The Certified Domestic Observer Final Evaluations include the following information: Observer name; debriefer name; cruise number; future training recommendation; mid-cruise briefing requirement; deployment history, including vessel or plant names, and dates deployed at each; deployment scores; and narrative evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, or rule, regulation or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigation or prosecuting such violation or charged with enforcing or implementing the statute or contract, or rule, regulation or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Department decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed to a Federal, state, local, or international agency, in response to its request, in connection with the assignment, hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

5. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

6. A record in this system of records may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

7. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether disclosure thereof is required by the Freedom of Information Act (5 U.S.C. 552).

8. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract, but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

9. A record in this system may be transferred to the Office of Personnel Management for personnel research purposes, as a data source for management information, for the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or related to manpower studies.

10. A record in this system may be disclosed to the Administrator, General Services, or his designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations

governing inspection of records for this purpose and any other relevant (*i.e.* GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

11. NMFS will make available to each NMFS-certified contractor a NMFS-generated final evaluation, containing the information described above, for each observer deployment made under contract with that contractor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage on computers or disk; paper records in file folders individually named and kept in secure file cabinets.

RETRIEVABILITY:

Observers are assigned observer numbers and ''cruise'' (or deployment) numbers. Documents can be electronically retrieved by observer name or observer number combined with cruise number and year of deployment. Contractors included in this system of records do not have electronic access to this information. Paper printouts of electronic records will be made by NMFS staff to transmit via fax to the contractors included in this system of records.

SAFEGUARDS:

Grounds and buildings employ security systems. Where electronic information is retrievable by terminal, all safeguards appropriate to secure the telecommunications system (hardware and software) are utilized. Paper records are maintained in secured file cabinets in areas that are accessible only to authorized personnel. NMFS-certified contractors, to whom access to this information is granted in accordance with this systems of records routine uses provision, are instructed on the confidential nature of this information.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with the National Archives Records Administration and the Department of Commerce record keeping procedures.

SYSTEM MANAGER(S) AND ADDRESS:

North Pacific Groundfish Observer Program Task Leader, Alaska Fisheries Science Center, North Pacific Groundfish Observer Program, 7600 Sand Point Way NE, BIN C15700, Building 4, Seattle, Washington, 98115–0070.

NOTIFICATION PROCEDURE:

Privacy Act information contained in this system of records may be requested from the system manager at the address above and must be approved by the Office of General Counsel, National Oceanic and Atmospheric Administration, Alaska Region. A requestor, including a NMFS-certified observer seeking information on himself or herself, should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department of Commerce's rules which appear in 15 CFR part 4b—Privacy Act.

RECORD ACCESS PROCEDURES:

Upon completion of each deployment debriefing, NMFS will fax a copy of the observer's final deployment evaluation to the observer's contracting company. The observer provider company must keep the observer evaluation record confidential and cannot release it without prior written release from the observer. Each observer is provided with a copy of his or her final evaluation upon completion of that debriefing. A request from a NMFS-certified observer for past evaluations should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b—Privacy Act.

RECORD SOURCE CATEGORIES:

NMFS-certified observers and North Pacific Groundfish Observer Program staff.

Dated: October 9, 2002.

Brenda S. Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–26240 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 39–2002]

Foreign-Trade Zone 143—Sacramento, CA; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), West Sacramento, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Sacramento-Yolo Port District, grantee of FTZ 143, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in West Sacramento, California. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 1115 Shore Street, West Sacramento, California (65.824 square feet of enclosed space on 4 acres). The facilities (28 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: Petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging

from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 917 7th Street, 2nd Floor, Sacramento, CA 95814.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26410 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–2002]

Foreign-Trade Zone 170—Indianapolis, IN; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), New Albany, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 170, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in New Albany, Indiana. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 800 Industrial Boulevard, New Albany, Indiana (53,000 square feet of enclosed space on 14.05 acres). The facilities (55 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 11405 North Pennsylvania Street, Suite 106, Carmel, IN 46032.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26411 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 41–2002]

Foreign-Trade Zone 182—Fort Wayne, IN, Application For Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Warsaw, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Fort Wayne, Indiana, grantee of FTZ 182, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Warsaw, Indiana. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites in Warsaw: (1) 3025 Old West Road 30 (33,520 square feet of enclosed space on 9.65 acres); and (2) 1406 West Winona Avenue (26,670 square feet of enclosed space on 16.69 acres). The facilities (28 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: Petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions Via Express/Package Delivery Services:* Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. *Submissions Via the U.S. Postal Service:* Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 11405 North Pennsylvania Street, Suite 106, Carmel, IN 46032.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26412 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2002]

Foreign-Trade Zone 29—Louisville, KY; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation, (Pigments, Inks, and Varnish Products), Elizabethtown, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of FTZ 29, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Elizabethtown, Kentucky. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites in Elizabethtown: (1) 305 Ring Road (2 buildings, 147,694 square feet of enclosed space with possible addition of 138,631 square feet, on 102 acres); and (2) 51 Harvest Drive (3 buildings, 156,600 square feet of enclosed space, on 23 acres). The facilities (175 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: Petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and

iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 601 West Broadway, Room 634B, Louisville, KY 40202.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26413 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2002]

Foreign-Trade Zone 47—Boone County, KY; Application For Foreign-Trade Subzone Status Flint Ink North America Corporation (Pigments, Inks, and Varnish Products) Erlanger, KY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northern Kentucky Foreign Trade Zone, Inc./Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 47, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Erlanger, Kentucky. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 1835 Airport Exchange Boulevard, Erlanger, Kentucky (97,926 square feet of enclosed space on 2.3 acres). The facilities (52 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650, Cincinnati, OH 45202.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26417 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–2002]

Foreign-Trade Zone 189—Kent-Ottawa-Muskegon Counties, MI Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Holland and Zeeland, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kent-Ottawa-Muskegon Foreign Trade Zone, grantee of FTZ 189, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of the CDR Pigments and Dispersions Division of Flint Ink North America Corporation (Flint Ink) in Holland and Zeeland, Michigan. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites: (1) 471 Howard Avenue, Holland, Michigan (3 buildings, 236,239 square feet of enclosed space, on 30 acres); and (2) 9548 Adams, Zeeland, Michigan (1 building, 100,000 square feet, on 18 acres). The facilities (123 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 401 West Fulton Street, Suite 309C, Grand Rapids, MI 49504.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26418 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–2002]

Foreign-Trade Zone 46—Cincinnati, OH; Application for Foreign-Trade Subzone Status; Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Cincinnati and Lebanon, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation and its CDR Pigments and Dispersions Division (Flint Ink) in Cincinnati and Lebanon, Ohio. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at three sites: (1) 410 Glendale Milford Road, Cincinnati, Ohio (4 buildings, 111,000 square feet of enclosed space, on 12.55 acres); (2) 2675 Henkle Drive, Lebanon, Ohio (1 building, 52,000 square feet with a possible addition of 5,000 square feet, on 6 acres); and 4670 Dues Drive, Cincinnati, Ohio (1 building, 23,000 square feet, on 2.94 acres). The facilities (197 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8 % *ad valorem*; potential finished products have rates ranging from duty-free to 9.2 %) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2 %; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 36 East 7th Street, Suite 2650, Cincinnati, OH 45202.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26419 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 46–2002]

Foreign-Trade Zone 105—Providence, RI; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products), Lincoln, RI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Rhode Island Economic Development Corp., grantee of FTZ 105, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Lincoln, Rhode Island. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 40 Albion Road, Lincoln, Rhode Island (21,930 square feet of enclosed space on 3.5 acres). The facilities (26 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their

derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem*; potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, One West Exchange Street, Providence, RI 02903.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26420 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2002]

Foreign-Trade Zone 21—Charleston, SC; Application for Foreign-Trade Subzone Status, Flint Ink North America Corporation, (Pigments, Inks, and Varnish Products), Beaufort, SC

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 21, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Beaufort, South Carolina. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at 224 Parker Drive, Beaufort, South Carolina (69,200 square feet of enclosed space on 27 acres). The facilities (33 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the

Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 31, 2002.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 5300 International Boulevard, Suite 201–C, Charleston, SC 29418.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26415 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1251]

Approval of Processing Activity Within Foreign-Trade Zone 113 Midlothian, TX; Siemens Westinghouse Power Corporation (Inc.), (Industrial Power Generation Equipment)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

WHEREAS, Foreign-Trade Zone Operations, Inc., operator of FTZ 113, has requested authority on behalf of Siemens Westinghouse Power Corporation (Inc.), to process foreign-origin turbines and domestic industrial power generators under zone procedures within FTZ 113 (filed 4–29–2002, FTZ Docket 21–2002), and;

WHEREAS, the application seeks FTZ authority to admit foreign-origin steam turbines and domestically-produced electric generators and to withdraw the equipment for entry as generator sets; and,

WHEREAS, notice inviting public comment has been given in the **Federal Register** (67 FR 31180, 5–9–2002); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

NOW, THEREFORE, the Board hereby approves the request, subject to the Act and the Board's regulations, including Section 400.28.

Signed in Washington, DC, this 7th day of October, 2000.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26414 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–2002]

Foreign-Trade Zone 185—Culpeper, Virginia; Application For Foreign-Trade Subzone Status, Flint Ink North America Corporation (Pigments, Inks, and Varnish Products) Weyers Cave, VA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Culpeper County Chamber of Commerce, grantee of FTZ 185, requesting special-purpose subzone status for the manufacturing and distribution facilities (pigments, inks, and varnish products) of Flint Ink North America Corporation (Flint Ink) in Weyers Cave, Virginia. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 7, 2002.

The Flint Ink facilities are located at two sites in Weyers Cave: (1) 106 Triangle Drive (57,500 square feet of enclosed space on 7.1 acres); and (2) 447 Weyers Cave, Road (52,000 square feet of enclosed space on 22.455 acres. The facilities (51 employees) are used to manufacture, test, package, and warehouse pigments, inks, and varnish products primarily for use by the graphic arts industry.

Foreign-sourced materials account for approximately 10 to 50 percent of the finished-product value of Flint Ink's current products, and may include items from the following categories: petroleum oils and mineral oils, distillates; hydrogen chloride and chlorosulfuric acid; sodium and potassium hydroxides; chlorides, chloride oxides, chloride hydroxides, bromides, bromide oxides, iodides and iodide oxides; nitrites and nitrates; acyclic alcohols and their derivatives; phenols and phenol-alcohols; ketones, quinines, and their derivatives; polycarboxylic acids and their derivatives; carboxylic acids and their derivatives; amine function compounds; carboxyamide-function compounds and amide-function compounds of carbonic acid; heterocyclic compounds, and nucleic acids and their salts; nucleic acids and their salts, and other heterocyclic compounds; synthetic organic coloring matter, preparations based thereon, and synthetic organic products used as fluorescent brightening agents or luminophores; other coloring matter; printing ink, writing or drawing ink, and other inks; artificial waxes and prepared waxes; rosin, resin, and derivatives thereof; reaction initiators, reaction accelerators, and catalytic preparations; polymers of vinyl chloride or other halogenated olefins in primary forms; polymers of vinyl acetate or other vinyl esters, and other vinyl polymers, in primary forms; petroleum resins, coumarone-indene resins, polyterpenes, polysulfides, polysulfones, and other products in primary forms; and cellulose and its chemical derivatives in primary forms.

Zone procedures would allow the company to choose the duty rates that apply to the finished products (the primary initial finished product has a duty rate of 1.8% *ad valorem;* potential finished products have rates ranging from duty-free to 9.2%) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 9.2%; average of 7%). This savings from inverted tariffs would be the primary benefit derived from subzone status. FTZ procedures would also exempt Flint Ink from Customs duty payments on foreign materials used in production for export. In addition, Flint Ink states that it would realize logistical/procedural and other benefits. FTZ status may also make a site eligible for benefits provided under state/local programs. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to

the Board. Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is December 16, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 2, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Culpeper County Chamber of Commerce, 109 South Commerce Street, Culpeper, VA 22701.

Dated: October 10, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–26416 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid from the People's Republic of China; Notice of Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On August 27, 2002, in response to requests by two exporters, the Department of Commerce initiated an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China. The period of review is July 1, 2001, through June 30, 2002. The requests for administrative review were made by two exporters of the subject merchandise, Guangdong Chemicals Import and Export Co. and Tianjin Chemicals Import and Export Co. This review has now been rescinded as a result of the timely withdrawal of the requests for administrative review by both exporters, as no other interested party requested the review.

EFFECTIVE DATE: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0629.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the regulations of the Department of Commerce (the Department) are to 19 CFR part 351 (2002).

Background

On July 1, 2002, the Department published in the Federal Register a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order on sebacic acid from the People's Republic of China (PRC). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 10, 2002, two exporters, Guangdong Chemicals Import and Export Co. (Guangdong) and Tianjin Chemicals Import and Export Co. (Tianjin), requested an administrative review of this antidumping duty order on sebacic acid from the PRC.

In accordance with 19 CFR 351.221(b)(1), we initiated this review on August 27, 2002, covering the period of July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (Aug. 27, 2002). On September 10, 2002, both exporters withdrew their requests for administrative review.

Rescission of Review

Guangdong and Tianjin timely withdrew their requests for administrative review for the above-referenced period on September 10, 2002. Therefore, because no other interested party requested a review of either Guangdong or Tianjin for this period of review, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding this review of the antidumping order on sebacic acid from the PRC for the period of July 1, 2001, through June 30, 2002. This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: October 9, 2002.

Louis Apple,

Acting Deputy Assistant SecretaryImport Administration, Group I.

[FR Doc. 02–26407 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–041. *Applicant:* The Ohio State University, Materials Science and Engineering, 2041 College Road, Columbus, OH 43210. *Instrument:* Electron Microscope, Model Tecnai F20 S–TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used for morphological and structural studies of ceramics and metals, including high temperature superconductors, high temperature metal alloys, evaporated metal thin films, silicon bicrystals, soils and geological minerals, polymers and possibly some biological samples. Also, the instrument will be used to measure the morphology and orientation of grains and particles, as well as the structure, long and short range ordering, number and type of defects and the elemental composition of various phases in the materials. Application accepted by Commissioner of Customs: September 25, 2002.

Docket Number: 02–042. *Applicant:* The Pennsylvania State University, Microarray Facility, Wartik Laboratory, University Park, PA 16802. *Instrument:* Plate Filler, Model QFill2. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* The instrument is intended to be used to rapidly dispense growth medium into 96 and 384-well microtitre plates to support bacterial growth for molecular biology experiments. The gene and genome sequences of an organism under study will be cloned into small circular DNA molecules (''plasmids'') that are grown inside standard E. coli bacteria in any molecular or genomics laboratory for use in performing the experiments. Objectives pursued in the course of the investigations are: (a) Gene discovery, (b) gene sequence characterization, (c) discovery of expressed gene sequences, and (d) genome-wide description of gene expression patterns in different tissues. Application accepted by Commissioner of Customs: September 26, 2002.

Docket Number: 02–043. *Applicant:* The Pennsylvania State University, Microarry Facility, Wartik Laboratory, University Park, PA 16802. *Instrument:* Colony Picking/Arraying Robot, Model Q PixII. *Manufacturer:* Genetix Limited, United Kingdom. *Intended Use:* The instrument is intended to be used to manipulate (pick, transfer, sort or replicate) bacterial colonies that contain either circular plasmids or viral phage particles. The plasmids and phage in turn will contain fragments (clones) of DNA or expressed gene sequences (cDNAs) from an organism of interest. Libraries of DNA or cDNA are used to map and study the sequence of genes in the genome, and to obtain information about which genes are expressed in an organism at a given time. Objectives pursued in the course of the investigations are: (a) Gene discovery, (b) gene sequence characterization, (c) discovery of expressed gene sequences and (d) genome-wide description of gene expression patterns in different tissues. Application accepted by Commissioner of Customs: September 26, 2002.

Docket Number: 02–045. *Applicant:* University of Vermont, College of Medicine, Molecular Physiology & Biophysics, HSRF, Room 120, 149 Beaumont Avenue, Burlington, VT 05405. *Instrument:* Electron Microscope, Model Tecnai 12 TWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to carry out structural studies of biological samples for the purpose of biomedical research involving metabolic enzymes. The enzymes will be isolated from yeast and plunged into liquid ethane to preserve their structure and samples will be analyzed. An enzyme goes through different steps or stages as it performs its task in the cell. By analyzing all the different states of the enzyme, a better understanding of its function can be achieved. Application accepted by Commissioner of Customs: October 1, 2002.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–26409 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas Health Science Center at Tyler; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02–037. *Applicant:* University of Texas Health Science Center at Tyler, Tyler, TX 75708–3154. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 67 FR 58355, September 16, 2002. *Order Date:* June 26, 2002.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 02–26408 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, November 12, 2002, 9 a.m. to 5:30 p.m.; Wednesday, November 13, 2002, 8 a.m. to 5:30 p.m.; Thursday, November 14, 2002, 8 a.m. to 5:30 p.m.; Friday, November 15, 2002, 8 a.m. to 3 p.m. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the site visit process, review the final judging process and meeting procedures, final judging of the 2002 applicants, learnings and improvements for 2003 judging cycle, update on the 2003 program and review 2003 judges calendar. The review process involves examination of records and discussions of applicant data, and will be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code.

DATES: The meeting will convene November 12, 2002 at 8 a.m. and adjourn at 3 p.m. on November 15, 2002. The entire meeting will be closed.

A0DRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public

in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: October 10, 2002.

Arden L. Bement, Jr.,

Director.

[FR Doc. 02–26436 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092702B]

Marine Mammals; File No. 358–1585–02

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Alaska Department of Fish and Game, Division of Wildlife Conservation, P.O. Box 25526, Juneau, AK, has been issued an amendment to scientific research Permit No. 358–1585–01.

ADDRESSES: The amendment 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; and

Protected Resources Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Carrie Hubard (301)713–2289.

SUPPLEMENTARY INFORMATION: On August 5, 2002, notice was published in the **Federal Register** (67 FR 50632) that an amendment of Permit No. 358–1585–01 issued April 12, 2002, had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit was amended to allow the Holder to expand the research protocol to include implantation of subcutaneous transmitters in harbor seals. Ten seals will be used in the initial study followed by 50 seals in 2003. Reauthorization to continue research is required based on results of the initial implants and the full field season.

Dated: October 10, 2002.

Trevor Spradlin,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–26427 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100102B]

Stock Assessment of Large Coastal Sharks in the U.S. Atlantic and Gulf of Mexico

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a stock assessment report on large coastal sharks (LCS) in the Atlantic and Gulf of Mexico, prepared by the NMFS Southeast Fisheries Science Center, and a final meeting report of the shark evaluation workshop held in Panama City, FL, June 24 through June 28, 2002.

ADDRESSES: Written requests for copies of these reports should be sent to Karyl Brewster-Geisz, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, (301) 713–2347; fax (301) 713–1917.

SUPPLEMENTARY INFORMATION: Numerous species of LCS are caught in directed and incidental fisheries by commercial and recreational fishermen along the U.S. Atlantic and Gulf of Mexico coasts. The species in this management group presently include, but are not limited to, sandbar, blacktip, silky, tiger, spinner, and bull sharks. The previous stock assessment of LCS was conducted in 1998 and classified this group as being overfished. A substantial amount of information has become available since then, including four more years of catch estimates, new biological data, and extended fishery-independent and fishery-dependent catch rate series. The final meeting report summarizes discussions of the available data, how the data should be used, and the types of models and sensitivity tests that should conducted. The stock assessment report uses this information to estimate the status of LCS and to project their future abundance under a variety of future catch levels in waters off the U.S. Atlantic and Gulf of Mexico coasts.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 9, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–26428 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

October 10, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and Guaranteed Access Levels (GALs) for textile products, produced or manufactured in Costa Rica and exported during the period January 1, 2003 through December 31, 2003 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish

limits and guaranteed access levels for 2003.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Information regarding the availability of the 2003 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 10, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2003, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,728,466 dozen.
342/642	638,074 dozen.
347/348	2,912,850 dozen.
443	234,722 numbers.
447	12,655 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2002 shall be charged to the applicable category limits for that year (see directive dated October 25, 2001) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), you are directed to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 2003 and extending through December 31, 2003:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of May 15, 1990 (55 FR 21074), as amended, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

These specific limits and guaranteed access levels do not apply to goods that qualify for quota-free entry under the Trade and Development Act of 2000.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–26402 Filed 10–16–02; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Practice Implementation Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Business Practice Implementation Board (DBB) will meet in open session on Tuesday, October 29, 2002, at the Pentagon, Washington, DC from 0900 until 1000. The mission of the DBB is to advise the Senior Executive Council (SEC) and the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board's Human Resources Task Group will deliberate on its findings and proposed recommendations related to tasks assigned earlier this year.

DATES: Tuesday, October 29, 2002, 0900 to 1000.

ADDRESSES: Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Defense Business Practice Implementation Board, 1100 Defense Pentagon, Washington, DC 20301–1100, via E-mail at *DBB@osd.pentagon.mil,* or via phone at (703) 695–0505.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact the Defense Business Practices Implementation Board no later than Wednesday, October 23 for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by Monday, October 21 to allow time for distribution to the Board members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding thirty-minutes.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26352 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1300, Thursday, October 17, 2002 and 0900, Friday, October 18, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500 Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square

Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26348 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, November 26, 2002.

ADDRESSES: The meeting will be held at Palisades Institutes for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App § 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26349 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, November 20, 2002.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 553b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26350 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming Meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: November 14, 2002.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director of Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rossyln P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: October 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26351 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Unexploded Ordinance (UXO) will meet in closed session on October 30–31, 2002; November 21–22, 2002; and December 3–5, 2002, at SAIC, Inc., 4001 N. Fairfax Street, Arlington, VA. This Task Force will review modern technology that can be exploited or developed to reduce the extremely high cost of UXO clean up.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to exploit modern technology to reduce the extremely high cost of UXO clean up and improve its effectiveness for both contaminated land and water ranges and help accomplish the job in a reasonable time; and science and technologies that can be developed to support and sustain continued live fire training and testing of munitions at ranges across the United States with an acceptable environmental impact.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that, accordingly, the meeting will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26354 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Science Board

Office of the Secretary

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Seabasing will meet in closed session on November 5–6, 2002, and November 18–19, 2002, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess how seabasing of expeditionary forces can best serve the nation's defense needs through at least the first half of the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine the broadest range of alternatives for seabasing of expeditionary forces and be guided by: the expected naval environment for the next 20–50 years; the role of naval forces in enabling access for joint forces through the world's littorals; assets and technologies needed to establish a robust and capable Enhanced Networked Seabase; the timing of the acquisition of the technologies, platforms and systems which replace the legacy systems; and the function of new hardware and opportunities to reallocate functionality to improve effectiveness, or efficiency, or economy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 9, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–26353 Filed 10–16–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Leader, Regulatory 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 December 16, 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 Leader, Regulatory 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: October 11, 2002.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: FSA Students Portal (JS).

Frequency: On Occasion, Monthly, Annually.

Affected Public: Individuals or household; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 5,000,000. Burden Hours: 200,000.

Abstract: Federal Student Aid (FSA) of the U.S. Department of Education seeks to establish a registration system within the 'Students Portal', an Internet Portal Website (hereafter 'the Website'). The Website will make the college application process more efficient, faster, and accurate by making it an automated, electronic process that targets financial aid and college applications. The Website uses some personal contact information criteria to automatically fill out the forms and surveys initiated by the user. The Website will also provide a database of demographic information that will help FSA target the distribution of financial aid materials to specific groups of students and/or parents. For example, studies have shown that providing student financial assistance information to middle school (or elementary school) students and/or their parents dramatically increases the likelihood that those students will attend college. The demographic information from the Website will help us to identify potential customers in the middle school age range and is information that was previously unavailable to us.

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 2172. 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 e-mail address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail 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. 02–26448 Filed 10–16–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Intent To Compromise Claim Against the State of Louisiana State Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise claim with request for comments.

SUMMARY: The United States Department of Education (Department) intends to compromise a claim against the Louisiana State Department of Education (LSDE) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 01–24–R. Before compromising a claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on that action (20 U.S.C. 1234a(j)).

DATES: We must receive your comments on the proposed action on or before December 2, 2002.

ADDRESSES: Address all comments concerning the proposed action to Jeffrey C. Morhardt, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 6E312, Washington, DC 20202–2110.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Morhardt, Esq. Telephone: (202) 401–6700. 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, audio tape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed action. During and after the comment period, you may inspect all public comments in room 6E312, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing Comments

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The claim in question arose when the Chief of the Department's Indirect Cost Group, Office of the Chief Financial Officer (Chief) issued a program determination letter (PDL) on June 28, 2001. The PDL demanded a refund of $3,171,296 of funds provided to the LSDE for fiscal years 1992–98 under various Department programs. Specifically, the Chief found that the LSDE had failed to carry out its administrative responsibilities to ensure that the New Orleans Parish School Board (NOPS) complied with applicable Federal statutes and regulations regarding proper accounting for Federal education funds. More specifically, the Chief found that NOPS charged Federal funds for unemployment compensation insurance premiums disproportionately and therefore overcharged Federal funds in relation to the benefits received. Accordingly, the Chief disallowed the percent of the total premium costs for 1992–98 in excess of the amount that should have been paid using Federal funds based upon the percentage of Federal funds and State and local funds.

During settlement discussions, the LSDE submitted substantial documentation to demonstrate that the actual amount of excess unemployment compensation premiums that NOPS charged to Federal programs during fiscal years 1997 and 1998 was $664,990.67, rather than $906,084, as stated in the PDL. The LSDE also submitted documentation to demonstrate that $2,650,010.13 in disallowed costs for fiscal years 1992–96 and part of fiscal year 1997 were barred from recovery by the statute of limitations of the General Education Provisions Act (GEPA). 20 U.S.C. 1234a(k). After conducting a thorough review of this documentation, the Chief has decided to accept the LSDE's documentation, thereby reducing the claim to $280,192.54 for the remainder of fiscal years 1997 and 1998.

The Department proposes to compromise this remaining claim to $250,192.54. Based on litigation risks and the costs of proceeding through the administrative and, possibly, court process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. In addition, in light of NOPS' corrective action performed in 1998, there is little or no likelihood of a recurrence of this problem. As a result, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for $250,192.54 is appropriate. The public

is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to Jeffrey C. Morhardt, Esq. at the telephone number and address listed at the beginning of this notice.

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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.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gop.gov/nara/index.html*

Program Authority: 20 U.S.C. 1234a(j).
Dated: October 10, 2002.

Jack Martin,

Chief Financial Officer.

[FR Doc. 02–26398 Filed 10–16–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Continuation of Solicitation for the Office of Science Financial Assistance Program—Notice 03–01

AGENCY: U.S. Department of Energy.

ACTION: Annual Notice of Continuation of Availability of Grants and Cooperative Agreements.

SUMMARY: The Office of Science (SC) of the Department of Energy (DOE) hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Advanced Scientific Computing, Fusion Energy Sciences, Biological and Environmental Research, and Energy Research Analyses. On September 3, 1992, DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program (now called the Office of Science Financial Assistance Program), 10 CFR part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR part 605.

DATES: Applications may be submitted until September 30, 2003, in response to this Notice of Availability.

ADDRESSES: Formal applications in response to this solicitation are to be electronically submitted by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov/*. IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific proposal as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at: *HelpDesk@e-center.doe.gov* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit an application through IIPS please contact the Office of the Director, Grants and Contracts Division, Office of Science, DOE at 301–903–5212 in order to gain assistance for submission through IIPS or to receive special approval and instructions on how to submit printed applications.

SUPPLEMENTARY INFORMATION: This Notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science, usually published after the beginning of the fiscal year. This annual Notice 03–01 succeeds Notice 02–01, which was published December 20, 2001.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in Fiscal Year 2003. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

The following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science areas and their objectives are as follows:

(a) Materials Sciences and Engineering

The objective of this program is to increase the fundamental understanding of phenomena, properties, and behavior important to materials that will contribute to improving current energy technologies and developing new energy technologies. This program is comprised of the subfields materials physics, condensed matter physics, materials chemistry, engineering physics, and related disciplines where the emphasis is on the science of materials. Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences. Program Contact: (301) 903–5804.

(c) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of geologic processes related to energy and environmental quality. The program emphasizes cross-cutting basic research that will improve understanding of reactive geochemical transport and other subsurface processes and properties and how to image them using techniques ranging from electrons, x-rays or neutrons to electromagnetic and seismic waves. Applications of this fundamental understanding might include transport of contaminant fluids, hydrocarbons, sequestered CO_2 or performance prediction for repository

sites. The emphasis is on the disciplinary areas of geochemistry, geophysics, geomechanics, and hydrogeology with a focus on the upper levels of the earth's crust. Particular emphasis is on processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, physics of fluid transport, and fundamental properties and interactions of rocks, minerals, and fluids.

Program Contact: (301) 903–4061.

(d) Energy Biosciences

The primary objective of this program is to generate an understanding of fundamental biological mechanisms in plants and microorganisms that will support future technological developments related to DOE's mission. The research serves to provide the basic information foundation for environmentally responsible production and conversion of renewable resources for fuels, chemicals, and the conservation of energy. This program has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the program regarding these requirements.

Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: experimental research, theoretical research, and technology R&D in support of the high energy physics program.

Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are a fundamental understanding of the interactions and structures of atomic nuclei and nuclear matter, and an understanding of the forces of nature as manifested in nuclear matter.

Program Contact: (301) 903–3613.

3. Advanced Scientific Computing Research

This program fosters and supports fundamental research in advanced computing research (applied mathematics, computer science and networking), and operates supercomputer, networking, and related facilities to enable the analysis, modeling, simulation, and prediction of complex phenomena important to the Department of Energy.

(a) Mathematical, Information, and Computational Sciences

This subprogram is responsible for carrying out the primary mission of the ASCR program: discovering, developing, and deploying advanced scientific computing and communications tools and operating the high performance computing and network facilities that researchers need to analyze, model, simulate, and—most importantly—predict the behavior of complex natural and engineered systems of importance to the Office of Science and to the Department of Energy.

The computing and the networking required to meet Office of Science needs exceed the state-of-the-art by a wide margin. Furthermore, the algorithms, software tools, the software libraries and the software environments needed to accelerate scientific discovery through modeling and simulation are beyond the realm of commercial interest. To establish and maintain DOE's modeling and simulation leadership in scientific areas that are important to its mission, the MICS subprogram employs a broad, but integrated research strategy. The basic research portfolio in applied mathematics and computer science provides the foundation for enabling research activities, which includes efforts to advance networking, to develop software tools, software libraries and software environments. Results from enabling research supported by the MICS subprogram are used by computational scientists supported by other Office of Science and other DOE programs. Research areas include:

(b) Applied Mathematics

Research on the underlying mathematical understanding and numerical algorithms to enable effective description and prediction of physical systems such as fluids, magnetized plasmas, or protein molecules. This includes, for example, methods for solving large systems of partial differential equations on parallel computers, techniques for choosing optimal values for parameters in large systems with hundreds to hundreds of thousands of parameters, improving our understanding of fluid turbulence, and developing techniques for reliably estimating the errors in simulations of complex physical phenomena.

(c) Computer Science

Research in computer science to enable large scientific applications through advances in massively parallel computing such as very lightweight operating systems for parallel computers, distributed computing such as development of the Parallel Virtual Machine (PVM) software package which has become an industry standard, and large scale data management and visualization. The development of new computer and computational science techniques will allow scientists to use the most advanced computers without being overwhelmed by the complexity of rewriting their codes every 18 months.

(d) Networking

Research in high performance networks and information surety required to support high performance applications—protocols for high performance networks, methods for measuring the performance of high performance networks, and software to enable high speed connections between high performance computers and networks. The development of high speed communications and collaboration technologies will allow scientists to view, compare, and integrate data from multiple sources remotely.

Program Contact: (301) 903–5800.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. The Office of Fusion Energy Sciences (OFES) supports basic and applied research, encourages technical connectivity with the broader U.S. science community, and uses international collaboration to accomplish this mission.

(a) Research Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program. Research is conducted on medium to large-scale confinement devices to study physics issues relevant to basic plasmas and to the production of fusion energy. Experiments on this scale of devices are used to explore the

limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) Reducing plasma energy and particle transport at high densities and temperatures, (2) understanding the physical laws governing stability of high pressure plasmas, (3) investigating plasma wave interactions, (4) studying and controlling impurity particle transport and exhaust in plasmas, and (5) interaction and coupling among these four issues in a fusion experiment.

Research is also carried out in the following areas: (1) Basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) theoretical research to provide the understanding of fusion plasmas necessary for interpreting results from present experiments, planning future experiments, and designing future confinement devices; (3) critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments; (4) supporting research on innovative confinement concepts; and (5) research on issues that support the development of Inertial Fusion Energy, for which high energy density physics necessary for target development is carried out by the Office of Defense Programs in the Department of Energy's National Nuclear Security Agency.

Program Contact: (301) 903–4095.

(b) Facilities and Enabling Technologies Division

This Division is responsible for overseeing the facility operations and enabling research and development activity budgets within the OFES. Grant program opportunities are in the enabling research and development activity. (Grants for scientific use of the facilities operated/maintained by this Division should be addressed to the Research Division.) The enabling technologies program supports the advancement of fusion science in the nearer-term by carrying out research on technological topics that: (1) enable domestic experiments to achieve their full performance potential and scientific research goals; (2) permit scientific exploitation of the performance gains being sought from physics concept improvements; (3) allow the U.S. to enter into international collaborations gaining access to experimental conditions not available domestically; and (4) explore the science underlying these technological advances.

The enabling technologies program supports pursuit of fusion energy science for the longer-term by conducting research aimed at innovative technologies, designs and materials to point toward an attractive fusion energy vision and affordable pathways for optimized fusion development.

Program Contact: (301) 903–3068.

5. Biological and Environmental Research Program

For over 50 years the Biological and Environmental Research (BER) Program has been investing to advance environmental and biomedical knowledge connected to energy. The BER program provides fundamental science to underpin the business thrusts of the Department's strategic plan. Through its support of peer-reviewed research at national laboratories, universities, and private institutions, the program develops the knowledge needed (1) to identify, understand, and anticipate the long-term health and environmental consequences of energy production, development, and use, and (2) to develop biology based solutions that address DOE and National needs.

(a) Life Sciences Research

Research is focused on using DOE's unique resources and facilities to develop fundamental knowledge of biological systems that can be used to address DOE needs in clean energy, carbon sequestration, and environmental cleanup and that will underpin biotechnology based solutions to energy challenges. The objectives are: (1) To develop the experimental and, together with the Advanced Scientific Computing Research program, the computational resources, tools, and technologies needed to understand and predict the complex behavior of complete biological systems, principally microbes and microbial communities; (2) to take advantage of the remarkable high throughput and cost-effective DNA sequencing capacity at the Joint Genome Institute to meet the DNA sequencing needs of the scientific community through competitive, peer-reviewed nominations for DNA sequencing; (3) to develop and support DOE national user facilities for use in fundamental structural biology at synchrotron and neutron sources; (4) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins at a genomic scale; (5) to understand and characterize the risks to human health from exposures to low levels of radiation; and (6) to anticipate and address ethical, legal, and social implications arising from genome research.

Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Sciences

The research is designed to develop the beneficial applications of nuclear and energy-related technologies for bio-medical research, medical diagnosis and treatment. The objectives are: (1) To utilize innovative radiochemistry to develop new radiotracers for medical research, clinical diagnosis and treatment, (2) To develop the next generation of non-invasive nuclear medicine technologies, such as positron emission tomography, (3) To develop advanced imaging detection instrumentation capable of high resolution from the sub-cellular to the clinical level, (4) To utilize the unique resources of the DOE in engineering, physics, chemistry and computer sciences to develop the fundamental tools to be used in biology and medicine, particularly in imaging sciences, photo-optics and biosensors.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

This research delivers the scientific knowledge, tools, and enabling discoveries in biological and environmental research to reduce the costs, risks, and schedules associated with the cleanup of the DOE nuclear weapons complex; to extend the frontiers of biological and chemical methods for remediation; to discover the fundamental mechanisms of contaminant transport in the environment; to develop cutting edge molecular tools for investigating environmental processes; and to develop an understanding of the ecological impacts of remediation activities. Research priorities include bioremediation, contaminant fate and transport, nuclear waste chemistry and advanced treatment options, and the operation of the William R. Wiley Environmental Molecular Sciences Laboratory (EMSL) and the Savannah River Ecology Laboratory (SREL). The research performed for this program will provide fundamental knowledge on a broad range of remediation problems.

Program Contact: (301) 903–4902.

(d) Climate Change Research

The program seeks to understand the basic physical, chemical, and biological processes of the Earth's atmosphere, land, and oceans and how these processes may be affected by energy production and use. The research is designed to provide data that will enable an objective assessment of the potential for and the consequences of human-induced climate change at global and regional scales. It also provides data

to enable assessments of mitigation options to prevent such a change. The program is comprehensive with an emphasis on understanding and simulating the radiation balance from the surface of the Earth to the top of the atmosphere (including the effect of clouds, water vapor, trace gases, and aerosols), on enhancing the quantitative models necessary to predict possible climate change at global and regional scales, and on understanding ecological effects of climate change. The carbon sequestration research seeks the understanding necessary to exploit the biosphere's natural carbon cycling processes to enhance the sequestration of carbon dioxide in terrestrial systems and the ocean, and to understand its potential environmental implications. The program includes research that can lead to the development of approaches to reduce or overcome the environmental and biological factors or processes that limit the sequestration of carbon in these systems to enhance the net sequestration of carbon. The research includes studies on terrestrial and ocean carbon sequestration and disposal, including research to modify the carbon sequestration capacity and rate by marine and terrestrial organisms and to understand the potential environmental implications.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts. Consistent with these overall objectives, this program conducts numerous research studies to assess directions in science and to identify and assess new and improved approaches to science management.

Program Contact: (202) 586–9942.

7. Experimental Program To Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addresses basic research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described in this notice. The EPSCoR program is restricted to applications, which originate in twenty-one states (Alabama, Alaska, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that only a limited number of new competitive research grants will be awarded under this program subject to the availability of funds.

Program Contact: (301) 903–3427.

Issued in Washington, DC on October 10, 2002.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 02–26397 Filed 10–16–02; 8:45 am]

BILLING CODE 6450–03–U

DEPARTMENT OF ENERGY

Voluntary Reporting Greenhouse Gas Emissions Reporting Program

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Notice of public workshops.

SUMMARY: The Department of Energy (We, DOE, or the Department) will hold four public workshops to enable interested persons to discuss and provide comments on possible improvements to the guidelines that now govern the Department of Energy's Voluntary Greenhouse Gas Reporting Program. These workshops are intended to assist DOE and other participating agencies in their efforts to enhance the reporting of greenhouse gas emissions and emission reductions, as directed by the President on February 14, 2002. Each of the four workshops are expected to address the full range of issues related to the Department of Energy's Voluntary Greenhouse Gas Emissions Reporting (1605b) Program.

DATES: The Department will hold four public workshops, as follows:

Washington DC, November 18–19, 2002.
Chicago, December 5–6, 2002.
San Francisco, December 9–10, 2002.
Houston, December 12–13, 2002.

At least three weeks before each workshop, all persons who plan to attend are requested to register with the Department through the following website: *http://www.pi.energy.gov/enhancingGHGregistry/index.html.* After these workshops, the Department will continue to accept comments, data, and information regarding the issues addressed at the workshops, but such information must be received by no later than Friday, December 20, 2002, in order to ensure full consideration during the Department's development of revised program guidelines, which are expected to be formally proposed early in 2003.

ADDRESSES: The workshops will be held at the following locations:

Washington DC, Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.
Chicago, Donald E. Stephens Convention Center, Hotel Sofitel Chicago O'Hare, 5555 and 5550 North River Road, Rosemont, IL 60018.
San Francisco, Best Western Grosvenor Hotel, 380 South Airport Boulevard So., San Francisco, CA 94080.
Houston, Houston Airport Marriott, 18700 John Kennedy Blvd., Houston, TX 77032.

Persons interested in registering for any of these four workshops or in obtaining more information about DOE's efforts to improve the existing Voluntary Greenhouse Gas Reporting Program should visit the following website: *http://www.pi.energy.gov/enhancingGHGregistry/index.html.* Inquiries regarding these workshops may be e-mailed to *1605b.workshops@hq.doe.gov.* Hardcopy inquiries regarding these workshops may also be mailed to Mark Friedrichs, PT–20 Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. [**Note:** due to precautionary screening of mail to Federal offices, some delays should be expected.] Any follow-up comments or other relevant information should be e-mailed to *ghgregistry.comments@hq.doe.gov.*

The website will be used to make available draft and final workshop agendas, information on lodging, any background papers that are made available before the workshops, transcripts of each workshop, and comments or other information submitted after the workshops. For persons without ready access to the internet, this website can be viewed at the Freedom of Information Reading Room (Room 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI–20, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585–0121, e-mail: *1605b.workshops@hq.doe.gov* or phone 202–481–8550.

SUPPLEMENTARY INFORMATION: DOE's existing Voluntary Greenhouse Gas Reporting Program was mandated by section 1605(b) of Energy Policy Act of 1992. The current program operates under guidelines issued by the Department on October 19, 1994 (59 FR 52769). These guidelines give program participants considerable flexibility. As a consequence of this flexibility, the reports of greenhouse gas emissions or emissions reductions submitted to DOE are often not consistent, complete or verifiable.

On February 14, 2002, the President:

Directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements of the current voluntary emissions reduction registration program under section 1605(b) of the 1992 Energy Policy Act within 120 days. These improvements will enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches.

Directed the Secretary of Energy to recommend reforms to ensure that businesses and individuals that register reductions are not penalized under a future climate policy and to give transferable credits to companies that can show real emissions reductions.

To achieve these objectives it will be necessary to supplement or supplant the existing guidelines with new, more rigorous reporting requirements.

On May 6, 2002, the Department of Energy solicited public comments on various issues relevant to its efforts to implement the President's directives.

After consideration of these public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency wrote the President on July 8, 2002, stating that improvements to the existing Voluntary Greenhouse Gas Reporting Program should:

1. Develop fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
2. Standardize widely accepted, transparent accounting methods.
3. Support independent verification of registry reports.
4. Encourage reporters to report greenhouse gas intensity (emissions per unit of output) as well as emissions or emissions reductions.
5. Encourage corporate or entity-wide reporting.
6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.
7. Develop a process for evaluating the extent to which past reductions may qualify for credits.
8. Assure the voluntary reporting program is an effective tool for reaching the 18 percent goal.
9. Factor in international strategies as well as State-level efforts.
10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

These workshops are intended to help us determine the specific improvements that should be made to the Department's guidelines by encouraging open dialogue among all of the utilities, businesses, institutions, environmental groups, individuals and other affected interests. Through these workshops, we hope to receive as much constructive input to this process as possible.

The Presidential directives that began our review of the existing program guidelines, and the objectives identified in the July 8 letter to the President, are the starting point of our current efforts. Most of the issues that need to be addressed and resolved as part of this process fall into two broad categories: Emission Reporting and Emission Reductions. In both areas, we will be endeavoring to develop more rigorous guidelines that will help encourage future reports that are reliable, objective and verifiable. Another key objective is that the guidelines should encourage full reporting by the broadest possible spectrum of utilites, businesses and institutions responsible for greenhouse gas emissions.

A full agenda and various other materials will be made available prior to the workshop at: *http://www.pi.energy.gov/enhancingGHGregistry/index.html.*

Issued in Washington, DC on 10 October, 2002.

Barton W. Marcois,

Principal Deputy Assistant Secretary, Office of Policy and International Affairs.

[FR Doc. 02–26396 Filed 10–16–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 24, 2002, 8:30 a.m.–4:30 p.m. Friday, October 25, 2002, 8:30 a.m.–12 noon.

ADDRESSES: U. S. Department of Energy, Room 8E–089, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 287–1709. Alternately, Mr. Weinig may be contacted by e-mail at *william.weinig@eia.doe.gov* or by FAX at (202) 287–1705.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy-related statistical matters.

Tentative Agenda

Thursday, October 24, 2002

A. Opening Remarks by the ASA Committee Chair, the EIA Administrator and the Director, Statistics and Methods Group, EIA. Room 8E–089

B. Major Topics (Room 8E–089 unless otherwise noted)
1. Update on Commercial Buildings Energy Consumption Survey.
2. Completion of EIA's System for the Analysis of Global Energy Markets.
3. Information Quality Guidelines Completed: What's Next?
4. Natural Gas Data Program Updates.
5. Using Data from Combined Heat and Power Plants to Estimate Natural Gas Industrial Prices.
6. Managing Risk in Energy Markets (Room 5E–069).
7. Public Questions and Comments.
8. State Level Coal Forecasting.
9. Estimating Monthly Data for Non-Utility Generation and Fuel Consumption from Annual and Monthly Time Series (Room 5E–069).
10. Estimating and Presenting Power Sector Fuel Use in EIA Publications and Analyses.
11. Public Questions and Comments.

Friday, October 25, 2002, Room 8E–089

C. Major Topics
1. EIA's Voluntary Reporting of Greenhouse Gases Program.
2. Organization and Delivery of Energy Information in Spatially Referenced Form.

3. The ASA Committee on Energy Statistics Contributions to the EIA.
4. Public Questions and Comments.

D. Closing Remarks by the Chair

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above. This **Federal Register** Notice is being published less than 15 days before the meeting due to programmatic issues that needed to be resolved prior to publication.

A Meeting Summary and Transcript will subsequently be available through Mr. Weinig who may be contacted at (202) 287–1709 or by e-mail at *william.weinig@eia.doe.gov.*

Issued at Washington, DC on October 11, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–26443 Filed 10–16–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–9–000]

Alternate Power Source, Inc. Complainant, v. Western Massachusetts Electric Company and Northeast Utilities System Respondent.; Notice of Complaint and Request for Fast Track Processing

October 10, 2002.

Take notice that on October 8, 2002 Alternate Power Source Inc., filed a complaint against Northeast Utilities System and Western Massachusetts Electric Company alleging discriminatory transmission pricing practices and violations of filed rate tariffs.

Copies of said filing have been served upon the utility regulatory agencies for two New England States.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before October 28, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The answer to the complaint, 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. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26387 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–3–000]

El Paso Natural Gas Company; Notice of Application

October 10, 2002.

Take notice that on October 3, 2002, El Paso Natural Gas Company (El Paso), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP03–1–000, an application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing the construction, ownership and operation of certain natural gas compression facilities and appurtenances in Arizona, New Mexico, and Texas, referred to as the Line 2000 Power-up Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso proposes to construct, own and operate compression stations at nine new or existing mainline compressor stations on its transmission system to add a total transportation capacity of 320,000 Mcf of natural gas per day. Specifically, El Paso proposes to install compression facilities with a total of 151,600 horsepower on Line 2000 at the existing Casa Grande, Lordsburg, Florida, El Paso, and Cornudas Compressor Stations, and new facilities near milepost (MP) 609 in Cochise County, Arizona (the Cimarron Station), at the former Tom Mix Oil Pump Station located near MP 530 in Pinal County, Arizona, at the former Black River Oil Pump Station located near MP 946 in Culberson County, Texas, and at a new site at approximately MP 1101 in Winkler County, Texas (the Wink Compressor Station). It is explained that the additional capacity would enable El Paso to transport gas from the eastern portion of its system—the Keystone and Waha Pools—to the southern and western portions and would enhance flexibility on the system. El Paso will use the new compression to further integrate its south mainline systems and increase flexibility.

It is explained that the project was proposed in response to issues raised by various parties in four separate proceedings regarding capacity allocation as a result of changed circumstances on El Paso's system.[1] El Paso states that the Commission's order on May 31, 2002, in Docket No. RP00–336–002 established a set of procedures and deadlines to effectuate two principle changes in service on El Paso's system: the conversion of firm FT–1 Full Requirements (FR) service to contract demand (CD) service with specified volumetric entitlements; and the conversion of system-wide receipt point rights to quantified rights and specific receipt points or at supply pools. El Paso states that in a subsequent September 20, 2002 order, the Commission encouraged it to construct the power-up facilities and has directed El Paso to include the capacity from the Line 2000 Power-up Project in its initial allocation of capacity to converting FR shippers. According to El Paso, however, the Commission, in the September 20 order extended the effective date for the reallocation of capacity to May 1, 2003, assuming that the Power-up facilities would be up and running by the summer of 2003.

However, El Paso states that it will take approximately 24 months to bring the Line 2000 Power-up project into service.

El Paso contends that the in-service date for the facilities is dependent upon the timing of certificate approvals, the receipt of air quality permits, and the delivery of the compression equipment.

[1] Docket Nos. RP00–139–000, RP00–336–000, RP01–484–000, and RP01–486–000.

Thus, El Paso states that the project will be constructed on a phased construction and in-service schedule, adding increments of 120,000 Mcf per day by February 2004, 100,000 Mcf per day by April 2004, and 100,000 Mcf per day by April 2005.

El Paso specifically requests a certificate order from the Commission which provides that (1) these facilities are needed and in the public interest in light of the changed circumstances on El Paso's system, (2) the expansion of its capacity by way of the Power-up Project is prudent, and (3) El Paso will be allowed to include the costs associated with such facilities in the rates resulting from the next rate case in which El Paso's costs and revenues are reviewed.

El Paso states that it will not assess the FR shippers the reservation charges attributable directly to the Power-up facilities until the next rate case examining its costs and revenues. El Paso asserts that it will assess usage and fuel charges based on the location of the receipts and deliveries for service provided through these facilities prior to that time, pursuant to the provisions of El Paso's FERC Gas Tariff, Second Revised Volume No. 1–A. It is stated that the project meets the criteria of the Commission's 1999 Policy Statement for construction of new facilities, with benefits outweighing any adverse effects. El Paso estimates the total capital cost for the project at $173,287,900.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, at (719) 520–3788, El Paso Gas Transmission Company, Post Office Box 1087, Colorado Springs, Colorado 80944.

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 October 31, 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 385.211 and 385.214) 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. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the Commission's Web site at *http://www.ferc.fed.us/efi/doorbell.htm*. The Commission strongly encourages parties to file interventions electronically.

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 environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 ion 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 to file comments or to intervene as early in the process as possible.

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. 02–26386 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–436–000]

Northern Natural Gas Company; Notice of Application

October 10, 2002.

Take notice that on September 30, 2002, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in the above referenced docket, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience to construct and operate certain compression, pipeline, and town border station (TBS) facilities, with appurtances, located in various counties in Minnesota in order to expand the capacity of Northern's Market Area facilities (Project MAX), all as more fully described in the application. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659.

Specifically, Northern seeks authority to construct and operate: (1) Modifications at its Farmington Compressor Station located in Dakota County, Minnesota; (2) mainline modifications at the end of its 30-inch C-Line located in Washington County, Minnesota; (3) approximately 4.6 miles of 8-inch loop on its Alexandria branchline located in Morrison County, Minnesota; (4) a new branchline electric compressor station located near Popple Creek, Minnesota; and, (5) modifications at ten existing TBSs located in Douglas, Wright, Stearns, Dakota, Pope, and Sherburne Counties, Minnesota. The incremental capacity created by the subject facilities will be used to serve Northern's high priority residential, commercial, and industrial customers in its Market Area. The proposed

construction and operation will increase the peak day capacity of Northern's Market Area mainline by approximately 16,200 Mcf per day (Mcf/d). Northern states that the total estimated capital cost for the proposed facilities is $5,833,952.

Northern requests that the Commission issue an order granting approval of the subject facilities by no later than May 1, 2003 in order to ensure an in-service date of November 1, 2003.

Any questions regarding the application should be directed to Mary Kay Miller, Vice President, Rates & Certificates, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, telephone (402) 398–7060 or Michael T. Loeffler, Director Certificates and Community Relations, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330, telephone (402) 398–7103.

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 October 31, 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.

The Commission strongly encourages electronic filings of comments, protests, and interventions 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. 02–26385 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–16–000]

Pan-Alberta Gas (U.S.) Inc.; Mirant Americas Energy Marketing, L.P.; Complainants, v. Northern Border Pipeline Company; Respondent; Notice of Complaint

October 10, 2002.

Take notice that on October 8, 2002, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Pan-Alberta Gas (U.S.) Inc. (PAGUS) (by its agent Mirant Canada Energy Marketing, Ltd.) and Mirant Americas Energy Marketing, L.P. (MAEM) tendered for filing a Complaint against Northern Border Pipeline Company (Northern Border). PAGUS and MAEM request that the complaint be processed by the Commission on a fast track basis.

PAGUS and MAEM allege that Section 26.2(b) of the General Terms and Conditions of Northern Border's tariff conflicts with long-standing Commission policies because it permits the pipeline in some circumstances to contract its capacity on a long term basis at discounted rates without posting the capacity for bid. They further allege that Section 26.2(b) subverts and undermines the Right of First Refusal (''ROFR'') process on the Northern Border system. PAGUS and MAEM request that the Commission invalidate Section 26.2(b).

PAGUS and MAEM also request that the Commission clarify the rights of shippers whose capacity goes through the ROFR bidding process, but is not awarded to any party during that process because no bids acceptable to the pipeline were submitted. PAGUS and MAEM request the Commission to confirm that in that situation, the ROFR matching rights of the existing capacity holders will continue in effect for the remainder of their contract terms.

Finally, PAGUS and MAEM request that the Commission grant preliminary relief in the form of an order prohibiting Northern Border from continuing the ROFR process with respect to PAGUS' capacity until after this Complaint is resolved.

Any person desiring to be heard 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. The answer to the complaint and all comments, interventions or protests must be filed on or before October 18, 2002. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, call (202) 502–8222 or for TTY, (202) 502–8659. The answer to the complaint, 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. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26389 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–35–000

Tennessee Gas Pipeline Company; Notice of Technical Conference

October 10, 2002.

In the Commission's order issued on September 13, 2002,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, November 5, 2002, at 10:30 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–26388 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Tennessee Gas Pipeline Company, 100 FERC ¶ 61,268 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–11–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Pacific Gas and Electric Company

[Docket Nos. ER02–11–001 and ER02–208–001]

Take notice that on October 7, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing a refund report, in connection with the Commission's July 17, 2002 Order issued in the above-referenced Dockets.

Copies of PG&E's filing have been served upon the California Independent System Operator Corporation, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: October 28, 2002.

2. Commonwealth Edison Company

[Docket No. ER03–21–000]

Take notice that on October 7, 2002, Commonwealth Edison Company submitted to the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation effective August 21, 2002, for Service Agreement No. 556, Second Revised Tariff No. 5 with Duke Energy Cook, LLC.

Notice of the proposed cancellation has been served on Duke Energy Cook, LLC and Illinois Commerce Commission.

Comment Date: October 28, 2002.

Standard Paragraph

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. 02–26362 Filed 10–16–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–1–000, et al.]

Riverside Energy Center, LLC, et al.; Electric Rate and Corporate Regulation Filings

October 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Riverside Energy Center, LLC

[Docket No. EG03–1–000]

Take notice that on October 4, 2002, Riverside Energy Center, LLC (Riverside or Applicant) tendered for filing 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, a Wisconsin limited liability company, proposes to own and operate a 600 megawatt natural gas-fired combined cycle electric generating facility in the Town of Beloit, Rock County, Wisconsin.

Comment Date: October 29, 2002.

2. Duke Energy Hanging Rock, LLC

[Docket No. EG03–2–000]

Take notice that on October 4, 2002, Duke Energy Hanging Rock, LLC (Duke Hanging Rock) filed an application with the Federal Energy Regulatory Commission (the Commission) for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Duke Hanging Rock states that it is a Delaware limited liability company that will be engaged directly and exclusively in the business of operating all or part

of one or more eligible facilities to be located in Lawrence County, Ohio. The eligible facilities will consist of an approximately 1,240 MW natural gas-fired, combined cycle electric generation plant and related facilities. The output of the eligible facilities will be sold at wholesale.

Comment Date: October 29, 2002.

3. Edison Source

[Docket No. ER02–2564–001]

Take notice that on October 3, 2002, Edison Source tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its filing in the above-referenced docket concerning the termination of the (I) Scheduling Coordinator Agreement, dated November 20, 1997, as amended by Amendment No. 1, dated June 1, 1998, and (ii) Meter Service Agreement for Scheduling Coordinators, dated November 20, 1997, as amended by Amendment No. 1, dated June 1, 1998; (iii) Application Programming Interface to Scheduling Infrastructure System Sublicense Agreement, dated September 15, 1998; and (iv) withdrawing Edison Source's Standing Request Relating to Inter-Scheduling Coordinator Trades, dated June 5, 1998.

Edison Source requests that the above terminations and withdrawal become effective as of December 16, 2002.

Comment Date: October 24, 2002.

4. Consumers Energy Company

[Docket No. ER03–15–000]

Take notice that on October 4, 2002, Consumers Energy Company (Consumers) tendered for filing changes to its First Revised Rate Schedule No. 116. Consumers states that the changes are being made pursuant to Section 5.3 of that rate schedule to reflect the outcome of Docket No. OA96–77–000. The revised pages filed are First Revised Sheet Nos. 2, 11, 12, 22, 23 and 24 and Original Sheet No. 23a.

Copies of the filing were served upon the customer and the Michigan Public Service Commission.

Comment Date: October 25, 2002.

5. Golden Spread Electric Cooperative, Inc.

[Docket No. ER03–16–000]

Take notice that on October 4, 2002, Golden Spread Electric Cooperative, Inc. (Golden Spread) tendered for filing with the Commission a Second Informational Filing to Golden Spread Rate Schedule No. 35. The Second Informational Filing updates the formulary fixed costs associated with replacement energy sales by Golden Spread to Southwestern Public Service Company (Southwestern). A copy of this filing has been served upon Southwestern.

Comment Date: October 25, 2002.

6. Duke Energy Hanging Rock, LLC

[Docket No. ER03–17–000]

Take notice that on October 4, 2002, Duke Energy Hanging Rock, LLC (Duke Hanging Rock) tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke Hanging Rock seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke Hanging Rock also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities. Duke Hanging Rock seeks an effective date 60 days from the date of filing of its proposed rate tariff.

Comment Date: October 25, 2002.

7. Astoria Generating Company, L.P.

[Docket No. ER03–18–000]

Take notice that on October 4, 2002, Astoria Generating Company, L.P. (Astoria) submitted for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994) and Part 35 of the Commission's Regulations, a Tariff for Quick Start Service (Tariff) to compensate Astoria for Quick Start Service provided to Consolidated Edison Company of New York, Inc. or the New York Independent System Operator, Inc. (NYISO). Astoria will provide Quick Start Service to the Buyers to allow Con Edison and/or the NYISO to meet New York State Reliability Council reliability requirements.

Astoria respectfully requests that the Commission waive the notice requirements set forth in Rule 35.3(a) to the extent necessary to allow the Tariff to become effective as of October 4, 2002.

Comment Date: October 25, 2002.

8. The Detroit Edison Company

[Docket No. ER03–19–000]

Take notice that on October 4, 2002, The Detroit Edison Company tendered for filing with the Federal Energy Regulatory Commission (Commission) a filing pursuant to Section 205 of the Federal Power Act in the above-captioned docket. The filing requests that the Commission accept for filing an Agency Agreement for Open Access Wholesale Distribution Interconnection Service between The Detroit Edison Company and the Midwest Independent Transmission System Operator, Inc., dated October 3, 2002.

Comment Date: October 25, 2002.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–20–000]

Take notice that on October 4, 2002 PJM Interconnection, L.L.C. (PJM), submitted for filing an executed revised interconnection service agreement between PJM and Conectiv Delmarva Generation Inc. (Conectiv) that supercedes an earlier interconnection service agreement between the parties.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties. Copies of this filing were served upon Conectiv and the state regulatory commissions within the PJM region.

Comment Date: October 25, 2002.

10. Louisville Gas and Electric Company

[Docket No. ES03–1–000]

Take notice that on October 1, 2002, Louisville Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue no more than $400 million of short-term debt securities, from time to time during a two-year period.

Comment Date: October 29, 2002.

11. Kentucky Utilities Company

[Docket No. ES03–2–000]

Take notice that on October 1, 2002, Kentucky Utilities Company filed an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term debt in an amount not to exceed $400 million, on or before November 30, 2004.

Comment Date: October 29, 2002.

Standard Paragraph

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. 02–26363 Filed 10–15–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7394–4]

RIN 2040–AD55

Public Meetings on the Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production (CAAP) Point Source Category

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Office of Science and Technology within EPA's Office of Water is conducting public meetings during the comment period to discuss the proposed effluent limitations guidelines and standards for the CAAP industry. EPA will sponsor three public meetings throughout the United States to give everyone an opportunity to attend. No registration is required for these meetings. EPA will report on the status of the regulatory development, and the public can ask questions and provide information and ideas to the Agency on key technical, scientific, economic, and other issues.

DATES: The public meeting dates are:

1. October 30, 2002, 9 a.m. to 12 noon, Washington, DC.
2. November 6, 2002, 9 a.m. to 12 noon, Seattle, WA.
3. November 12, 2002, 9 a.m. to 12 noon, Atlanta, GA.

ADDRESSES: The meeting locations are:

1. *Washington*—EPA East (Room 1153), 1201 Constitution Avenue, Washington, DC 20460. The closest Metro stop is Federal Triangle.
2. *Seattle*—EPA Region 10 Building (Nisqually-Pend Orielle—Quinalt—Shoshone Conference Room), 1200 6th Avenue, Seattle, WA 98101. You can find more information on Seattle transportation, directions, etc. on the following Web site: *http://yosemite.epa.gov/R10/EXTAFF.NSF/webpage/visiting+our+offices?OpenDocument.*
3. *Atlanta*—Sam Nunn Atlanta Federal Center (Atlanta-Augusta Room), 61 Forsyth St, SW, Atlanta, GA 30303. You can find more information on Atlanta hotels, transportation, etc. at *http://www.epa.gov/region4/visitors/transpor1.htm.*

FOR FURTHER INFORMATION CONTACT: Marta Jordan, Engineering and Analysis Division (4303), U.S. EPA, 1200 Pennsylvania Ave NW., Washington DC 20460. Telephone (202) 566–1049, fax (202) 566–1053 or e-mail *jordan.marta@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 12, 2002 (67 FR 57871), EPA proposed effluent limitations guidelines and standards for the CAAP Category under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The proposed regulations would apply to discharges from certain facilities in the CAAP Category that grow, contain or produce aquatic animals at amounts above 100,000 pounds for three subcategories: flow-through, recirculating and net pen systems. EPA did not propose to amend the National Pollutant Discharge Elimination System permitting regulations that define the facilities subject to permits. The proposed effluent guidelines and standards would apply to many, but not all CAAP facilities.

The public meetings will include a discussion of the scope of the regulation (including subcategorization), a summary of industry information, technology-based regulatory options, and general CAAP industry issues. Because EPA did not propose pretreatment standards for CAAP facilities, meeting agendas do not include pretreatment. Although EPA will not record and transcribe these meetings, EPA will prepare meeting summaries and add them to the rulemaking record.

If you need special accommodations at these meetings, such as wheelchair access or special audio-visual needs, you should contact the following at least five business days before the meeting so that EPA can make appropriate arrangements:

- Marta Jordan at (202) 566–1049 for the meeting in Washington, DC.
- Cathe Bell at (206) 553–0308 and/or Margaret/Maria (audio-visual needs) at (206) 553–1050 for the meeting in Seattle. You can also use the following Web site to find information on directions, lodging, and transportation: *http://yosemite.epa.gov/R10/EXTAFF.NSF/webpage/visiting+our+offices?OpenDocument.*
- Gary Hosmer at (404) 562–8151 for the meeting in Atlanta. You can also use the following Web site to find information on directions, lodging, and transportation: *http://www.epa.gov/region4/visitors/transpor1.htm.*

Those who are unable to attend the meeting can get a copy of the presentation and meeting materials after the meeting by making an e-mail or telephone request to Mrs. Marta E. Jordan, see the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: October 10, 2002.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 02–26442 Filed 10–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0260; FRL–7278–4]

Caffeine; Receipt of Application for Emergency Exemption, Solicitation of Public Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On September 27, 2002, EPA published a notice soliciting public comments regarding the receipt of an application for a quarantine exemption from the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA, APHIS) to use the pesticide caffeine (1*H*-purine-2,6-dione, 3,7-dihydro-1,3,7-trimethyl-) (CAS No. 58–08–2) to treat up to 200 acres of floriculture and nursery crops, parks, hotels and resort areas, and forest habitats to control Coqui and Greenhouse frogs. Comments were being requested because the Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is extending the comment period for 8 days, from October 15, 2002, to October 23, 2002.

DATES: Comments, identified by docket ID number OPP–2002–0260 must be received on or before October 23, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 27, 2002 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division

(7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; fax number: (703) 308–5433; e-mail address: Sec-18-Mailbox@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a federal or state government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

Federal or state government entity, (NAICS 9241), e.g., Department of Agriculture, Environment.

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

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0260. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the September 27, 2002 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA taking?

This document extends the public comment period established in the **Federal Register** of September 27, 2002 (67 FR 61099) (FRL–7275–2). In that document, EPA sought comment on a quarantine exemption request from USDA, APHIS to use the pesticide caffeine (1*H*-purine-2,6-dione, 3,7-dihydro-1,3,7-trimethyl-) (CAS No. 58–08–2) to treat up to 200 acres of floriculture and nursery crops, parks, hotels and resort areas, and forest habitats to control Coqui and Greenhouse frogs. The Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is hereby extending the comment period, which was set to end on October 15, 2002, to October 25, 2002.

III. What is the Agency's Authority for Taking this Action?

In accordance with 40 CFR 166 the Administrator shall issue a notice of receipt for a quarantine exemption request when the application proposes the use of a new chemical. Further provisions are made to give the public 15 days to comment. However, the Administrator may extend the comment period if additional time for comment is requested.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 10, 2002.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 02–26438 Filed 10–11–02; 4:47 pm]

BILLING CODE 6560–50–S

THE PRESIDENT'S CRITICAL INFRASTRUCTURE PROTECTION BOARD

National Strategy To Secure Cyberspace

October 11, 2002.

AGENCY: President's Critical Infrastructure Protection Board, Executive Office Of the President, The White House.

ACTION: Notice of pending request for public comment regarding the National Strategy to Secure Cyberspace for comment, released on September 18, 2002.

SUMMARY: Pursuant to the President's charge in Executive Order 12321, the President's Critical Infrastructure Protection Board (the ''Board'') has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft of the Strategy ''For Comment'' (the ''Strategy''). The Strategy was made available online at *http://www.securecyberspace.gov* for viewing and downloading. At the time of the release of the Strategy, the Board invited public comments and set a deadline of November 18, 2002 for such comments. The most efficient way to provide public comment is to do so online through the feedback link at *http://www.securecyberspace.gov.* By this Notice, the Board continues to solicit further comments and views from the public on the Strategy.

DATES: Comments may be submitted through November 18, 2002.

ADDRESSES: Comments may be submitted electronically as provided at *http://www.securecyberspace.gov.* In addition, written comments may be sent to: PCIPB/Strategy Public Comment; The White House; Washington, DC 20502. Individual hard copies of the draft Strategy may be obtained by calling 202–456–5420.

FOR FURTHER INFORMATION CONTACT: Tommy J. Cabe, (202) 456–5420.

SUPPLEMENTARY INFORMATION: On October 16, 2001, the President created the Board by Executive Order 12321. The President noted that ''[t]he information technology revolution has changed the way business is transacted,

government operates, and national defense is conducted. Those three functions now depend on an interdependent network of critical information infrastructures.'' In the Executive Order, the President directed the Board to ''recommend policies and coordinate programs for protecting information systems for critical infrastructure,'' and called for the Board to ''coordinate outreach to and consultation with the private sector, * * * State and local governments, [and] communities and representatives from academia and other relevant elements of society.''

Pursuant to the President's charge, the Board has been engaged in development of the National Strategy to Secure Cyberspace. On September 18, 2002, the Board released to the public a draft Strategy ''For Comment,'' identifying 24 strategic goals and listing over 80 recommendations. The Strategy was made available online at *http://www.securecyberspace.gov* for viewing and downloading.

The Strategy was developed based on input from a broad spectrum of individuals and groups that represent the owners and operators of cyberspace, as well as from the key sectors that rely on cyberspace, including Federal departments and agencies, private companies, State and local governments, educational institutions, nongovernmental organizations, and the general public. Town hall meetings to facilitate discussion and stimulate input were held during the Spring in Denver, Chicago, Portland, Oregon, and Atlanta and this month in Philadelphia and Boston. In addition, a list of 53 key questions was compiled, published, and publicized to spark public debate and facilitate informed input. The Board will convene additional town hall meetings around the country in the next few weeks to raise awareness about cybersecurity issues, and to solicit and receive the views and input of concerned citizens regarding the Strategy. Town hall meetings will be held in Pittsburgh, PA (October 24), New York, NY (November 7), Phoenix, AZ (November 14). For further information about specific town hall meetings, see *http://www.securecyberspace.gov.*

At the time of the release of the Strategy, the Board invited public comments and set a deadline of November 18, 2002 for such comments. By this Notice, the Board continues to solicit further comments and views from the public on the draft Strategy. The most efficient way to provide public comment is to do so online through the feedback link at *http://www.securecyberspace.gov.* In order to facilitate review and consideration of public comment, commenters are requested to use this electronic feedback link if at all possible. Comments will also be accepted if mailed to the postal address listed below, but it is requested that such commenters also provide an electronic version of their comments as well as the hard copy (*e.g.*, CD or floppy disc) if possible. In addition, it is requested that all commenters, including those submitting their comments in hard copy form rather than online, make every effort to organize the comments by reference to specific sections of the Strategy and if applicable) the numbered recommendation or discussion topic commented upon.

Those preferring to submit their comments by hard copy (preferably with an accompanying electronic version of the comment) should send them to: PCIPB/Strategy Public Comment; The White House; Washington, DC 20502. The Board will consider all relevant comments in the further development of the Strategy. However, there are no plans to respond individually to each comment.

Dated: October 11, 2002.

Richard A. Clarke,

Chair, President's Critical Infrastructure Protection Board

[FR Doc. 02–26456 Filed 10–16–02; 8:45 am]

BILLING CODE 3165–D3–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 5, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 16, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *lesmith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0387.

Title: On Site Verification of Field Disturbance Sensors—Section 15.201(d).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 3,600 hours.

Total Annual Cost: $40,000.

Needs and Uses: FCC rules permit the operation of field disturbance sensors in the low VHF region of the spectrum. To monitor non-licensed field disturbance sensors operating in the low VHF television bands, a unique procedure for on-site equipment testing of the systems is required to ensure suitable safeguards for the operation of these devices. Data are retained by the holder of the equipment authorized/issued by the FCC and made available only at the request of the Commission.

OMB Control Number: 3060–0436.

Title: Equipment Authorization—Cordless Telephone Security Coding.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 200.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Needs and Uses: The FCC requires cordless telephone security features to protect the public switched telephone network from unintentional line seizure and telephone dialing. These features prevent unauthorized access to the telephone line, the dialing of calls in response to signals other than those from the owner's handset, and the unintentional ringing of a cordless telephone handset. Use of the cordless telephone security features reduces the harm caused by some cordless telephones to the ''911'' Emergency Service Telephone System and the telephone network in general.

OMB Control Number: 3060–1015.

Title: Ultra Wideband Transmission Systems Operating Under Part 15—Section 15.525, (ET Docket No. 98–153).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 500.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 1,000 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR Section 15.2525 requires operators of Ultra Wideband (UWB) transmission systems to coordinate their operations to avoid interference with sensitive U.S. government radio systems. Initial operation in a particular area may not commence until authorized by the FCC. The UWB operators must provide the name, address, and other pertinent contact information of the user, the desired geographical area of operation, the FCC ID number, time period during which operations will take place, and other nomenclature of the UWB device. The FCC collects this information and forwards it to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce). This information collection is essential to control potential interference to Federal radio communications. (Please note that on June 12, 2002, OMB approved this collection under the ''emergency processing'' provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26432 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 7, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by December 16, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0900.

Title: Compatibility of Wireless Services with Enhanced 911; Second Report and Order in CC Docket No. 94–102.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, state, local, or tribal government, not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 20 hours.

Frequency of Response: One-time and on occasion reporting requirements.

Total Annual Burden: 2,190 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The information submitted by manufacturers or carriers wishing to incorporate new or modified E911 call processing modes will be used to keep the Commission informed of technological developments and thus to ensure that the Commission's regulations are kept current and reflect the preferences of the industry in complying with E911 regulations. The information to be submitted with applications for equipment authorizations for analog cellular telephones is necessary to ensure industry compliance with E911 call completion regulations. The voluntary education program will enable consumers to use wireless analog sets to make E911 calls in an informative manner, ensuring a fast, reliable response.

OMB Control No.: 3060–0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 13.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual and on occasion reporting requirements, recordkeeping requirement.

Total Annual Burden: 104 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Pursuant to section 64.804 of FCC rules, a carrier must obtain a signed, written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for charges, and which

shall state that the applicant or applicants are liable for payment and that the applicant understands that service will be discontinued if payment is not rendered. Section 64.804 also requires records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services shall be maintained by the carrier as to show separately, interstate and foreign communication services all charges, credits, adjustments, and security, if any, and balance receivable. Section 64.804 requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report, annually, data including due and outstanding balances.

OMB Control No.: 3060–0876.

Title: USAC Board of Directors Nomination Process (47 CFR 54.703) and Review of Adminstrator's Decision (47 CFR 54.719–54.725).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 22.

Estimated Time Per Response: 20–32 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 560 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Pursuant to section 54.703 industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors. Sections 54.719–54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. The information is used by the Commission to select USAC's Board of Directors and to ensure that requests for review are filed properly with the Commission.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26433 Filed 10–17–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 16, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0076.

Title: Annual Employment Report for Common Carriers.

Form No.: FCC Form 395.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4,000.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement.

Total Annual Burden: 4,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Annual Employment Report is a data collection device for enforcement and assessment of the Commission's EEO rules. All common carrier licensees or permittees which sixteen (16) or more full-time employees are required to file this report and retain it for a two year period. The report identifies each carrier's staff by gender, race, color and/or national origin in each of nine major job categories. The information, in addition to being useful for our purposes, has also been used by public interest groups, NTIA, the Equal Employment Opportunity Commission, the Congress and the U.S. Commission on Civil Rights to assess progress in accordance with their particular objectives.

OMB Control No.: 3060–0859.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 80.

Estimated Time Per Response: 63 to 125 hours (average).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,280 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it in the public interest to inform the public of the information necessary to support its full consideration of the issues likely to be involved in preemption actions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26434 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 18, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0395.

Title: The ARMIS USOA Report (ARMIS Report 43–02); the ARMIS Service Quality Report (ARMIS Report 43–05); and the ARMIS Infrastructure Report (ARMIS Report 43–07).

Report Nos.: FCC Reports 43–02, 43–05, and 43–07.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 5.7 to 844 hours.

Frequency of Response: Annual reporting requirement, recordkeeping requirement.

Total Annual Burden: 26,446 hours.

Total Annual Cost: N/A.

Needs and Uses: The USOA Report provides the annual results of the carriers' activities for each account of the Uniform System of Accounts. The Service Quality Report provides service quality information in the areas of interexchange access service, installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap carriers. The Infrastructure Report provides switch deployment and capabilities data. The Commission is seeking an extension of the emergency request that was submitted in March 2002.

OMB Control No.: 3060–0511.

Title: ARMIS Access Report.

Report No.: FCC Report 43–04.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 121.

Estimated Time Per Response: 157 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 18,997 hours.

Total Annual Cost: N/A.

Needs and Uses: The Access Report is needed to administer the Commission's accounting, jurisdictional separations and access charge rule; to analyze revenue requirements and rates of return, and to collect financial data from Tier 1 incumbent local exchange carriers. The Commission is seeking an extension of the emergency request that was submitted in March 2002.

OMB Control No.: 3060–0513.

Title: ARMIS Joint Cost Report.

Report No.: FCC Report 43–03.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 121.

Estimated Time Per Response: 83 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 10,043 hours.

Total Annual Cost: N/A.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of nonregulated operations by the regulated operations of Tier 1 carriers. The Commission is seeking an extension of the emergency request that was submitted in March 2002.

OMB Control No.: 3060–0641.

Title: Notification to File Progress Report.

Form No.: FCC Form 218-I.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 500 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 218–I is used as a method of verifying that the 218–219 MHz service licensee (previously IVDS) has made service available in accordance with the terms of authorization issued. The information is used to update databases and insures efficient spectrum utilization.

OMB Control No.: 3060–0783.

Title: Section 90.176, Coordination Notification Requirements on Frequencies Below 512 MHz.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 15 respondents; 3,900 responses.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 1,950 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 90.176 requires each Private Land Mobile frequency coordinator to provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering analysis. Any method can be used to ensure this compliance with the ''one business day requirement'' and must provide, at a minimum, the name of the applicant; frequency or frequencies recommended; antenna locations and heights; the effective radiated power; the type(s) of emission; the description of the service area; and the date and time of the recommendation. If a conflict in recommendations arises, the affected coordinators are jointly responsible for taking action to resolve the conflict, up to and including notifying the Commission that an application may have to be returned.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26431 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–2578]

Commission Releases Agenda for Public Forum on Rights-of-Way Issues

ACTION: Notice.

SUMMARY: This document announces the agenda for the public forum on rights-of-way issues to be held on October 16, 2002.

DATES: The public forum on rights-of-way management will be held on October 16, 2002 from 9:15 a.m. to 3:30 p.m.

ADDRESSES: The public forum on rights-of-way management will be held at the FCC's headquarters, 445 12th Street, SW., Washington, DC, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Kris Monteith or Gene Fullano, Consumer & Government Affairs Bureau, (202) 418–1400, *kmonteit@fcc.gov* or *gfullano@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Public Forum is aimed at facilitating discussion among local authorities, state regulators, and the industry to develop consensus positions where possible. The forum will strive to, among other things, identify principles and practices that all parties believe can be a model for access to and management of rights-of-way with respect to the communications industry. The following agenda provides the names and affiliations of the invited panelists.

9:15 a.m.–10 a.m.

Welcome and Introduction
K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau, FCC Chairman and Commissioners

10 a.m.–11 a.m.

The Jurisdictional Question: Local vs. Federal Authority
Introduction—Background, historical perspective on rights-of-way issues, and status of court challenges. Panel discussion on the scope of Federal authority under Section 253 of the Communications Act.
Moderator: Jane Mago, General Counsel, Office of General Counsel

Panelists

Lisa Gelb, Deputy City Attorney, San Francisco, California
Chris Melcher, Corporate Counsel, Qwest Communications
Pam Beery, Partner, Beery & Elsner
Teresa Marrero, Manager, Federal Rights-of-Way Issues, AT&T

11 a.m.–11:15 a.m.

Break

11:15 a.m.–12:30 p.m.

Fair and Reasonable Compensation for Use of Rights-of-Way
Panel discussion on compensation issues including cost-based, percentage of revenue, and in-kind compensation approaches.
Moderator: Bill Maher, Chief, Wireline Competition Bureau

Panelists

Sandy Sakamoto, Assistant General Counsel and Assistant Attorney SBC/Pacific Telesis
Don Knight, Assistant City Attorney, Dallas, Texas
Kelsi Reeves, Vice President of Federal Government Relations Time Warner Telecom
Larry Doherty, Director, Site Development, West Region, Sprint PCS
Barry Orton, Professor of Telecommunications, University of Wisconsin—Madison

12:30 p.m.–2 p.m.

Lunch Break

2 p.m.–2:30 p.m.

Perspectives from the Administration
Nancy Victory, Assistant Secretary for Communications and Information, U.S. Department of Commerce

2:30 p.m.–3:30 p.m.

Looking Ahead: Policy Approaches to Rights-of-Way Management
Panel discussion on how best to accommodate the interests of multiple stakeholders.
Moderator: Ken Ferree, Chief, Media Bureau

Panelists

Ken Fellman, Mayor, Arvada, Colorado
Dorian Denburg, Chief Rights-of-Way Counsel, BellSouth Corporation
Bob Chernow, Chair, Regional Telecom Commission
Alexandra Wilson, Chief Policy Counsel, Cox Enterprises
Bob Nelson, Commissioner, Michigan Public Utility Commission

3:30 p.m.

Closing
K. Dane Snowden, Chief, Consumer & Governmental Affairs Bureau

The forum will be closed captioned and will be carried live on the Internet through RealAudio from the FCC Web site at: *http://www.fcc.gov/realaudio/.* A transcript of the forum will be available 10 business days after the event on the FCC's Internet site at *http://www.fcc.gov/cgb/row.html.* Transcripts may also be obtained from the FCC's duplicating contractor, Qualex International, 445 12th St., SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* Audio and video tapes of the forum can be purchased from CACI Productions (formerly Infocus Media), 341 Victory Drive, Herndon, VA 20170, by calling CACI at (703) 834–1470 or by faxing CACI at (703) 834–0111. The meeting agenda will be provided in accessible formats. The meeting site is fully accessible to people using wheelchairs or other mobility aids. Copies of the transcript in other alternative formats (computer diskette, large print, and Braille) are available to persons with disabilities by contacting Brian Millin (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.* Send requests for reasonable accommodations to *fcc504@fcc.gov,* or contact Helen Chang, Section 504 Officer, 202–418–0424, 202–418–0432 TTY, or *hchang@fcc.gov.* Also include a way of contacting you if we need more information. Please submit your request at least 5 days in advance so that we can assure provision of the service you require. Participants and attendees are reminded of the Commission's ex parte rules and are responsible for complying with those rules to the extent their comments address the merits of pending proceedings.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26430 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From October 10th Open Meeting

October 9, 2002.

The following item has been deleted from the list of agenda items scheduled for consideration at the October 10, 2002, Open Meeting and previously listed in the Commission's Notice of October 3, 2002. This item has been adopted by the Commission.

Item No.	Bureau	Subject
3	Enforcement	Title: SBC Communications, Inc., Apparent Liability for Forfeiture. Summary: The Commission will consider a Forfeiture Order concerning compliance with the shared transport condition of the SBC/Ameritech merger order.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–26555 Filed 10–15–02; 10:44 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 01–92, DA 02–2436]

Intercarrier Compensation for Wireless Traffic

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comment on two petitions for declaratory ruling regarding the intercarrier compensation regime applicable to certain types of wireless traffic. Both petitions raise issues under consideration in CC Docket 01–92, *Developing a Unified Intercarrier Compensation Regime.*

DATES: Comments due October 18, 2002 and reply comments due November 1, 2002.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Steve Morris or Victoria Schlesinger, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1530, or Gregory Vadas, Policy Division, Wireless Telecommunications Bureau, (202) 418–1798.

SUPPLEMENTARY INFORMATION: On September 6, 2002, T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications, Inc., and Nextel Partners, Inc. (CMRS Petitioners) filed a petition for declaratory ruling in the above-referenced docket requesting that the Commission ''reaffirm that wireless termination tariffs are not a proper mechanism for establishing reciprocal compensation arrangements' between local exchange carriers (LECs) and commercial mobile radio service (CMRS) providers. According to CMRS Petitioners, a CMRS carrier typically will interconnect indirectly with a rural ILEC (*i.e.*, traffic will be exchanged through an intermediate carrier.) CMRS Petitioners state that indirectly interconnecting carriers often exchange traffic pursuant to a bill-and-keep arrangement, rather than an interconnection agreement, at least for mobile-to-land traffic. CMRS Petitioners state that some rural LECs recently have filed state tariffs as a mechanism to collect reciprocal compensation for the termination of intra-MTA traffic originated by CMRS carriers. The CMRS Petitioners assert that compensation for such traffic should be paid only when the LEC and CMRS carrier have entered into an interconnection agreement under section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In the absence of such an agreement, they state that traffic should be exchanged on a bill-and-keep basis. The CMRS Petitioners request that the Commission direct ILECs to withdraw any wireless termination tariffs in existence today or, alternatively, to declare such tariffs unlawful, void and of no effect. The CMRS Petitioners state that the Commission has authority to issue the requested ruling pursuant to sections 332(c)(1) and 201 of the Communications Act.

On September 18, 2002, U.S. LEC Corp. filed a petition for declaratory ruling asking the Commission to ''issue a ruling reaffirming that LECs are entitled to recover access charges from IXCs for the provision of access service on interexchange calls originating from, or terminating on, the networks of CMRS providers.'' U.S. LEC states that industry practice is for IXCs to pay access charges to LECs for this traffic, but that recently one IXC has declined to pay these charges. U.S. LEC states that a requirement that IXCs pay access charges to LECs for traffic to or from a CMRS carrier is fully supported by Commission precedent. U.S. LEC asserts that grant of the petition is necessary to eliminate controversy and avoid future challenges regarding this issue. The U.S. LEC petition was placed in the record in the above-referenced docket.

Both petitions raise issues under consideration in CC Docket 01–92, *Developing a Unified Intercarrier Compensation Regime,* 66 FR 28410, May 23, 2001.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before October 18, 2002, and reply comments on or before November 1, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your email address>.'' A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html.* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7:p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD

20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com.* In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, Wireline Competition Bureau, and Chief, Policy Division, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW., Washington, DC 20554, and will be placed on the Commission's Internet site.

This proceeding will be governed by ''permit-but-disclose'' ex parte procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules. Parties making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. In addition, interested parties are to file any written ex parte presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW., TW–B204, Washington, DC 20554, and serve with three copies each: Pricing Policy Division, Wireline Competition Bureau, Attn: Victoria Schlesinger, and Policy Division, Wireless Telecommunications Bureau, Attn: Gregory Vadas, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893.

Federal Communications Commission.

Tamara Preiss,

Division Chief, Pricing Policy Division.

[FR Doc. 02–26435 Filed 10–16–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE: Tuesday, October 8, 2002. The closed meeting and the open meeting scheduled for that day were canceled.

DATE AND TIME: Tuesday, October 22, 2002 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 23, 2002 and Thursday, October 24, 2002 at 9:30 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

MATTER BEFORE THE COMMISSION: Coordinated and Independent Expenditures: Notice of Proposed Rulemaking.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 24, 2002, 10 a.m., meeting open to the public. This meeting has been canceled.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–26633 Filed 10–15–02; 3:20 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Grants for State and Local Homeland Security Activities

AGENCY: Office of National Preparedness (ONP), Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability of fiscal year 2002 supplemental funds for State and local all-hazards emergency operational planning, Citizen Corps activities, and development or improvement of Emergency Operations Centers.

SUMMARY: FEMA gives notice of the availability of funds for fiscal year (FY) 2002 for State and local all-hazards emergency operations planning; for the development or improvement of State and local Emergency Operations Centers (EOCs); and for further development of Citizen Corps, including funds for Citizen Corps Councils and for Community Emergency Response Team (CERT) training. Funding of $100 million is available for planning, $56 million for EOCs, and $25 million for Citizen Corps.

FOR FURTHER INFORMATION CONTACT: Gil Jamieson, Federal Emergency Management Agency, Office of National Preparedness, 500 C Street, SW., Washington, DC 20472, (202) 646–4090 or e-mail: *gil.jamieson@fema.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Appropriation

The legislative authority for the program activities described in this notice are the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5206;. The 2002 Supplemental Appropriations Act For Further Recovery From and Response To Terrorist Attacks on the United States, P.L. 107–206.

Applicant Eligibility

States are eligible to apply for the assistance described in this notice. The term ''State'' as used in this notice and consistent with the Stafford Act, 42 U.S.C. 5122(4), means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Local governments may receive assistance as subgrantees of the States in which they are located. The term ''Local government'' as used in this notice shall have the meaning set forth in the Stafford Act, 42 U.S.C. 5122(6).

Activities To Be Funded

State and Local All Hazards Emergency Operational Planning

The FY 2002 supplemental funding will provide comprehensive planning assistance to State and local governments to conduct Emergency Operations Plan (EOP) updating for all hazards with special emphasis on incidents of terrorism including use of weapons of mass destruction (WMD).

The funds for planning grants will be allocated among the States on the basis of population and will require no cost share. Each State grantee of these planning funds will be required to pass through at least 75 percent of the amount received to local governments.

Coordinated planning at the State and local levels is essential to meet urgent needs for improving the planning initiatives of State and local emergency management and first responder organizations to effectively request and use future resources and thereby build and enhance our Nation's capability to respond to and recover from the imminent threat or actual occurrence of a terrorist attack including use of WMD.

States will receive supplemental 2002 funding to modify and enhance their EOPs, as needed, so that they address all hazards, to include terrorism using WMD or conventional means. Funds should also be used for the following emergency planning objectives:

- Incorporate interstate and intrastate mutual aid agreements,
- Facilitate communication and interoperability protocols,
- Establish a common incident command system, * Address critical infrastructure protection,
- Conduct State and local assessments to determine emergency management planning priorities,
- Address State and local continuity of operations and continuity of government, and
- Provide for coordination and effective use of volunteers in response and preparedness activities.

Citizen Corps

Grants under the Citizen Corps initiative will be available to establish Citizen Corps Councils, to support the oversight and outreach responsibilities of the councils, and to expand CERT training. Of the $25 million appropriated for Citizen Corps, $4 million will be used for grants related to Citizen Corps Councils, $17 million will be used for grants related to CERT training, and $4 million will be used by FEMA for activities essential for developing the Citizen Corps initiative.

Citizen Corps funds will be allocated to States using the percentages prescribed in Section 1014 of the USA Patriot Act, Pub. L. 107–56. Each State will be allocated a base amount of not less than 0.75 percent of the total amount available except that the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands each will be allocated a base amount of 0.25 percent. The remaining Citizen Corps grant funds will be allocated on the basis of population and added to the base amounts. Citizen Corps grants and subgrants described in this notice will carry no cost-share requirement.

Grantees will be expected to develop and implement a jurisdiction-wide strategic plan for Citizen Corps, including forming local Citizen Corps Councils, CERT training, public education and outreach, and volunteer opportunities that promote community and family safety. Local governments receiving grants may use the funding for Citizen Corps Council organizing activities; for outreach and public education campaigns to promote Citizen Corps and community and family safety measures, to include printing, marketing, advertising, and special events; for organizing, training, equipping, and maintaining CERTs; and for defraying the added expense of liability coverage for CERT participants.

Each grantee of Citizen Corps funds will be required to subgrant at least 75 percent of those funds to local governments with no cost share. Grantees are expected to give priority to local governments that have demonstrated a commitment to community and family safety or to local governments that have a high-risk profile based on crime, disaster vulnerabilities, and public health issues. A commitment to community and family safety is shown by such activities as having established or planned a Citizen Corps Council, having programs to promote community and family safety, having conducted community-based events that promote safety, having established mutual aid agreements with other jurisdictions, and having demonstrated a commitment to citizen participation in crime prevention and disaster mitigation, preparedness, response, and recovery.

Emergency Operations Centers (EOCs)

The funding for EOCs will be awarded in two phases. Each State will be allocated a $50,000 Phase 1 grant, which is targeted for an initial assessment of the hazards, vulnerabilities, and resultant risk to the existing EOC. If a State has already completed a vulnerability assessment of its existing State EOC, it may apply to use the funds to conduct initial assessments of local EOCs. Phase 1 EOC activity will be 100 percent federally funded, *i.e.*, will require no cost share.

Phase 2 EOC grants will use the remaining funds to address the most immediate EOC deficiencies nationwide. The Phase 2 EOC grants will require a 50–percent non-Federal cost share.

During Phase 2, we invite the States to submit grant applications that reflect deficiencies documented in a completed self-assessment that reflects statewide needs, is consistent with national priorities, and considers characteristics associated with a fully functioning EOC. EOC self-assessment criteria will be provided in the grant guidance package.

Project applications will be evaluated and selections made for funding on the basis of the following order of national priorities:

- Physical modifications to the EOC to support secure communications equipment;
- New EOC construction where the most cost effective action is new construction (Cost-benefit ratio should be greater than 1);
- Corrective construction to address deficiencies determined by the Risk Assessment;
- Architectural and Engineering services for EOC projects in FY 2003 and out years;
- Creation of State Alternate EOC at an existing building for Continuity of Operations;
- Physical modifications to enhance security, but not the hiring of guards;
- Retrofits of existing EOCs with collective protection systems for Chemical, Biological, Radiological, or Nuclear (CBRN) agents;
- Redundant communications; and
- Other projects to increase the survivability of existing State or local EOCs.

FEMA will conduct the final environmental review and approval for all activities in accordance with Title 44, Code of Federal Regulations, Part 10 (44 CFR part 10) prior to awarding any grants. The approval for some activities, including the risk/vulnerability assessments of EOCs, is automatic through the categorical exclusion under the National Environmental Policy Act, per 44 CFR 10.8. However, some EOC projects, including physical modifications to EOCs for secure communications equipment, may require a more extensive environmental review, sometimes resulting in an environmental assessment. To expedite the approval process, States should consult with the FEMA Regional office as they develop their environmental documentation. Until FEMA has completed its environmental review, States may not initiate work on these projects.

EOC construction projects supported by these grants are subject to the provisions of the Davis-Bacon Act. All laborers and mechanics employed by contractors or subcontractors in performance of construction work

assisted by these EOC grants must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with Davis-Bacon and related Acts.

Grant Application Process

The chief elected official of each eligible jurisdiction will receive a letter from FEMA describing the grant activity and requesting that a point of contact (POC) and alternate be appointed. Guidance and grant application packages will be provided to the POCs.

A single grant application may be used to apply for the planning, Citizen Corps and Phase 1 EOC program elements. A separate application should be prepared for the Phase 2 EOC program element. The grant application for the planning, Citizen Corps, and Phase 1 EOC program elements should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information ‘‘ Non-Construction Program, FEMA Form 20–20;
- Budget Narrative;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances ‘‘ Non-Construction Program, FEMA Form 20–16A;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL; and,
- Program Narrative identifying the activities for which funding is requested.

The Program Narrative should include the following:

- Description of how States will work with local governments including Tribal governments and communities and the process that the State will use to solicit, prioritize, and select subgrants;
- Activity title and number;
- Individual activity costs, including Federal and nonfederal shares;
- Activity-specific scopes of work, including a list of properties, if applicable;
- Recommendations and documentation regarding the environmental review required by 44 CFR 10, Environmental Considerations, and other applicable laws and executive orders; and
- Certification that the State has evaluated the included projects and that they will be implemented in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

The Phase 2 EOC grant application should include all of the above with the following construction program forms substituted for the non-construction versions:

- Budget Information ‘‘ Construction Programs, FEMA Form 20–15;
- Assurances ‘‘ Construction Programs, FEMA Form 20–16B;

FEMA regional personnel will work directly with the States providing technical assistance, as required, as State and local governments carry out work under the grants.

Administrative Costs

Costs to administer each of the programs will be limited to 5 percent of the grant award. The amount that grantees and subgrantees choose to apply toward administrative costs will not be in addition to the grant and subgrant amounts. For grants with the 75-percent pass-through requirement, administrative costs for the grantees will be based on the portion of the grant that the State retains (i.e., States may use no more than 5 percent of the 25 percent of the total grant award they retain for administrative costs). Administrative costs for each subgrantee will be limited to 5 percent of their subgrant award. Administrative costs may be used to support grants management activities such as the review and award of subgrant applications, the preparation of quarterly reports, and monitoring subgrants. Costs related to staffing to implement program activities are eligible costs under each of the grants and do not need to be charged to the administrative costs. For example, hiring a staff person to update the State’s Emergency Operations Plan is an eligible activity under the Planning grant. Indirect costs should also be included in administrative costs and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency. In compliance with 44 CFR 13.20, all administrative costs must be supported by source documentation. If the Indirect Cost Rate exceeds the 5-percent administrative costs allowance after all other eligible administrative costs have been identified and budgeted, the grantee must submit a request for a waiver with justification to validate the need for additional administrative costs.

Sensitive Information

FEMA will make every effort as permitted by law to protect sensitive or confidential information submitted in the grant process. If FEMA receives a third-party request for an applicant’s information, both the Freedom of Information Act and FEMA’s regulations contain provisions that may protect sensitive or confidential information that is determined by FEMA to be exempt from disclosure. These determinations are made on a case-by-case basis. Applicants should advise FEMA of the sensitive or confidential nature of information at the time such information is submitted. To ensure proper handling in the mail distribution process, the sensitive or confidential information should be placed in an envelope plainly marked to indicate the nature of its contents. This envelope should be placed in a second envelope marked ‘‘To be opened by addressee only’’ and mailed ‘‘Certified Receipt Requested.’’

Reporting Requirements

The States are required to submit quarterly financial and performance reports 30 days after the end of each quarter, per 44 CFR 13.40 and 41. Reporting dates are: January 30, April 30, July 30, and October 30. The performance reports will provide a comparison of actual accomplishments to the objectives approved for the period. Where the output of the project can be quantified, that information shall be provided. The States must also report the progress of each subgrantee award in their quarterly reports. When the Department of Health and Human Services (HHS) Payment Management System (SMARTLINK) is used for advanced or reimbursement payments, the grantee is required to submit a copy of Federal Cash Transaction Report (HHS/PMS 272) to FEMA when it is submitted to HHS. In addition, final financial and performance reports are required 90 days after the close of the grant, per 44 CFR 13.50.

ADDRESSES: FEMA Regional Offices:

FEMA Region I—*Serving the States of Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and Massachusetts:* 442 J.W. McCormack POCH, Boston, MA 02109–4595.

FEMA Region II—*Serving the States of New York and New Jersey, the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands:* 26 Federal Plaza, Rm. 1337, New York, NY 10278–0002.

FEMA Region III—*Serving the District of Columbia and the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia:* 1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

FEMA Region IV—*Serving the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee:* 3003 Chamblee Tucker Road, Atlanta, GA 30341.

FEMA Region V—*Serving the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin:* 536 S. Clark Street, 6th Floor, Chicago, IL 60605.

FEMA Region VI—*Serving the States of Arkansas, Louisiana, New Mexico, Oklahoma and Texas:* FRC 800 North Loop 288, Denton, TX 76201–3698.

FEMA Region VII—*Serving the States of Iowa, Kansas, Missouri, and Nebraska:* 2323 Grand Avenue, Suite 900, Kansas City, MO 64108.

FEMA Region VIII—*Serving the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:* Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

FEMA Region IX—*Serving the States of Arizona, California, Hawaii and Nevada; the Territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands:* 1111 Broadway, Suite 1200, Oakland, CA 94607–4052.

FEMA Region X—*Serving the States of Alaska, Idaho, Oregon and Washington:* Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–9709.

Dated: October 10, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–26405 Filed 10–16–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011626–007.

Title: The Alianca/Columbus/Crowley/P&O Nedlloyd Agreement.

Parties: Alianca Navegacao e Logistica Ltda., Hamburg-Sud, P&O Nedlloyd Limited, P&O Nedlloyd B.V., Oceanica AGW Com. E Rep. Ltda.

Synopsis: The amendment increases the number of vessels to be operated under the agreement from six to seven with each party's space allocation adjusted accordingly.

Agreement No.: 201139.

Title: Port of New Orleans and New Orleans Cold Storage & Warehouse Company, Ltd.

Parties: Board of Commissioners of the Port of New Orleans New Orleans Cold Storage & Warehouse Company, Ltd.

Synopsis: The filed agreement provides for the lease of the facility known as the Jourdan Road Shed and the construction of a new cold storage facility at that location. The lease will run for 30 years with two optional renewal periods of 10 years each.

By Order of the Federal Maritime Commission.

Dated: October 11, 2002.

Theodore A. Zook,

Assistance Secretary.

[FR Doc. 02–26455 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4284N.

Name: Cargo, Inc.

Address: 220 Thorndale Avenue, Bensenville, IL 60106.

Date Revoked: September 19, 2002.

Reason: Failed to maintain a valid bond.

License Number: 4156N.

Name: Gulf Eagle USA, Inc. dba Gulf Eagle Ocean Line.

Address: 500 McCormick Drive, Suite G & H, Glen Burnie, MD 21061.

Date Revoked: July 18, 2002.

Reason: Failed to maintain a valid bond.

License Number: 17413NF.

Name: Venture Transport, Inc.

Address: 314 North Post Oak Lane, Houston, TX 77024.

Date Revoked: September 4, 2002.

Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–26454 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

Lincense No.	Name/Address	Date reissued
3661F	Expressair Cargo, Inc., 11091 NW 27th Street, Miami, FL 33172	September 8, 2002
16194N	Palumbo International Freight Forwarders, Inc., Calle Nebraska S–8, Ext Parkville, Guaynabo, PR 00969.	July 18, 2002

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 02–26452 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation

Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Uni-Star Logistics, Inc., 520 E. Carson Plaza Court, Suite 206, Carson, CA 90746, Officer: Jong Jae Lee, President (Qualifying Individual)

People & Logistics America, Inc., 21148 S. Figueroa Street, Carson, CA 90745, Officers: Hyn S. Bang, President (Qualifying Individual), Man Youn, CFO

KSO Container Inc., 3200 Wilshire Blvd., Suite 601, (North Tower), Los Angeles, CA 90010, Officers: Joseph A. Lorenzo, Jr., President/CFO (Qualifying Individual), Hyung Shin, Secretary

Commonwealth Custom Broker, Inc., dba C.C.B. Logistics dba C.C.B. Terminal, 8100 NW 29th Street, Miami, FL 33122, Officer: Rick Betancourt, President (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Gonbros Group Corporation, 2110 SW 3rd Avenue, Suite 4E, Miami, FL 33129–1477, Officers: Andre J. Gonzales, President (Qualifying Individual), Philippe R. Gonzales, Vice President

Dragon America Forwarding Inc., 3847 NW 142nd Terrace, Portland, OR 97229, Officers: Tamie Keeler-Parr, Vice President (Qualifying Individual), Jianian Gordon Chen, President

Global Worldwide, Inc., 4808 Kroemer Road, Fort Wayne, IN 46818, Officers: Donald J. Krengiel, Asst. Secretary (Qualifying Individual), James W. Rogers, Director

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Echo-Translink Systems (ETS), 13027 7th Avenue, NW., Seattle, WA 98177, Ellen Thompson, Sole Proprietor

Dated: October 11, 2002.

Theodore A. Zook,

Assistant Secretary.

[FR Doc. 02–26453 Filed 10–16–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Act, Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, October 21, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 11, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–26541 Filed 10–15–02; 10:25 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its regulations under the Fair Packaging Labeling Act (FPLA). The FTC is seeking public comments on the proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements contained in the regulations. That clearance expires on December 31, 2002.

DATES: Comments must be filed by November 18, 2002.

ADDRESSES: Send written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN.: Desk Officer for the Federal Trade Commission (comments in electronic form should be sent to *oira_docket@omb.eop.gov),* and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580 (comments in electronic form should be sent to *FPLApprwk@ftc.gov*). All comments should be captioned ''FPLA Regulations: Paperwork Comment'' as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Stephen Ecklund, Investigator, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326–2841.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. On July 31, 2002, the FTC sought comment on the information collection requirements associated with the FPLA regulations, 16 CFR parts 500–503 (OMB Control Number: 3084–0110). Sec 67 FR 49694. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the Rule.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *FPLA pprwk@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)96)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii).

The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The regulations that implement the FPLA, 16 CFR parts 500–503, establish requirements for the

manner and form of labeling applicable to manufacturers, packagers, and distributors of ''consumer commodities.'' [1] Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) A statement of identity; (2) a net quantity of contents disclosure; and (3) the name and place of business of a company that is responsible for the product.

Estimated annual hours burden: 8,095,000 total burden hours (solely relating to disclosure [2]).

Based on U.S. Census data, staff conservatively estimates that approximately 809,500 manufacturers, packagers, distributors, and retailers of consumer commodities make disclosures at an average burden of ten hours per entity, for a total disclosure burden of 8,095,000 hours.

Estimated annual cost burden: $135,187,000, rounded (solely relating to labor costs).

The estimated annual labor cost burden associated with the FPLA disclosure requirements consists of an estimated hour of managerial and/or professional time per covered entity (at an estimated average hourly rate of $50) and nine hours of clerical time per covered entity (at an estimated average hourly rate of $13), for a total of $135,186,500 ($167 per covered entity × 809,500 entities).

Total capital and start-up costs are de minimis. For many years, the packaging and labeling activities that require capital and start-up costs have been performed by covered entities in the ordinary course of business independent of the FPLA and implementing regulations. Similarly, firms provide in the ordinary course business the information that the statute and regulations require be placed on packages and labels.

John D. Graubert,

Acting General Counsel.

[FR Doc. 02–26393 Filed 10–16–02; 8:45 am]

BILLING CODE 6750–01–M

[1] ''Consumer commodity'' means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.'' 16 CFR 500.2(c). For the precise scope of the term's coverage see 16 CFR 500.2(c); 503.2; 503.5. See also *http://www.ftc.gov/os/statutes/fpla/outline.html.*

[2] To the extent that the FPLA-implementing regulations require sellers of consumer commodities to keep records that substantiate ''cents off,'' ''introductory offer,'' and/or ''economy size'' claims, staff believes that most, if not all, of the records that sellers maintain would be kept in the ordinary course of business, regardless of the legal mandates. ''Burden,'' for OMB purposes, excludes such items. *See* 5 CFR 1320.3(b)(2).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

Name: Task Force on Community Preventive Services

Times and Dates: 8:45 a.m.–5 p.m., October 23, 2002. 8:30 a.m.–3 p.m., October 24, 2002.

Place: The Sheraton Colony Square, 188 14th Street, NE., Atlanta, Georgia 30361, telephone(404) 892–6000.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters To Be Discussed: Agenda items include: briefings on the administrative information, a clinical guide update, dissemination activities, methods overview, and preliminary findings from the Tobacco Control State Workshops; approved recommendations for the following interventions: Cancer Reminders, Skin Cancer Prevention, Tobacco—School-Based Interventions, and Vaccine Preventable Disease—Methods Introduction and High Risk Adult Vaccinations; and updates on the development of the Improving Pregnancy Outcomes, Mental Health, Nutrition and Violence Prevention Chapters.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Stephanie Zaza, M.D., Chief, Community Guide Branch, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 4770 Buford Highway, M/S K–73, Atlanta, Georgia 30341, telephone 770/488–8189.

Persons interested in reserving a space for this meeting should call 770/488–8189 by close of business on October 18, 2002.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26378 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee to ACIPC.

Time and Date: 8:15 a.m.-12:15 p.m., November 6, 2002.

Place: Sheraton Colony Square Hotel Midtown Atlanta, 188 14th Street, NE, Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control (NCIPC) programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items of the Subcommittee oversight meeting include presentations and discussions on the fiscal year 2001 and 2002 NCIPC research budget; enhancing relationships between extramural researchers and NCIPC staff; policies on mid-course reviews of Injury Control Research Centers (ICRCs); and length of ICRC research projects. Following the oversight meeting, the Subcommittee will conduct an acute care workshop in which several researchers will present current projects that have been funded in the acute care area. The discussions that occur in the workshop will

have relevance to the agenda for the full ACIPC meeting that follows.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1:30 p.m.–6 p.m., November 6, 2002. 8 a.m.–3 p.m., November 7, 2002.

Place: Sheraton Colony Square Hotel Midtown Atlanta, 188 14th Street, NE, Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include reports from the Science and Program Review Subcommittee and Family and Intimate Violence Prevention Subcommittee; an update on CDC's preparedness efforts; an update on unintentional poisoning in North Carolina; fatal intimate partner violence, Ft. Bragg, North Carolina, 2002; an introduction to the issue of the public health role in acute care for injury prevention and control; NCIPC activities in acute care; presentations on acute care from representatives of professional medical organizations, including emergency medical services, emergency medicine, and trauma medicine specialists, which will provide ACIPC members with an overview of the state of trauma care in the United States and identify gaps that need to be filled; discussion of possible NCIPC contributions to acute care for injury; and NCIPC's 10th Anniversary celebrations and follow-up plan.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26379 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Safety and Health Research Advisory Committee (MSHRAC).

Time and Date: 8 a.m.–4 p.m., November 7, 2002.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington DC 20001, telephone (202) 628–2100, fax (202) 879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 35 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters to Be Discussed: Agenda for this meeting will focus on reports from the Director, NIOSH and Associate Director of Mining, training and worker education, emergency response and rescue, National Personal Protective Technology Lab, extramural research, and future activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Lewis V. Wade, Ph.D., Executive Secretary, MSHRAC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715–H, Hubert Humphrey Building, P12 Washington, DC 20201–0004, telephone 202/401–2192, fax 202/260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 10, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–26377 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Advisory Committee to the Director of the National Center for Environmental Health of the Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, National Center for Environmental Health.

Time and Date: 8:30 a.m.–4:30 p.m., November 22, 2002.

Place: Centers for Disease Control and Prevention, Chamblee Campus, 4770 Buford Highway NE., Building 102, Room 2201, Atlanta, GA 30341. In the interest of security, CDC has instituted stringent procedures for entrance onto the Chamblee campus by nongovernment employees. Persons without government identification will need to show a photo ID, sign in with Security, and be escorted to Building 102.

Status: Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 80 people.

Purpose: The Secretary, and by delegation, the Director of the Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work.

Matters to be Discussed: The agenda items for the meeting on November 22 will include but are not limited to an overview of the National Center for Environmental Health; personnel issues; and presentations from NCEH regarding current activities.

Agenda items are tentative and subject to change.

Contact Person for More Information: Individuals interested in attending the

meeting, please contact Kent Taylor, designated federal official, CDC, 4770 Buford Highway NE, MS F–29, Atlanta, Georgia 30341–3724; telephone (770) 488–7020, fax (770) 488–7024; e-mail: *ktaylor@cdc.gov*. The deadline for notification of attendance is November 14, 2002.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2002.

Burma Burch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention,

[FR Doc. 02–26380 Filed 10–16–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 22, 2002, from 10 a.m. to 5:30 p.m., and October 23, 2002, from 8:30 a.m. to 4:30 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 22, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application for a drug-coated coronary artery stent intended to treat coronary artery obstructions and to help prevent in-stent stenosis. On October 23, 2002, the committee will discuss and make recommendations on a premarket notification (510(k)) submission for an arterial cannula intended to prevent an adverse neurological or limb threatening event. Background information for each day's topic, including the agenda and questions for the committee, will be available to the public one business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the October 22, 2002, session will be posted on October 21, 2002; material for the October 23, 2002, session will be posted on October 22, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2002. On both days, oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of each topic and for approximately 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 18, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, as soon as possible.

FDA regrets that it was unable to publish this notice 15 days prior to the October 22, 2002, Circulatory System Devices Panel of the Medical Devices Advisory Committee Meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Circulatory System Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26471 Filed 10–11–02; 4:26 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Science Board to the Food and Drug Administration Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Science Board to the Food and Drug Administration.

General Function of the Committee: The Board shall provide advice primarily to the Commissioner and the Senior Associate Commissioner for Science and Health and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community. Additionally, the Board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science, formulating an appropriate research agenda, and upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Date and Time: The meeting will be held on October 25, 2002, 8 a.m. to 4:30 p.m.

Location: 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

Contact Person: Susan Bond, Office of the Commissioner (HF–33), Food and Drug Administration, rm. 17–35, 5600 Fishers Lane, Rockville, MD 20852, 301–827–6687, or e-mail: *sbond@oc.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12603.

Please call the Information Line for up-to-date information on this meeting.

Agenda: The Board will hear and discuss counter terrorism initiatives at FDA with emphasis on those initiatives from: The Center for Food Safety and Applied Nutrition, the new Office of Cellular and Gene Therapy in the Center for Biologics Evaluation and Research, current research and efforts in the pregnancy labeling initiative, an update of the pharmaceutical manufacturing initiative from The Center for Drug Evaluation and Research, and an update of the management oversight of products.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 18, 2002. Open committee discussion will be held from 8 a.m. to 1 p.m.; an open public hearing will be held from 1 p.m. to 2 p.m.; and an open committee discussion will be held from 2 p.m. to 4:30 p.m. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 18, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Susan Bond at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the October 25, 2002, Science Board to the Food and Drug Administration Advisory Committee Meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Science Board to the Food and Drug Administration Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 2002.

Linda Arey Skladany,

Senior Associate Commissioner for External Relations.

[FR Doc. 02–26472 Filed 10–11–02; 4:26 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Program Conference

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of public hearing.

SUMMARY: This document announces a public hearing to receive information and views on the notice that proposes methodologies and processes for the Children's Hospitals Graduate Medical Education (CHGME) Payment Program, published in the **Federal Register** (67 FR 60241) on September 25, 2002. The notice proposes methodology for: (1) Determining payments during the CHGME Payment Program's reconciliation process; (2) calculating indirect medical education (IME) payment; (3) disseminating CHGME Payment Program data, and (4) audit. This hearing will brief the public on the above methodologies and processes as well as hear public comments on the above. The public may also participate in the hearing by telephone as described below.

DATES: The public hearing will be held on October 22, 2002, from 2 p.m. to 3:30 p.m. EST.

ADDRESSES: The public hearing will be held in the Division of Medicine and Dentistry Conference Room, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ayah E. Johnson, Ph.D., telephone: (301) 443–1058; Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857; or by e-mail at: *ajohnson@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The CHGME Payment Program, as authorized by section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), provides funds to children's hospitals to address disparity in the level of Federal funding for children's hospitals that result from Medicare funding for graduate medical education (GME). Pub. L. 106–310 amended the CHGME statute to extend the program through fiscal year 2005.

The hearing will again provide information on the proposed methodologies and processes contained in the September 25, 2002, CHGME Payment Program notice. The agenda for the hearing will include the following: (1) Methodology for determining payments during the CHGME Payment Program's reconciliation process; (2) calculating IME payment; (3) disseminating CHGME Payment Program data, and (4) audit. This hearing will brief the public on the above methodologies and processes as well as hear comments from the public on the above. Time will also be available for a question and answer period. Information about the Program can be found on the CHGME Payment Program Web site. The Web site address is *http://bhpr.hrsa.gov/childrenshospitalgme.*

For security reasons, individuals wishing to attend the public hearing at the Parklawn Building must contact the CHGME Payment Program no later than October 17, 2002 to receive security clearance. These individuals should plan to arrive no later than 1:15 PM to accommodate security procedures. Individuals who do not contact the CHGME Payment Program by October 17, 2002 to receive security clearance will not be admitted to the Parklawn Building. In order for individuals to participate by telephone, they must dial: (888) 625–1617 and enter the corresponding pass code 52453. The pass code (52453) and Dr. Ayah Johnson's name, as call leader, are required to join the call. Telephone participants should call no later than 1:45 p.m. for logistical reasons.

In order to facilitate the public hearing, participants are asked to submit their questions in writing to Ayah E. Johnson, Ph.D., Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, 5600 Fishers Lane, Room 9A–27, Rockville, Maryland 20857; or by e-mail at *ajohnson@hrsa.gov* no later than October 17, 2002.

During the public hearing, individuals are asked to (1) hold their questions until the allotted question-and-answer period; (2) identify themselves and their hospital/organization before each question; and (3) address questions to

the Health Resources and Services Administration only. Individuals participating by telephone are also asked to keep their speakerphones on mute unless they are asking a question.

Dated: October 10, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–26476 Filed 10–16–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Recovery Plan for the Star Cactus (Astrophytum asterias)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the Draft Recovery Plan for the Star Cactus *(Astrophytum asterias).* The star cactus is known to occur on one private land site in Starr County, Texas. Additional populations may be found in Tamaulipas, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: The comment period for this Draft Recovery Plan closes November 18, 2002. Comments on the Draft Recovery Plan must be received by the closing date.

ADDRESSES: Persons wishing to review the Draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMUCC, 6300 Ocean Drive, Box 338, Corpus Christi, Texas, 78412. Comments and materials concerning this Draft Recovery Plan may be sent to ''Field Supervisor'' at the address above.

FOR FURTHER INFORMATION CONTACT: Loretta Pressly, Corpus Christi Ecological Services Field Office, at the above address; telephone (361) 994–9005, facsimile (361) 994–8262.

SUPPLEMENTARY INFORMATION:

Background

The star cactus *(Astrophytum asterias)* was listed as endangered on October 18, 1993, under authority of the Endangered Species Act of 1973, as amended. The threats facing the survival and recovery of this species include: habitat destruction through conversion of native habitat to agricultural land and increased urbanization; competition with exotic invasive species; genetic vulnerability due to low population numbers; and collecting pressures for cactus trade. The Draft Recovery Plan includes information about the species and provides objectives and actions needed to downlist, then delist the species. Recovery activities designed to achieve these objectives include; protecting known populations; searching for additional populations; performing outreach activities to educate the general public on the need for protection; establishing additional populations through reintroduction in the known range of the plant.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing recovery plans.

The Star Cactus Draft Recovery Plan is being submitted for technical and agency review. After consideration of comments received during the review period, the recovery plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 10, 2002.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 02–26376 Filed 10–16–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–02–1610–DT]

Notice of Availability of the Proposed California Desert Conservation Area Plan Amendment for the Coachella Valley, and the Final Environmental Impact Statement

AGENCY: Department of the Interior, Bureau of Land Management, California Desert District.

ACTION: Notice of Availability (NOA) of the Bureau of Land Management (BLM) Proposed California Desert Conservation Area (CDCA) Plan Amendment for the Coachella Valley (Coachella Valley Plan) and associated Final Environmental Impact Statement (FEIS), and initiation of the 30-day protest period.

SUMMARY: The Coachella Valley Plan amends the CDCA Plan for a 1.2 million-acre planning area encompassing the Coachella Valley, California. The BLM administers approximately 28 percent, or 330,516 acres, of the planning area. The Coachella Valley Plan is being developed in coordination with the Coachella Valley Association of Governments in support of their efforts to prepare a Coachella Valley Multiple-Species Habitat Conservation Plan (CVMSHCP).

The Coachella Valley Plan includes goals, objectives, and management prescriptions in accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) for comprehensive management of desert ecosystems, including actions supporting recovery of ten species listed under the federal Endangered Species Act: Peninsular Ranges Bighorn Sheep *(Ovis Canadensis nelsoni),* Arroyo Toad *(Bufo microscaphus californicus),* Desert Pupfish *(Cyprinodon macularius macularius),* Desert Slender Salamander *(Batrachoseps aridus),* Desert Tortoise *(Xerobates [or Gopherus] agassizii),* Least Bell's Vireo *(Vireo bellii pusillus),* Southwestern Willow Flycatcher *(Empidonax traillii extimus),* Yuma Clapper Rail *(Rallus longirostris yumanesis),* Coachella Valley Milk Vetch *(Astragalus lentiginousus coachellae),* and Triple-ribbed Milk Vetch *(Astragalus tricarinatus).* The

FEIS evaluates the Proposed Plan Amendments and three alternatives. The FEIS also includes public comments on the Draft Environmental Impact Statement (DEIS) and BLM's response to those comments.

DATES: The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final EIS containing the plan or amendment in the **Federal Register**. For an amendment not requiring the preparation of an EIS, the protest shall be filed within 30 days of the publication of the notice of its effective date. The BLM will issue a press release citing the actual date for closure of the protest period when determined, including publication on the BLM California's Internet site. Instructions for filing protests are contained in the Coachella Valley Plan cover sheet just inside the front cover, and are included below under ''Supplementary Information.''

ADDRESSES: Mailing address for filing a protest:

Regular mail—U.S. Department of the Interior, Director, Bureau of Land Management (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight mail—U.S. Department of the Interior, Director, Bureau of Land Management (210), Attn: Brenda Williams, Telephone (202) 452–5045, 1620 ''L'' Street NW, Rm. 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jim Foote at (760) 251–4836 or *jfoote@ca.blm.gov.* Copies of the Coachella Valley Plan are being mailed to those who received the DEIS or provided comments on the DEIS. The document is available for review via the Internet at *http://www.ca.blm.gov/palmsprings* and is also available in hard copy at the following addresses and telephone numbers:

BLM, 690 West Garnet Ave., P.O. Box 581260, North Palm Springs, CA 92258; (760) 251–4800.

BLM, 6221 Box Springs Blvd., Riverside, CA 92507; (909) 697–5200.

SUPPLEMENTARY INFORMATION: Following are the instructions from *Title 43 Code of Federal Regulations 1610.5–2* for filing protests:

(a) Any person who participates in the planning process and has an interest that is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues that were submitted for the record during the planning process.

(1) The protest shall be in writing and shall be filed with the Director. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final EIS containing the plan or amendment in the **Federal Register**. For an amendment not requiring the preparation of an EIS, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A concise statement explaining why the State Director's decision is believed to be wrong.

(3) The Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(b) The decision of the Director shall be the final decision for the Department of the Interior.

Dated: September 13, 2002.

James G. Kenna,

Field Manager.

[FR Doc. 02–26390 Filed 10–16–02; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–448]

Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of public hearing, and request for public comments.

EFFECTIVE DATE: October 10, 2002.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on September 16, 2002, the Commission instituted investigation No. 332–448, Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of assessing the textile and apparel industries of certain foreign suppliers with respect to their competitiveness and other factors pertinent to their adjustment to the final completion of the phaseout of quotas required by the Uruguay Round Agreement on Textiles and Clothing (ATC) on January 1, 2005.

FOR FURTHER INFORMATION CONTACT: For general information, contact Robert W. Wallace (202–205–3458; *wallace@usitc.gov*) or Kimberlie Freund (202–708–5402; *kfreund@usitc.gov*) of the Office of Industries. For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need access to the Commission should contact the Office of the Secretary at 202–205–2000. General information about the Commission can be found on its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public/.*

Background: As requested by the USTR, the Commission will assess the textile and apparel industries of certain countries that are currently suppliers to the U.S. market with respect to their competitiveness and other factors pertinent to their adjustment to ATC completion. These countries include: (a) significant ATC suppliers to the U.S. market, (b) Mexico, and (c) other supplying countries with preferential access to the U.S. market. In the letter, the USTR requested that, to the extent practicable, the Commission's analysis should discuss factors such as textile and apparel consumption, production, employment, and prices in major textile and apparel exporting countries, as well as their textile and apparel trade, particularly with industrial country markets. The USTR requested that the Commission provide the information in a confidential report by June 30, 2003. In consultation with USTR staff, countries identified as significant ATC suppliers to the U.S. market for purposes of this investigation are Bangladesh, China, Egypt, Hong Kong, India, Indonesia, Korea, Malaysia, Macao, Pakistan, the Philippines, Sri Lanka, Taiwan, Thailand, and Turkey.

Countries identified as ''other supplying countries with preferential access to the U.S. market'' are Israel, Jordan, and certain designated beneficiary countries under the African Growth and Opportunity Act, the Andean Trade Promotion and Drug Eradication Act, and the United States-Caribbean Basin Trade Partnership Act. In the request letter, the USTR referred to the ATC, which entered into force with the WTO agreements in 1995 and created special interim rules to govern trade in textiles and apparel among World Trade Organization Members for 10 years. The ATC called for the gradual and complete elimination of import quotas on textiles and apparel established by the United States and other importing countries under the Multifiber Arrangement and predecessor arrangements by January 1, 2005. Also in the request letter, USTR stated that, in anticipation of the final completion of the quota phaseout required by the ATC, ''it may be that significant changes will occur in the global pattern of production, trade and consumption of these products. It would be most helpful for the Administration to be able to anticipate the nature of these changes as much as possible.''

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on January 22, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., January 6, 2003. Any prehearing briefs (original and 14 copies) should be filed no later than 5:15 p.m., January 8, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., February 4, 2003. In the event that, as of the close of business on January 6, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205–1806) after January 6, 2003, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on February 4, 2003.

All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

List of Subjects: Textiles, apparel, quotas, and imports.

By order of the Commission.

Issued: October 10, 2002.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–26356 Filed 10–16–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 289–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records—previously published November 4, 1997 (62 FR 58734):

Computer Linked Application Information Management System (CLAIMS 3 and 4) Justice/INS–013

INS proposes to modify the following sections of the notice: System Location—by providing the web address for locating INS field office addresses; Categories of Individuals—to adequately describe the individuals at issue within the system; Categories of Records in the System—describing three other database systems that are either components or extractions of CLAIMS; Purpose—adding an additional purpose for maintaining this system of records; Retrievability—adding another means for retrieval of the data; Retention and Disposal—updating the schedule to include its current description; System Manager—an internal reorganization switched authority for the system to a new program office; and Records Access Procedures—the text has been updated. Also, three routine uses (B), (F), and (G) are being edited and three routine uses (H), (I), and (J) have been added. Finally, other minor corrections and edits have also been made.

In accordance with 5 U.S.C. 552a (e)(4) and (11), the public is given a 30-day period in which to comment on the proposed routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comment by November 18, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a the Department has provided a report to OMB and the Congress.

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–013

SYSTEM NAME:

Computer Linked Application Information Management System (CLAIMS 3 and 4).

SYSTEM LOCATION:

The Department of Justice (DOJ) Data Processing Center with data access by Immigration and Naturalization Service (INS) users from Headquarters, Regional and District offices, Service Centers, and sub-offices as detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052), and on the Internet at the INS Web page, at *http://www.INS.gov*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed applications or petitions for benefits under the Immigration and Nationality Act, as amended, and/or who have submitted fee payments with such applications or petitions; and individuals who have paid fees for access to records under the Freedom of Information/Privacy Acts (FOIA/PA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic information which identifies individuals named above, *e.g.*, name and address, date of birth, country of birth and alien registration number. Records in the system may also include such information as date documents were filed or received in INS, application/petition status, location of record, FOIA/PA or other control number when applicable, and fee receipt data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103; 8 U.S.C. 1363; and 31 U.S.C. 3512.

PURPOSE(S):

CLAIMS 3 and 4 consists of three major components: 1) The Local Area Network (LAN) version is used mainly by the INS Service Centers to support the processing and maintenance of applications and petitions information into computer data format; 2) The centralized mainframe component, retains data uploaded from the Service Center LAN operations and provides real-time on-line nationwide inquiries and update capabilities to authorized INS representatives, and; 3) The re-engineered Client/Server version of CLAIMS automates aspects of applications associated with naturalization/citizenship and benefits processing. Both investigative and administrative records are maintained in this system in order to permit the INS to function efficiently. Reports are also generated from the data within the system.

The CLAIMS 3 and 4 components enable INS to provide automated support to process applications and/or petitions for benefits; determine the status of pending applications and petitions for benefits; account for and control the receipt and disposition of any fees and refunds collected, and FOIA/PA requests; and locate related physical and automated files to support INS responses to inquiries about these records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

B. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding.

C. To an actual or potential party or to his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

D. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

E. To a Member of Congress, or staff acting upon the Member's behalf, when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

F. To General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To an obligor who has posted a bond with the INS for the subject. INS may provide only such information, as either (1) may aid the obligor in locating the subject to insure his or her presence when required by INS or (2) assist the obligor in evaluating the propriety of the following actions by INS: breach of bond—*i.e.*, notice to the obligor that the subject of the bond has failed to appear which would render the full amount of the bond due and payable.

H. To the appropriate agency/organization/task force, regardless of whether it is Federal, State, local, foreign, or tribal, charged with the enforcement (*e.g.*, investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

I. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

J. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on magnetic disks and tape.

RETRIEVABILITY:

Records may be retrieved by: the Alien File Number (A-Number) in some instances; the name of the individuals covered by the system; and by application/petition receipt number.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, and access to premises is by official identification. Offices are locked during non-duty hours. Access to this system is obtained through remote terminals that require the use of restricted passwords and a user ID.

RETENTION AND DISPOSAL:

The following INS proposal for retention and disposal is pending approval by NARA. Information located on the LAN database will be archived in accordance with the archiving criteria for each different INS form downloaded into the system, *i.e.*, one to three years after date of last completed action to a repository where it will remain 15 years before destruction. Archived reports are maintained at INS Service Centers for 15 years and then are destroyed. The re-engineered client/server data will be deleted 15 years after INS has completed the final action on the benefit request.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Executive Associate Commissioner, Office of Field Operations, Immigration Services Division, 435 I Street NW, Room 7246, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager.

RECORDS ACCESS PROCEDURE:

Requests for access to records in this system must be in writing. Such requests may be submitted by mail or in person. If a request for access is made by mail, the envelope and letter shall be clearly marked Privacy Access Request. The requester should provide his or her full name, date and place of birth, verification of identity in accordance with 8 CFR 103.21(b), and any other

identifying information that may be of assistance in locating the record. Requests to contest or amend information contained in the system should be made to the system manager or the FOIA/PA officer at any INS office. The requester should also provide a return address for transmitting the records to be released.

CONTESTING RECORDS PROCEDURE:

Requests to contest or amend information contained in the system should be made to the System Manager or the FOIA/PA officer at any INS office. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope, ''Privacy Act Amendment Request.'' The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the individuals covered by the system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–26260 Filed 10–16–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 290–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice (DOJ), proposes to remove an existing system of records, entitled Secondary Verification Automated Log (SVAL), last published October 10, 1995 (60 FR 52699) and replace it with a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published. This new system of records is entitled:

The Verification Information System (VIS), JUSTICE/INS–035.

Therefore, on the effective date of the new system, named above, the SVAL system notice will be removed from the DOJ inventory of Privacy Act systems of records.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by November 18, 2002. The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–035

SYSTEM NAME:

Verification Information System (VIS).

SYSTEM LOCATION:

Headquarters, Regional, District, and suboffices of the Immigration and Naturalization Service (INS) in the United States—addresses can be located on the INS webpage: *www.INS.gov* and as detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrants and naturalized U.S. citizens applying for federal, state, and local public benefits for whom INS receives a Form G–845, Document Verification Request, or an automated verification request submitted by federal, state, and local public benefit issuing agencies; and immigrant employees of employers who participate in one of INS' Employment Verification Pilot Programs.

AUTHORITY FOR MAINTENANCE OF RECORDS:

8 U.S.C. 1255a, 8 U.S.C. 1324a, 8 U.S.C. 1360 and 42 U.S.C. 1320b–7.

PURPOSE(S):

This system of records is used to provide immigration status information to federal, state, and local government agencies for immigrants and naturalized U.S. citizens applying for federal, state, and local public benefits. It is also used to provide employment authorization information to employers participating in an employment verification pilot program. The VIS expands the Systematic Alien Verification for Entitlements (SAVE) Program's current electronic primary verification process which utilizes the Alien Status Verification Index (ASVI) database (JUSTICE/INS–009, last published September 7, 2001, 66 FR 46815) to include two additional systems: (1) The Status Verification System (SVS); and (2) the Management Reporting System (MRS). External users access ASVI to electronically verify immigration status and employment authorization. In the instances when the verification cannot be confirmed by ASVI, an electronic transmission of the verification request is sent by ASVI to SVS to an INS field office for processing record manual agency verification requests (Forms G–845) submitted to INS field offices when the agency does not have access to an automated secondary verification method or electronic access is not feasible. In cases where the employer verification process requires the immigrant employee to contact INS, SVS records these transactions. The SVS also includes a workload traffic management capability that moves and records the location of verification requests transmitted by external users to INS field offices servicewide. The SVS also captures status and employment verification statistics and transmits these statistics electronically to MRS. The MRS is an automated system used by INS management to produce statistical reports and information on immigration status and employment authorization verification requests.

The purpose of the system is to meet both current and future immigration status and employment authorization verification needs. The VIS provides the opportunity to reduce the submission of the paper Forms G–845 and reduces the amount of time necessary to provide immigration status and employment authorization information. The VIS will be used by current participants of the SAVE Program, the Employment Verification Pilots, and future customers. The VIS extends the automation of the verification process from the initial verification through the ASVI database through any verification that may be required with INS field offices and records and captures statistical information associated with the verification process.

CATEGORIES OF RECORDS IN THE SYSTEM:

Some agency users submit requests to INS on Form G–845 for agency manual verification. These records contain the following data: Alien Registration Number (A-Number), alien name, nationality, date of birth, and name, address, telephone number, and contact person of the submitting agency. INS will complete Section B of Form G–845 with immigration status information and return it to the benefit issuing agency. However, identical data, together with a unique verification number and Form G–845 disposition data, will be recorded and maintained

by INS in the VIS database as a record of manual verification made by the benefit issuing agency.

Agency automated users submit their verification requests to INS electronically and these records contain the following data: A-Number, alien name, date of birth, INS document type, INS document expiration date, name of the submitting agency and immigration status information, as well as a unique verification number and disposition data, and will be maintained by INS in the VIS database as a record of verification made by the benefit issuing agency.

Employers also submit their verification requests to INS electronically and these records contain the following data: A-Number, alien name, date of birth, social security number, date of hire, claimed citizenship status, INS document type, INS document expiration date, name of the submitting employer and employment authorization information, as well as a unique verification number and disposition data, and will be maintained by INS in the VIS database as a record of verification made by the employer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed to the following:

A. To a federal, state, tribal, or local government agency, or to a contractor acting on its behalf, to the extent that such disclosure is necessary to enable these agencies to make decisions concerning: (1) Determination of eligibility for a federal, state, or local public benefit; or (2) issuance of a license or grant. Such access may be via a system in which the recipient performs its own automated verification of the requisite information for deciding any of the above. Records may also be disclosed to these agencies, or contractors operating on their behalf, for use in computer matching programs for the purpose of verifying an applicant's immigration status for the purpose of making benefit eligibility determinations.

B. To employers participating in Employment Verification Pilot Programs for verifying the employment authorization of immigrant employees to work in the United States. Employers are assigned secure access codes, user IDs, and passwords, and have access through personal computers with a modem.

C. To other federal, state, tribal, and local government agencies seeking to verify or determine the citizenship or immigration status of any individual within the jurisdiction of the INS as authorized or required by law. The INS will assign access codes and passwords for remote access through secure methods to agencies to perform their own automated verification.

D. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

E. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

G. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

H. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic disk and tape.

RETRIEVABILITY:

Agency records are retrieved by verification number, A-Number, or name of the applicant, or by the submitting agency name. Employer records are retrieved by verification number, A-Number, or Social Security Number of the employee, or by the submitting company name.

SAFEGUARDS:

Records are safeguarded in accordance with the Department of Justice Orders governing security of automated records and Privacy Act systems of records. Access is controlled through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

Completed verifications are archived to a storage disk monthly and destroyed five (5) years after the last month contained on the disk.

SYSTEM MANAGER(S) AND ADDRESS:

The Servicewide system manager is the Assistant Commissioner, Office of Records, Immigration and Naturalization Service, 425 I Street NW., Fourth Floor, Union Labor Life Building, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries about the system in writing to the system manager identified above.

RECORD ACCESS PROCEDURES:

In all cases, requests for access to a record in this system shall be in writing. If a request for access is made by mail, the envelope and letter should be clearly marked ''Privacy Act Request.'' The requester shall include the name, date and place of birth of the person whose record is sought and, if known, the A-Number. The requester shall also provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Any individual desiring to contest or amend information maintained in the system should direct his or her request to the System Manager or the INS office that completed the verification request. The request should clearly state what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Form G–845, Request for Document Verification (furnished by benefit issuing agencies) and INS immigration status records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 02–26261 Filed 10–16–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 291–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the system of records—INS Appendix: List of Principal Offices of the INS, JUSTICE/INS–999, last published, April 13, 1999 (64 FR 18052). This system notice is being modified because most of the INS offices are listed on the INS Web site. The Web site address is *http://www.INS.gov*. Those field office addresses not on the INS Web site appear in JUSTICE/INS–999. Requesters seeking records from the following systems of records may review this system notice and the Web site to obtain those addresses for each system location cited in the system notice.

1. INS Index System, JUSTICE/INS–001, 10/5/93 (58 FR 51847)
2. INS Alien File and Central Index System, JUSTICE/INS–001A, 9/7/01 (66 FR 46813)
3. INS Office of Internal Audit Investigations Index and Records, JUSTICE/INS–002, 1/3/02 (67 FR 347)
4. The Asset Management Information System (AMIS), JUSTICE/INS–004, 4/27/98 (63 FR 20651)
5. INS Image Storage and Retrieval System (ISRS), JUSTICE/INS–005, 01/22/01 (66 FR 6672)
6. INS Orphan Petitioner Index and Files, JUSTICE/INS–007, 07/27/01 (66 FR 39199)
7. INS Bond Management Information System, JUSTICE/INS–008, 12/18/98 (63 FR 70159)
8. INS Alien Status Verification Index, JUSTICE/INS–009, 9/7/01 (66 FR 46815)
9. INS Password Issuance and Control System, JUSTICE/INS–011, 3/2/89 (54 FR 8838)
10. INS Deportable Alien Control System, JUSTICE/INS–012, 01/22/01 (66 FR 6672)
11. INS Computer Linked Application Information Management System (CLAIMS), JUSTICE/INS–013, 11/4/97 (62 FR 59734)
12. Security Access Control System, JUSTICE/INS–014, 01/22/01 (66 FR 6670)
13. INS Port of Entry Office Management Support System, JUSTICE/INS–015, 6/14/90 (55 FR 24167)
14. Secondary Verification Automated Log, JUSTICE/INS–016, 10/10/95 (60 FR 52699)
15. INS Global Enrollment System (GES), JUSTICE/INS–017, 3/13/97 (62 FR 11919)
16. INS Employment Assistance Program (EAP) Treatment Referral Records, JUSTICE/INS–019, 1/22/98 (63 FR 3349)
17. Designated Entity Information Management System (DEIMS), JUSTICE/INS–021, 7/22/97 (62 FR 39256)
18. The Immigration and Naturalization Service Attorney/Representative Complaint/Petition Files, JUSTICE/INS–022, 12/16/99 (64 FR 70288)
19. INS Law Enforcement Support Center Database, JUSTICE/INS–023, 05/14/97 (62 FR 26556)
20. FD–258 Fingerprint Tracking System, JUSTICE/INS–024, 07/31/00 (65 FR 46741)
21. Worksite Enforcement Activity Record and Index (LYNX), JUSTICE/INS–025, 9/24/01 (66 FR 48890)
22. Hiring Tracking Systems (HITS), JUSTICE/INS–026, 12/16/99 (64 FR 70291)
23. JobSwap/Job Exchange System (JOBX), JUSTICE/INS–030, 03/8/01 (66 FR 13966)
24. Redesigned Naturalization Application Casework System (RNACS), JUSTICE/INS–031, 4/29/02, (67 FR 20996)
25. National Automated Immigration Lookout System (NAILS), JUSTICE/INS–032, 4/4/01 (66 FR 17928)
26. I–551 Renewal Program Temporary Sticker Issuance I–90 Manifest System (SIIMS), JUSTICE/INS–033, 01/22/01 (66 FR 6673)

Therefore, the INS Appendix, JUSTICE/INS–999 is modified accordingly.

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–999

SYSTEM NAME:

INS Appendix: List of principal offices of the Immigration and Naturalization Service.

HEADQUARTERS:

Immigration and Naturalization Service, 425 ''I'' Street NW., Washington, DC 20536.

REGIONAL OFFICES:

Eastern Regional Office, 70 Kimball Avenue, South Burlington, VT 05403–6813.

Central Regional Office, 7701 North Stemmons Freeway, Dallas, TX 75247–9998.

Western Regional Office, PO Box 30080, Laguna Niguel, CA 92607–0080.

ADMINISTRATIVE CENTERS:

Eastern Administrative Center, 70 Kimball Avenue, South Burlington, VT 05403–6813.

Southern Administrative Center, 1460 Prudential Drive, Dallas, TX 75235.

Northern Administrative Center, Bishop Henry Whipple Federal Building, Room 480, One Federal Drive, Fort Snelling, MN 55111–4007.

Western Administrative Center, 24000 Avila Road, Laguna Niguel, CA 92677–8080.

BORDER PATROL ACADEMY:

DOJ/INS (FLETC) Artesia, 1300 West Richey Avenue, Artesia, NM 88210.

Officer Development and Training Facility, Building 64 FLETC, Glynco, GA 31524.

[FR Doc. 02–26262 Filed 10–16–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 292–2002]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice, proposes minor changes to the following systems of records:

1. The Asset Management Information System (AMIS), JUSTICE/INS–004, previously published April 27, 1998 (63 FR 20651)

2. Law Enforcement Support Center Database (LESC), JUSTICE/INS–023, previously published May 14, 1997 (62 FR 26555).

INS proposes to add another authority for the AMIS system of records and make an editorial change in the ''Safeguards'' section. Changes for the LESC system of records include an editorial change to correct the address in the ''System Location'' and ''System Manager'' sections and a change in the ''Storage'' section to reflect that the program no longer maintains records in hardcopy format.

Comments may be directed to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

Dated: October 4, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

JUSTICE/INS–004

SYSTEM NAME:

The Asset Management Information System (AMIS).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 40 U.S.C. 486; (2) 41 CFR part 101; (3) 41 CFR part 128; and (4) 41 CFR part 102.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

* * * * *

RETRIEVABILITY:

* * * * *

SAFEGUARDS:

INS offices are located in buildings under security guard, and access to the premises is by official identification. All records are stored in space which is locked outside of normal office hours. In addition, paper records with social security numbers are stored in locked cabinets or machines. Access to the automated system is controlled by restricted password for use at remote terminals in secured areas.

* * * * *

JUSTICE/INS–023

SYSTEM NAME:

Law Enforcement Support Center Database.

SYSTEM LOCATION:

Immigration and Naturalization Service (INS), Law Enforcement Support Center (LESC), Eastern Regional Office Building, 188 Harvest Lane, Williston, Vermont 05495.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in electronic format. Electronic records are stored on magnetic or optical media (*i.e.,* computer hard drives, floppy disks, tapes and optical disks).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Director, Law Enforcement Support Center, Eastern Regional Office, Immigration and Naturalization Service, 188 Harvest Lane, Williston, VT 05495.

* * * * *

[FR Doc. 02–26263 Filed 10–16–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10845]

Amendment to Prohibited Transaction Exemption 86–128 (PTE 86–128) For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 86–128.

SUMMARY: This document amends PTE 86–128, a class exemption that permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. The amendment affects participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

DATES: The amendment is effective October 17, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8544, (this is not a toll-free number); or Charles Jackson, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 693–5600, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 10, 2002, notice was published in the **Federal Register** (67 FR 31838) of the pendency before the Department of a proposed amendment to PTE 86–128 (51 FR 41686, Nov. 18, 1986). PTE 86–128 provides an exemption from the restrictions of section 406(b)[1] of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code.

The amendment to PTE 86–128 adopted by this notice was requested in an application, dated October 29, 1999, on behalf of the Securities Industry Association (the SIA), a trade association for securities broker-dealers. The Department proposed the amendment to PTE 86–128 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

The notice of pendency gave interested persons an opportunity to comment on the proposed amendment or request a hearing. The Department received one comment on the proposed amendment which subsequently was withdrawn. The amendment adopted in this document is identical to the proposed amendment.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department submitted the proposed revision of the information collection provisions of Prohibited Transaction Exemption 86–128 to the Office of Management and Budget (OMB) at the time of publication of the proposed amendment. OMB approved the revised information collection request on June 20, 2002 under OMB control number 1210–0059. An application for continuing approval will be made before the currently scheduled expiration date of June 30, 2005.

Description of the Exemption

PTE 86–128 provides relief from the restrictions of section 406(b) for a plan fiduciary to use its authority to cause a plan to pay a fee to such fiduciary for effectuating or executing securities transactions as agent for the plan. Section I of PTE 86–128 contains definitions and special rules. Notably, for purposes of the class exemption, a ''person'' is defined to include ''the person and affiliates of the person'', and an ''affiliate'' of a ''person'' is defined, in part, to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; (2) any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or

[1] References to section 406 of ERISA as they appear throughout this amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996] generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

sister, of the person; and (3) any corporation or partnership of which the person is an officer, director or partner.

Section II describes the transactions covered under PTE 86–128 to include: a plan fiduciary using his or her authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency; a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; and the receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III contains conditions designed to protect the interests of plan participants and beneficiaries. These conditions require prior authorization to engage in covered transactions and periodic disclosure of the fiduciary's activities to the authorizing plan fiduciary. Section III(a), prior to this amendment, provided that the person engaging in a covered transaction may not be a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan. The term ''person'' is defined to include ''affiliates'' of the person, thus discretionary trustees, plan administrators, sponsoring employers, and their affiliates are generally precluded from relying on the relief provided by the exemption.

Section IV contains exceptions to several of the conditions in section III. Specifically, section IV provides that the conditions of section III do not apply to covered transactions to the extent such transactions are engaged in on behalf of individual retirement accounts which meet the requirements set forth in 29 CFR 2510.3–2(d) or plans, other than training programs, that do not cover any employees within the meaning of 29 CFR 2510.3–3. In addition, section IV provides that the conditions of section III do not apply in the case of agency cross transactions to the extent that the person effecting or executing the transaction: does not render investment advice to any plan for a fee with respect to the transaction; is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction; and does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such plan assets. Section IV also provides that a plan trustee, plan administrator, or sponsoring employer may engage in a covered transaction if he or she returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction. Finally, section IV contains special rules for pooled investment funds.

Description of the Exemption as Amended

The amendment to PTE 86–128 granted pursuant to this notice enables a discretionary trustee of an ERISA covered plan, or an affiliate of such trustee, to use its fiduciary authority to cause the plan to pay a fee to such trustee for effectuating or executing securities transactions as agent for the plan. In so doing, the trustee (other than a nondiscretionary trustee) must furnish to the authorizing fiduciary of each plan, at least annually, the information specified in section III(i) of the exemption, as amended. In general terms, this section requires the trustee to provide to such fiduciary the aggregate and the average brokerage commissions paid by the plan to brokerage firms affiliated and unaffiliated with the trustee.

In addition, as described in section III(h) of the exemption, a trustee (other than a nondiscretionary trustee) may only engage in a covered transaction on behalf of a plan to the extent such plan has at least $50 million in total net assets. This section provides further that, in the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(a) of the Act;

(3) In accordance with section 408(a) of ERISA and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) the amendment set forth herein is administratively feasible;

(ii) the amendment set forth herein is in the interests of plans and of their participants and beneficiaries; and

(iii) the amendment set forth herein is protective of the rights of participants and beneficiaries of plans;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 86–128 is amended as follows under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990):

(1) Section III(a) is amended to read: ''The person engaging in the covered transaction is not an administrator of the plan or an employer any of whose employees are covered by the plan.''

(2) A new paragraph (h) is added to section III which reads:

> ''(h) A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million.
>
> For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.''

(3) A new paragraph (i) is added to section III which reads:

''(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing fiduciary of each plan the following:

(1) the aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) the aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) the average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) the average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

For purposes of this paragraph (i), the words ''paid by the plan'' shall be construed to mean ''paid by the pooled fund'' when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.''

Signed at Washington, DC, this 11th day of October, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 02–26424 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Independent Contractor Register

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Independent Contractor Register.

DATES: Submit comments on or before December 16, 2000.

ADDRESSES: Send comments to David Meyer, Director, Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Meyer-David@msha.gov*, along with an original printed copy. Mr. Meyer can be reached at (202) 693–9802 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane E. Tarr, Program Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr_Jane@msha.gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977. 30 CFR 45.4(b) requires mine operators to maintain a written summary of information concerning each independent contractor present on the mine site. The information includes the trade name, business address, and telephone number; a brief description and the location on the mine of the work to be performed; MSHA location on the mine of the work to be performed; MSHA identification number, if any; and the contractor's business address of record. This information is required to be provided for inspection and enforcement purposes by the mine operator to any MSHA inspector upon request.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

The information obtained from the contractors is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Independent Contractor Register.

OMB Number: 1219–0040.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR part 45.

Total Respondents: 15,292.

Frequency: On occasion.

Total Responses: 99,398.

Average Time Per Response: 0.87 hours.

Estimated Total Burden Hours: 13,250 hours.

Estimated Total Burden Cost: $174,789.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–26384 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Part 46—Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c) (2) (A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the 30 CFR sections 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11; Training Plans, New Miner Training; Newly-Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training.

DATES: Submit comments on or before December 16, 2002.

ADDRESSES: Send comments to David Meyer, Director, Administration and Management, 1100 Wilson Boulevard, Room 2125, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to *Meyer-David@msha.gov,* along with an original printed copy. Mr. Meyer can be reached at (202) 693–9802 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane E. Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@msha.gov* (Internet e-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph (a) of § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by MSHA. For each size category, the Agency estimates that 20 percent of mine operators will choose to write a plan and send it to MSHA for approval.

Paragraph (d) requires mine operators to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to mine operators, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by mine operators, but by miners and their representatives.

Paragraph (g) requires that the miners' representative with a copy of the approved plan within one week after approval. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (h) allows mine operators, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal.

Paragraph (i) requires mine operators to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, mine operators must have the capability to provide the plan upon request by MSHA, miners, or their representatives.

Paragraph (a) of § 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

Paragraph (a) of § 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

Paragraph (a) of § 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator training the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide the miner with training that addresses the changes.

Paragraph (a) of § 46.8 requires, at least every 12 months, that the mine operator provide each miner with no less than 8 hours of refresher training.

Paragraph (a) of § 46.9 requires the mine operators upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was completed is punishable under § 110(a) and (f) of the Act.

Paragraph (a) of § 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

II. Desired Focus on Comments

MSHA is particularly interest in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''Federal Register Documents.''

III. Current Actions

USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United States. The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991.

MSHA's objective in these requirements is to ensure that all miners receive the required training, which would result in a decrease in accidents, injuries, and fatalities. Therefore, MSHA is continuing this requirement under 30 CFR 46.3, .5, .6, .7, .8, .9, and .11.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Training Plans, New Miner Training, Newly Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training (30 CFR 46.3, .5, .6, .7, .8, .9, .11).

OMB Number: 1219–0131.

Recordkeeping: § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

§ 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

§ 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

§ 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator train the miner in the safety and health aspects and safe work performances specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide the miner with training that addresses the changes.

§ 46.8 requires, at least every 12 months, that the mine operator provide each miner with no less than 8 hours of refresher training.

§ 46.9 requires the mine operators upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was completed is punishable under § 110(a) and (f) of the Act.

§ 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

Affected Public: Business or other for-profit.

Section	Total respondents	Frequency	Total responses	Avg time per response (hours)	Burden hours
46.3(a) exist	10,305	On Occasion	5,477	1.05	5,728
46.3(a) new	10,305	On Occasion	221	2.23	492
46.3(c) exist	10,305	On Occasion	1,040	.1	104
46.3(c) new	10,305	On Occasion	42	.19	8
46.3(d) exist	10,305	On Occasion	5,477	.05	274
46.3(d) new	10,305	On Occasion	221	.1	22
46.3(e) exist	10,305	On Occasion	384	.76	291
46.3(e) new	10,305	On Occasion	15	1.47	22
46.3(g) exist	10,305	On Occasion	1,095	.05	55
46.3(g) new	10,305	On Occasion	44	.09	4
46.3(h) exist	10,305	On Occasion	22	2	44
46.3(h) new	10,305	On Occasion	44	.09	4
46.3(i) exist	10,305	On Occasion	5,477	.05	274
46.3(i) new	10,305	On Occasion	221	.1	22
46.5(a) prepare	10,305	On Occasion	5,477	6	32,862
46.5(a) train	10,305	On Occasion	5,477	7.04	38,573
46.6(a) prepare	10,305	On Occasion	5,477	.1	5,477
46.6(a) train	10,305	On Occasion	5,477	1.74	9,543
46.7(a) Reg. Prepare	10,305	On Occasion	5,440	.25	1,360
46.7(a) Reg. Train	10,305	On Occasion	5,440	2.96	16,125
46.7(a) On Occasion New Prepare	10,305	On Occasion	11,042	.08	883
46.7(a) New Train	10,305	On Occasion	11,042	1.56	17,280
46.8(a) Prepare	10,305	On Occasion	5,477	3	16,431
46.8(a) Train	10,305	Annually	5,477	7.8	42,723
46.9 records of 46.5	10,305	On Occasion	4,139	.1	414
46.9 records of 46.6	10,305	On Occasion	4,076	.1	408

Section	Total respondents	Frequency	Total responses	Avg time per response (hours)	Burden hours
46.9 records of 46.7	10,305	On Occasion	31,287	.1	3,128
46.9 records of 46.8	10,305	On Occasion	31,287	.1	3,128
46.11(a) Train	10,305	On Occasion	5,477	10.45	57,218
Total	10,305		161,872		252,897

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $630,333.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 10th day of October, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–26383 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Systems of Records Notices

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to add records systems (NARA 35 and NARA 36).

SUMMARY: The National Archives and Records Administration (NARA) proposes to add two system of records notices to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. In this notice, NARA publishes NARA 35, Case Management and Reporting System (CMRS), and NARA 36, Public Transportation Benefit Program Files for comment.

EFFECTIVE DATES: The establishment of new systems NARA 35 and 36 will be effective without further notice on December 16, 2002, unless comments received on or before that date cause a contrary decision. If changes are made based on NARA's review of comments received, a new final notice will be published.

ADDRESSES: Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001. You may fax your comments to 301–837–0293. You may also comment via the Internet to *comments@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Ramona Branch Oliver, Privacy Act Officer, (301) 837–2024 (voice) or (301) 837–0293 (fax).

SUPPLEMENTARY INFORMATION: NARA last published a comprehensive set of Privacy Act notices in the **Federal Register** on April 2, 2002 (67 FR 15592). NARA is proposing to add NARA 35, Case Management and Reporting System, and NARA 36, Public Transportation Benefit Program Files, to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. NARA 35 covers persons who request information from or access to inactive military personnel, medical, and organizational records in the physical custody of the National Personnel Records Center (Military Personnel Records). NARA 36 covers the public transportation benefit program files, which contain information on NARA employees that is used to document the distribution of transportation subsidies. The notice for each of the two systems of records states the following:

- Name and the location of the record system;
- Authority for and manner of its operation;
- Categories of individuals it covers;
- Types of records that it contains;
- Sources of information in these records;
- Proposed ''routine uses'' of each system of records; and
- Business address of the NARA official who will inform interested persons of the procedures they must follow to gain access to and correct records pertaining to themselves. The Appendix B referenced in the proposed notices is found at 67 FR 15617.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles in transferring information to another agency or individual as a ''routine use'', including assurance that the information is relevant for the purposes for which it is transferred.

Dated: October 4, 2002.

John W. Carlin,

Archivist of the United States.

Accordingly, we are publishing the proposed new systems of records notices as follows:

NARA 35

SYSTEM NAME:

Case Management and Reporting System (CMRS).

SYSTEM LOCATION:

This automated system is located at the National Personnel Records Center (Military Personnel Records) in St. Louis, MO, and the National Archives and Records Administration in College Park, MD. The addresses for these locations are listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who request information from or access to inactive military personnel, medical, and organizational records in the physical custody of the National Personnel Records Center (Military Personnel Records). Also covered are the subjects of these inactive records.

CATEGORIES OF RECORDS IN THE SYSTEM:

CMRS files may include: Correspondence, including administrative forms used for routine inquiries and replies, between NARA staff and requesters; stored copies of frequently requested documents from individual Official Military Personnel Files (OMPF's); production and response time data used for internal reporting purposes; and databases used to respond to requests. These files may contain some or all of the following

information about an individual: Name, address, telephone number, position title, name of employer/institutional affiliation, identification of requested records, social security number/service number, previous military assignments, and other information furnished by the requester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2110, and 2907.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains CMRS files to: Maintain control of records being requested for either internal or external use, establish employee and requester accountability for records, prepare replies to requester's reference questions, record the status of requesters' requests and NARA replies to those requests, and to facilitate the preparation of statistical and other aggregate reports on employee performance and requester satisfaction.

The routine use statements A, C, D, E, F, and G, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records.

RETRIEVABILITY:

Information in CMRS files may be retrieved by the name, social security or military service number of the veteran whose record was the subject of the request. By use of a querying capability, information may also be retrieved by use of a system-assigned request number, by name and date of birth of the veteran, and by requester-supplied information, such as name and address, phone number, or email address.

SAFEGUARDS:

During business hours, electronic records are accessible to authorized NARA personnel via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

The disposition of the records in the CMRS system is under consideration. Accordingly, the records generated by the system cannot be destroyed until a records schedule is approved by the Archivist. Once the disposition is determined, retention and disposal of the records will be governed in accordance with the applicable disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager, CMRS, is the Director, National Personnel Records Center. The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address given in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the CMRS file is obtained from requesters and from NARA employees who maintain the file.

NARA 36

SYSTEM NAME:

Public Transportation Benefit Program Files.

SYSTEM LOCATION:

The transportation benefit program files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) The Facilities and Materiel Management Services Division (NAF);

(2) Presidential libraries, projects, and staffs; and

(3) Regional records services facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NARA employees who have enrolled in the Public Transit Subsidy Program (PTSP) are covered by this system, including: full-time employees; part-time employees; intermittent employees; and temporary employees and students.

CATEGORIES OF RECORDS IN THE SYSTEM:

The public transportation benefit program files contain information on NARA employees that is used to document the distribution of transportation subsidies. These files contain information submitted on NA Form 6041, Application'Public Transit Subsidy Program, by both current and non-current participants and include: name; home address; social security number; NARA unit; and NARA work phone number. In addition, files may contain vouchers and other forms used to document the disbursement of subsidies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104 and Executive Order 13150.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains transportation benefit program files on individuals in order to: provide the Department of Transportation with the names, social security numbers, and addresses of NARA employees who have enrolled in the Public Transit Subsidy Program or are members of qualified vanpools; and to verify employee compliance with the rules of the program. The routine use statements A and F, described in Appendix B following the NARA notices, also applies to this system.

STORAGE:

Paper forms (NA 6041, Application—Public Transit Subsidy Program; NA Form 6042—Authorization for Third Party Pickup—Public Transit Subsidy Program) and electronic records.

RETRIEVABILITY:

Information in the public transportation benefit program files may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible to authorized NARA personnel. Electronic records are accessible to authorized personnel via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records in the public transportation benefit program files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, NARA Files Maintenance

and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the transportation benefit program files in the Washington, DC, area is the PTSP Manager in NAF. Local PTSP managers are designated for the Presidential libraries and regional records services facilities. The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the public transportation benefit program files is obtained from individuals who have furnished information to the NARA PTSP.

[FR Doc. 02–25973 Filed 10–16–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 147th Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 7, 2002 from 2 p.m.–4:15 p.m. in Room 527 in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Following opening remarks and announcements, the new Council member will be sworn in. This will be followed by Congressional, White House, budget and planning updates. A guest presentation will be made by Jac Venza of PBS Great Performances. Other agenda items will include: Application Review for Creativity, Organizational Capacity Literature Fellowships, and Leadership Initiatives; review of Guidelines for Grants for Arts Projects; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TTY–TDD (202) 682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at (202) 682–5570.

Dated: October 9, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 02–26357 Filed 10–16–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to the Nuclear Management Company, LLC (the licensee), for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would revise the drywell leakage and sump monitoring section of the Technical Specifications (TSs) to clarify existing requirements, revise the existing limiting condition for operations and surveillance requirements, and add additional TS requirements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 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. 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 amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. The changes simply redefine the parameters for evaluation of leakage in the drywell. Changes in the time required to perform shutdown actions proposed are acceptable because they are reasonable based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner and without challenging plant safety systems. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC [intergranular stress corrosion cracking]. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment referenced in the proposed changes is still required to be operable. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or

different kind of accident from any accident previously analyzed.

The proposed changes do not involve physical alterations of the plant; no new or different type of equipment will be installed. Nor, are there significant changes in the methods governing normal plant operation. The changes simply redefine the parameters for evaluation of leakage in the drywell. Changes in the time required to perform shutdown actions proposed are acceptable because they are reasonable based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner and without challenging plant safety systems. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment redefines the parameters for evaluation of leakage in the drywell. Changes in the time required to perform shutdown actions proposed are acceptable because they are reasonable based on operating experience, to reach the required plant conditions from full power conditions in an orderly manner and without challenging plant safety systems. Therefore, these proposed changes will 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.

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. 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 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 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] which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* 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 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 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

[1] The most recent version of Title 10 of the *Code of Federal Regulations,* published January 1, 2002, inadvertently omitted the last sentence of 10 CFR 2.714(d) and subparagraphs (d)(1) and (2), regarding petitions to intervene and contentions. For the complete, corrected text of 10 CFR 2.714(d), please see 67 FR 20884; April 29, 2002.''

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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the 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 petition for leave to intervene and request for hearing 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 J. E. Silberg, Esquire Shaw, Pittman, Potts and Trowbridge 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the 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 dated October 8, 2002, 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.* 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, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 10th day of October 2002.

John G. Lamb,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–26445 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of establishment of the Peer Review Committee for Source Term Modeling.

SUMMARY: Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L., 94–463, Stat. 770–776) the Nuclear Regulatory Commission (NRC) announces the Establishment of the Peer Review Committee for Source Term Modeling. The Nuclear Regulatory Commission has determined that establishment of the Committee is necessary and is in the public interest. The Committee will develop guidance documents on source terms that will assist the NRC in evaluating the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages, including spent fuel. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration (GSA).

Background:

The committee will serve as an ''expert panel'' and will be composed of individuals with expertise in structural, nuclear, and thermal engineering, fuel performance and source term evaluations, consequence analyses, weapons and explosives, and transportation of radioactive material. The committee will refine the objectives, define evaluation criteria, develop the methodology, evaluate the scenarios, and write the guidance documents. The work will be based on previous and current studies and experiments, and the expertise of the individuals on the panel. The resulting guidance documents will be based on the qualitative judgments of the panel. A Smaller Expert Task Group will consist of individuals who will have complementary expertise to that of the committee. The Task Group will gather available data needed for the threat evaluations, revise and refine the range of payloads, packages and attack scenarios, provide an initial analysis of the sabotage scenarios and develop preliminary estimates for source terms for the more severe threats. The results of the Task Group will serve as a starting point for the work of the full committee.

The establishment of the Committee was effective on October 10, 2002 with the filing of its charter with the standing committees of Congress having legislative jurisdiction over the NRC, the Library of Congress, and GSA.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–415–1963.

Dated: October 11, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–26444 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754]

Environmental Assessment and Finding of No Significant Impact Related to the License Amendment Request of ABB Prospects, Inc. Materials License No. 06–00217–06 for the CE Windsor Site, Building Complexes 2, 5, and 17 in Windsor, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact related to the license amendment request of ABB Prospects, Inc. Materials License No. 06–00217–06 for the CE Windsor Site, Building Complexes 2, 5 and 17 in Windsor, Connecticut.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to ABB Prospects, Inc. Materials License No. 06–00217–06 to authorize dismantlement and deconstruction to grade level of the buildings in Building Complexes 2, 5, and 17 at the CE site in Windsor, CT and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the NRC has concluded that a finding of No Significant Impact is appropriate, and, therefore, an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: James Kottan, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, NRC Region I, King of Prussia, PA 19406; telephone (610) 337–5214 of e-mail *jjk@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Materials License Number 06–00217–06 issued to ABB Prospects, Inc. (ABB) to authorize the dismantlement and deconstruction of Building Complexes 2, 5, and 17 at the ABB site in Windsor, Connecticut.

1.0 Introduction

In a letter dated December 31, 2001, ABB submitted a request to amend Byproduct Materials License Number 06–00217–06 to obtain authorization to dismantle and deconstruct Building Complexes 2, 5, and 17 and to remove all impacted sub-grade structures and systems. In subsequent letters dated February 22, 2002, March 8, 2002, and August 9, 2002, ABB modified the original license amendment request. The request currently before the NRC is limited to dismantlement and deconstruction of the buildings of Building Complexes 2, 5, and 17 to grade level only. References hereafter to the license amendment request are to the request as amended through the August 9, 2002 letter. This environmental assessment (EA) is being performed to evaluate the environmental impacts of ABB's request for NRC's approval for ABB to conduct decommissioning only at or above the basement slabs and at or above the floors of the three Complexes.

In accordance with the conditions currently described in Byproduct Materials License Number 06–00217–06, the licensee has been performing remediation of residual radioactivity and other industrial contaminants from internal building equipment and components for Building Complexes 2, 5, and 17. The radioactive contamination at ABB's Windsor, Connecticut site consists of soils and building and equipment surfaces contaminated with uranium and by-product material from licensed operations that occurred from the late 1950s until 2001.

The licensee's December 31, 2001 license amendment request was noticed in the **Federal Register** on April 10, 2002 (67 FR 28610). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action.

1.1 Proposed Action

The proposed action is to amend NRC Byproduct Materials License Number 06–00217–06 issued to ABB to allow for the dismantlement and deconstruction of the buildings in Building Complexes 2, 5, and 17. The buildings will be taken down to grade level only and no work will be performed on the building slabs/foundations or sub-grade structures and systems. ABB plans to use dismantlement and deconstruction techniques, such as cutting and shearing in taking the buildings down. Manual jackhammers, equipment mounted jackhammers (hoe ram), skid-steer loader or shears will be used to remove/dismantle and to size reduce concrete or concrete masonry unit (CMU) structures. CMU walls may also be brought down using pushover techniques. Steel reinforcement bars will be torch-cut, sheared, or saw-cut as required for dismantlement, leveling, or size reduction purposes.

1.2 Purpose and Need for the Proposed Action

NRC regulations require licensees to begin timely decommissioning of their sites, or any separate buildings that contain residual radioactivity, upon cessation of licensed operational activities, in accordance with 10 CFR 30.36(d). The purpose of the proposed action is to reduce residual radioactivity at ABB's Windsor, Connecticut site. Additionally, due to the commercial value of the site property, the licensee plans to eventually return the land to beneficial unrestricted use. The proposed licensing action will support such an ultimate goal. NRC is fulfilling its responsibilities under the Atomic Energy Act and the National Environmental Policy Act to make a decision on a proposed license amendment for building dismantlement and deconstruction that ensures protection of the public health and safety and the environment.

2.0 Facility Description/Operating History

2.1 Site Local and Physical Description

The CE Windsor site is located in the Town of Windsor, Connecticut, 13 km (8 miles) north of Hartford, Connecticut. This site is industrially zoned by the Town of Windsor, and is located in a Mixed Land Use area of Hartford County. The site covers approximately 600 acres. Much of the northern and western portions of the property are wooded. Approximately, one third of the property is developed with buildings, infrastructure, and maintained landscaping. ABB anticipates that future uses of the site will be consistent with its current use (commercial, light industrial uses). The current land use in the surrounding area is a mixture of commercial, light industrial, warehousing, office park, residential, municipal landfill, and commercial farming. Surface water bodies on site include the Great Pond, located on the southwestern end of the property, the Small Pond, located East of the Site buildings, and the Goodwin Pond and the Site Brook, both located on the northeastern portion of the property. The regional geology in Windsor is mapped within the Central Valley landscape of the Newark Terrain. A full description of the site and its characteristics is given in the ABB License Amendment Request for demolition of Building Complexes 2, 5, and 17.

2.2 Facility Operating History

From the late1950's until 2001, ABB Prospects, Inc. Combustion Engineering site was involved in the research, development, engineering, production, and servicing of nuclear systems and fuel. Nuclear research was conducted in

the Building 2 Complex and the Building 5 Complex. Nuclear fuel was manufactured in the Building 17 Complex.

The Building 2 Complex was constructed in the mid 1950's and is located in the central area of the CE site. The Building 2 Complex consists of buildings 1, 1A, 2, and 2A. Uses for these buildings included nuclear research and development and commercial nuclear power plant outage support. The Building 5 Complex is located in the southern portion of the CE site and includes buildings 5, 15, 16, and 18. Building 5 was constructed in 1957, building 18 was constructed in 1968 and building 16 was constructed in 1975. Building 15 was a carpentry shop and was not used for nuclear materials work. Building 5 was a research and development laboratory that included a materials development laboratory, a nuclear fuel manufacturing laboratory, and an engineering development laboratory. Building 16 was used to test boronometers, and building 18 contained a scale model reactor test loop to test the fluid mechanics of commercial nuclear reactors. The Building 17 Complex consists of only building 17 which was constructed in 1967 and used for manufacturing commercial nuclear fuel. Commercial nuclear fuel manufacturing ceased in 1993, and the building was renovated and used for commercial nuclear power plant outage support work.

3.0 Alternatives to the Proposed Action

The only alternatives to the proposed action of dismantlement and deconstruction of Building Complexes 2, 5, and 17 are decontamination of the buildings without dismantlement and deconstruction and no action. The no action alternative is not acceptable because it will result in violation of the NRC's Timeliness Rule (10 CFR 30.36d), which requires licensees to decommission their facilities when licensed activities cease, and to request termination of their radioactive materials license. The no action alternative would keep radioactive material on site without disposal. Additionally, the impact of the proposed action encompasses the alternative action of decontaminating and maintaining the buildings on site. Maintaining the buildings on site would provide negligible, if any, environmental benefit, but would greatly reduce options for future use of the site. Therefore, these alternative are not considered to be reasonable and are not analyzed further in the EA.

4.0 Environmental Impacts

The NRC staff has reviewed the license amendment request for the ABB facility in Windsor, Connecticut and examined the impacts of this license amendment request. Potential impacts include water resource impact (*e.g.*, water may be used for dust control), air quality impacts from dust emissions, temporary local traffic impacts resulting from transporting the building debris offsite, beneficial local economic effects due to the creation of jobs to perform dismantlement and deconstruction, human health impacts, noise impacts from equipment operation, scenic quality impacts, and waste management impacts.

Based on its review, the staff has determined that no surface water or ground water impacts are expected from building dismantlement and deconstruction down to the building slabs and foundations at grade. Additionally, the staff has determined that significant air quality, noise, land use, and off-site radiation exposure impacts are also not expected. No significant air quality impacts are anticipated because of the contamination controls and dust suppression techniques that will be implemented by ABB during building dismantlement and deconstruction. Asbestos waste, primarily from building siding, will be generated during building dismantlement and deconstruction. All removal and disposal of asbestos building siding will take place in accordance with applicable Federal and State regulations. In addition, the environmental impacts associated with the dismantlement and deconstruction of the buildings in Building Complexes 2, 5, and 17 are bounded by the impacts evaluated by NUREG–0586, ''Final Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear Facilities'' (NRC, 1988). Generic impacts for this type of dismantlement and deconstruction process were previously evaluated and described in this GEIS, which concludes that the environmental consequences are small. The risk to human health from the transportation of all radioactive material in the U.S. was evaluated in NUREG–0170, ''Final Environmental Statement on the Transportation of Radioactive Materials by Air and Other Modes'' (NRC, 1977). The principal radiological environmental impact during normal transportation is direct radiation exposure to nearby persons from radioactive material in the package. The average annual individual dose from all radioactive material transportation in the U.S. was calculated to be approximately 0.5 mrem, well below the 10 CFR 20.1301 limit of 100 mrem for a member of the public. Additionally, ABB estimates that 1 to 2 truck loads of demolition waste will leave the site per working day compared to an average daily traffic flow of approximately 10,000 vehicles per day on Day Hill Road. The trucks will then travel on Interstate 91 to their intended destinations. Thus, waste management and transportation impacts from the building dismantlement and deconstruction will not be significant.

Occupational health was also considered in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977). The Department of Transportation (DOT) regulations in 49 CFR 177.842(g) require that the radiation dose may not exceed 0.02 mSv (2 mrem) per hour in any position normally occupied by an individual in a motor vehicle. Shipment of these materials would not affect the assessment of environmental impacts or the conclusions in the Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes (NRC, 1977).

The Staff also finds that the proposed license amendment will meet the radiological release criteria of Regulatory Guide 1.86, ''Termination of Operating Licenses for Nuclear Reactors,'' for release of material from the ABB site.

ABB will maintain an appropriate level of radiation protection staff, procedures, and capabilities, and, through its on-site Radiation Safety Officer, will implement an acceptable program to keep exposure to radioactive materials as low as reasonably achievable (ALARA). As previously noted, ABB has submitted a license amendment request describing the work to be performed, and work activities are not anticipated to result in radiation exposures to the public in excess of ten percent of the 10 CFR 20.1301 limits. The Connecticut Historical Commission has determined that there will be an historical impact from the proposed action, but that no prudent or feasible alternative exists relative to the proposed action. See Section 7.0 of this EA.

4.1 Cumulative Impacts

The NRC has evaluated whether cumulative environmental impacts could result from an incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions in the area. The proposed NRC approval of the

License Amendment, when combined with known effects on resource areas at the site, including future further site remediation, are not anticipated to result in any cumulative impacts at the site.

5.0 Mitigation Measures

The dismantlement and deconstruction of Building Complexes 2, 5, and 17 are not expected to have any significant adverse environmental impact. The license amendment request submitted by ABB contains mitigation measures to further ensure that the requested licensing action will not have any adverse environmental impact.

ABB plans to implement procedural controls, such as the use of less aggressive dismantlement and deconstruction techniques, including cutting and shearing, to minimize the generation of fugitive emissions. Other engineering controls, including water sprays, will also be utilized to control fugitive emissions and visible dust, if needed. In addition, ABB has agreed to perform the mitigative measures proposed by the Connecticut Historical Commission regarding the historical impact of the proposed action.

Erosion and sediment control will be provided, if necessary, in accordance with best management practices, regulatory guidance, and good engineering practices. This will include structural features, stabilization, and storm water management. The controls may be temporary or permanent.

6.0 Monitoring

The license amendment request submitted by ABB described the effluent/environmental monitoring that will take place during building dismantlement and deconstruction. This description included not only the routine effluent/environmental monitoring program that ABB presently has in place, but also the additional sampling that will take place during dismantlement and deconstruction. The additional air sampling will include air samples from three locations at or near the boundary of the particular dismantlement and deconstruction activity. The locations for the air samplers will be chosen with considerations of meteorological conditions and the dismantlement and deconstruction activity taking place in order to sample the maximum airborne concentrations. This air sampling data will be used by ABB to demonstrate that any effluent from the proposed building dismantlement and deconstruction will be limited in accordance with NRC requirements in accordance with 10 CFR part 20.

7.0 Agencies and Individuals Consulted

The NRC staff has prepared this EA with input from the Connecticut Historical Commission, by letters dated August 19, 2002 and August 26, 2002, and the U.S. Fish and Wildlife Service, by letter dated August 21, 2002. In its letter dated August 19, 2002, the Connecticut Historical Commission noted that buildings 1 and 2 of Building Complex 2 ''demonstrate architectural and engineering uniqueness, retain their essential functional characteristics, and possess historic significance with respect to commercial and military-related nuclear research and development''. The Connecticut Historical Commission also stated in this letter that ''no feasible and prudent alternative exists which would facilitate retention and adaptive use of the extant structures''. Therefore, the Connecticut Historical Commission proposed two mitigative measures: photographic documentation, to the standards of the State Historic Preservation Office, of buildings 1 and 2; and development of a public education component regarding Combustion Engineering's nuclear research at the CE site. ABB has agreed to perform the mitigative measures. In its letter dated August 26, 2002 the Connecticut Historical Commission noted that the first mitigative step had been competed by ABB, to the satisfaction of the State, and offered ''no objection to the expeditious furtherance of the proposed remediation and demolition of these historic structures''. The U.S. Fish and Wildlife Service indicated, in its letter, that on the basis of current information, no current Federally identified or proposed threatened or endangered species under U.S. Fish and Wildlife Service jurisdiction are known to occur in the site project area. The staff provided a draft of this Environmental Assessment to the State of Connecticut for review. In its letter dated September 23, 2002, which commented on draft EA, the State of Connecticut's only comment was that an additional alternative exists regarding the proposed action. This additional alternative is the decontamination of the existing structures without demolition of the structures. Section 3.0 of this EA was revised to reflect the State's comment.

8.0 Conclusion

NRC believes that the approval of the license amendment will not cause any significant impacts on the human environment that will not be mitigated and is protective of human health. The NRC staff has concluded that exposures to workers will be low and well within the limits specified in 10 CFR 20. Dismantlement and deconstruction of the buildings in Building Complexes 2, 5, and 17, as proposed by the amendment, will result in a reduction of radioactive material at the ABB site in Windsor, CT, which will reduce the long term potential for release of radiological contamination to the environment. No radiologically contaminated effluents are expected during building dismantlement and deconstruction. No radiation exposure to any member of the public is expected, and public exposure will therefore also be less than the applicable public exposure limits of 10 CFR part 20.

9.0 List of Preparers

This Environmental Assessment was prepared entirely by the following NRC staff.

James Kottan, ABB Project Manager, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, Decommissioning Issues.

Anthony Huffert, Senior Health Physicist, Division of Waste Management, Office of Nuclear Materials Safety and Safeguards (NMSS), Dose Assessment.

Amir Kouhestani, Project Manager, Division of Waste Management, NMSS, Decommissioning Issues.

Melanie Wong, Environmental Project Manager, Division of Waste Management, NMSS, Environmental Issues.

10.0 List of References

The licensee's December 31, 2001 license amendment request was noticed in the **Federal Register** on April 10, 2002 (67 FR 28610). This **Federal Register** notice also provided an opportunity for a hearing on this licensing action.

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

NUREG–0170, 1977. Final Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes, U.S. Nuclear Regulatory Commission, Washington, DC.

NUREG–0586, 1988. Final Generic Environmental Impact Statement on the Decommissioning of Nuclear Facilities, U.S. Nuclear Regulatory Commission, Washington, DC.

NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological

Criteria for License Termination of NRC-Licensed Nuclear Facilities'' NRC: Washington, DC July 1997.

NUREG–1748, ''Environmental Review Guidance for Licensing Actions Associated with NMSS Programs, Draft Report for Interim Use and Comment'' NRC: Washington, DC September 2001.

REGULATORY GUIDE—1.86, ''Termination of Operating Licenses for Nuclear Reactors'', NRC: Washington, DC June 1974.

ABB Building Permit Application (and Approval) for demolition of the buildings of Building Complexes 2, 5, and 17, Town of Windsor, Connecticut November 16, 2001.

Asbestos Abatement Registration Form for ABB filed with the Connecticut Department of Public Health.

Finding of No Significant Impact

Pursuant to 10 CFR part 51, NRC has prepared the above environmental assessment related to a license amendment to Materials License No. 06–00217–06 authorizing dismantlement and deconstruction to grade level of the buildings in Building Complexes 2, 5, and 17. On the basis of the above environmental assessment, the NRC has concluded that this licensing action would not have any significant effect on the quality of the human environment, and therefore, an environmental impact statement is not required.

The licensee's request for the proposed action was previously noticed in the **Federal Register** on April 10, 2002 (67 FR 28610) along with the notice of an opportunity to request a hearing.

ABB Prospects, Inc. request for the proposed action, the NRC's Environmental Assessment, and any other related documents, if any, are available for inspection and copying for a fee in the Region I Public Document Room, 475 Allendale Road, King of Prussia, PA 19406. The documents may also be viewed at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

Dated at King of Prussia, Pennsylvania, this 3rd day of October, 2002.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, RI.

[FR Doc. 02–26447 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Year 2002 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public availability of agency inventories of activities that are not inherently governmental and of activities that are inherently governmental.

SUMMARY: Agency inventories of activities that are not inherently governmental are now available to the public from the agencies listed below, in accordance with the ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act''). Agency inventories of activities that are inherently governmental are also now available to the public from the agencies listed below. This is the first release of the 2002 FAIR Act inventories. The Office of Federal Procurement Policy has made available a summary FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/OMB/procurement/index.html.* The User's Guide should help interested parties review 2002 FAIR Act inventories, and gain access to agency inventories through agency Web site addresses.

The FAIR Act requires OMB to publish an announcement of public availability of agency inventories of activities that are not inherently governmental upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. After review and consultation with OMB, the agency inventories are made available to the public. Interested parties who disagree with the agency's initial judgment can challenge the inclusion or the omission of an activity on the list and, if not satisfied with this review, may also demand a higher agency review/appeal.

Mitchell E. Daniels, Jr.,

Director.

Agency	Contact
Architectural and Transportation Barriers Compliance Board	Lawrence W. Roffee, (202) 272–0001 Web site: *http://www.access-board.gov*
National Council on Disabilities	Ethel D. Briggs, (202) 272–2004 Web site: *http://www.ncd.gov*
Committee for Purchase for People Who are Blind or Severely Disabled	Leon A. Wilson, Jr., (703) 603–7740 Web site: *http://www.jwod.gov*
National Commission on Libraries and Information Science	Judith C. Russell, (202) 606–9200 Web site: *http://www.nclis.gov/index.cfm*
Institute of Museum and Library Services	Teresa M. LaHaie, (202) 606–8637 Web site: *http://www.imls.gov*
National Endowment for the Humanities	Barry Maynes, (202) 606–8233 Web site: *http://www.neh.fed.us/*
Harry S. Truman Scholarship Foundation	Louis H. Blair, (202) 395–4831 Web site: *http://www.truman.gov*
James Madison Fellowship Foundation	Steve Weiss, (202) 653–6109 Web site: *http://www.jamesmadison.com*
Barry M. Goldwater Scholarship and Excellence in Education	Gerald J. Smith, (703) 756–6012 Web site: *http://www.act.org/goldwater/*
Christopher Columbus Fellowship Foundation	Judith M. Shellenberger, (315) 258-0090 Web site: *http://www.whitehouse.gov/omb*
Office of Navaho and Hopi Relocation	Nancy Thomas, (928) 779–2721 Web site: *http://www.whitehouse.gov/omb*
National Aeronautics and Space Administration	Tom Luedtke, (202) 358–2090 Web site: *http://competitivesourcing.nasa.gov*
Health and Human Services	Michael Colvin, (202) 690–7887 Web site: *http://www.hhs.gov/ogam/oam/fair/*

Agency	Contact
Consumer Product Safety Commission	Edward E. Quist, (301) 504–0029 x2240 Web site: *http://www.cpsc.gov*
Housing and Urban Development	James M. Martin, (202) 708–0638 Web site: *http://www.hud.gov/*
Commission on Fine Arts	Charles Atherton, (202) 504–2200 Web site: *http://www.cfa.gov*
Holocaust Museum	James Gaglione, (202) 314–0336 Web site: *http://www.ushmm.org/financial*
Kennedy Center	Lynne H. Pratt, (202) 416–8000 Web site: *http://www.kennedy-center.org*
Woodrow Wilson Center	Ronnie Dempsey, (202) 691–4216 Web site: *http://wwics.si.edu*
Office of Special Counsel	Jane McFarland, (202) 653–5163 Web site: *http://www.osc.gov*
U.S. Merit Systems Protection Board	Douglas Wade, (202) 653–6772, ext 1118 Web site: *http://www.mspb.gov*
Treasury	Kevin Whitfield, (202) 622–0248 Web site: *http://www.treas.gov/fair*

[FR Doc. 02–26374 Filed 10–16–02; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroads Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application and Claim for Benefits.

(2) *Form(s) submitted:* UI–63.

(3) *OMB Number:* 3220–0055.

(4) *Expiration date of current OMB clearance:* February 28, 2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or Households.

(7) *Estimated annual number of respondents:* 200.

(8) *Total annual responses:* 200.

(9) *Total annual reporting hours:* 23.

(10) *Collection description:* The collection obtains the information needed by the Railroad Retirement Board to pay, under Section 2(g) of the RUIA, benefits under that Act accrued, but not paid because of the death of the employee.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–26358 Filed 10–16–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46612; File No. SR–NASD–2002–128]

Self-Regulatory Organizations; Notice of Filing and Summary Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement

October 7, 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 September 25, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission the security futures risk disclosure statement. The text of the proposed rule change appears below. All text is new.

* * * * *

Risk Disclosure Statement for Security Futures Contracts

This disclosure statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future. The glossary of terms appears at the end of the document.

Customers should be aware that the examples in this document are exclusive of fees and commissions that may decrease their net gains or increase their net losses. The examples also do not include tax consequences, which may differ for each customer.

Section 1—Risks of Security Futures

1.1. Risks of Security Futures Transactions

Trading security futures contracts may not be suitable for all investors. You may lose a substantial amount of money in a very short period of time. The amount you may lose is potentially unlimited and can exceed the amount you originally deposit with your broker. This is because futures trading is highly leveraged, with a relatively small amount of money used to establish a position in assets having a much greater value. If you are uncomfortable with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b4.

this level of risk, you should not trade security futures contracts.

1.2. General Risks

• *Trading security futures contracts involves risk and may result in potentially unlimited losses that are greater than the amount you deposited with your broker.* As with any high risk financial product, you should not risk any funds that you cannot afford to lose, such as your retirement savings, medical and other emergency funds, funds set aside for purposes such as education or home ownership, proceeds from student loans or mortgages, or funds required to meet your living expenses.

• *Be cautious of claims that you can make large profits from trading security futures contracts.* Although the high degree of leverage in security futures contracts can result in large and immediate gains, it can also result in large and immediate losses. As with any financial product, there is no such thing as a ''sure winner.''

• *Because of the leverage involved and the nature of security futures contract transactions, you may feel the effects of your losses immediately.* Gains and losses in security futures contracts are credited or debited to your account, at a minimum, on a daily basis. If movements in the markets for security futures contracts or the underlying security decrease the value of your positions in security futures contracts, you may be required to have or make additional funds available to your carrying firm as margin. If your account is under the minimum margin requirements set by the exchange or the brokerage firm, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your account. Margin requirements are addressed in section 4.

• *Under certain market conditions, it may be difficult or impossible to liquidate a position.* Generally, you must enter into an offsetting transaction in order to liquidate a position in a security futures contract. If you cannot liquidate your position in security futures contracts, you may not be able to realize a gain in the value of your position or prevent losses from mounting. This inability to liquidate could occur, for example, if trading is halted due to unusual trading activity in either the security futures contract or the underlying security; if trading is halted due to recent news events involving the issuer of the underlying security; if systems failures occur on an exchange or at the firm carrying your position; or if the position is on an illiquid market. Even if you can liquidate your position, you may be forced to do so at a price that involves a large loss.

• *Under certain market conditions, it may also be difficult or impossible to manage your risk from open security futures positions by entering into an equivalent but opposite position in another contract month, on another market, or in the underlying security.* This inability to take positions to limit your risk could occur, for example, if trading is halted across markets due to unusual trading activity in the security futures contract or the underlying security or due to recent news events involving the issuer of the underlying security.

• *Under certain market conditions, the prices of security futures contracts may not maintain their customary or anticipated relationships to the prices of the underlying security or index.* These pricing disparities could occur, for example, when the market for the security futures contract is illiquid, when the primary market for the underlying security is closed, or when the reporting of transactions in the underlying security has been delayed. For index products, it could also occur when trading is delayed or halted in some or all of the securities that make up the index.

• *You may be required to settle certain security futures contracts with physical delivery of the underlying security.* If you hold your position in a physically settled security futures contract until the end of the last trading day prior to expiration, you will be obligated to make or take delivery of the underlying securities, which could involve additional costs. The actual settlement terms may vary from contract to contract and exchange to exchange. You should carefully review the settlement and delivery conditions before entering into a security futures contract. Settlement and delivery are discussed in section 5.

• *You may experience losses due to systems failures.* As with any financial transaction, you may experience losses if your orders for security futures contracts cannot be executed normally due to systems failures on a regulated exchange or at the brokerage firm carrying your position. Your losses may be greater if the brokerage firm carrying your position does not have adequate back-up systems or procedures.

• *All security futures contracts involve risk, and there is no trading strategy that can eliminate it.* Strategies using combinations of positions, such as spreads, may be as risky as outright long or short positions. Trading in security futures contracts requires knowledge of both the securities and the futures markets.

• *Day trading strategies involving security futures contracts and other products pose special risks.* As with any financial product, persons who seek to purchase and sell the same security future in the course of a day to profit from intra-day price movements (''day traders'') face a number of special risks, including substantial commissions, exposure to leverage, and competition with professional traders. You should thoroughly understand these risks and have appropriate experience before engaging in day trading. The special risks for day traders are discussed more fully in section 7.

• *Placing contingent orders, if permitted, such as ''stop-loss'' or ''stop-limit'' orders, will not necessarily limit your losses to the intended amount.* Some regulated exchanges may permit you to enter into stop-loss or stop-limit orders for security futures contracts, which are intended to limit your exposure to losses due to market fluctuations. However, market conditions may make it impossible to execute the order or to get the stop price.

• *You should thoroughly read and understand the customer account agreement with your brokerage firm before entering into any transactions in security futures contracts.*

• *You should thoroughly understand the regulatory protections available to your funds and positions in the event of the failure of your brokerage firm.* The regulatory protections available to your funds and positions in the event of the failure of your brokerage firm may vary depending on, among other factors, the contract you are trading and whether you are trading through a securities account or a futures account. Firms that allow customers to trade security futures in either securities accounts or futures accounts, or both, are required to disclose to customers the differences in regulatory protections between such accounts, and, where appropriate, how customers may elect to trade in either type of account.

Section 2—Description of a Security Futures Contract

2.1. What Is a Security Futures Contract?

A security futures contract is a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security or of the component securities of a narrow-based security index, at a certain price. A person who buys a security futures contract enters into a contract to

purchase an underlying security and is said to be ''long'' the contract. A person who sells a security futures contract enters into a contract to sell the underlying security and is said to be ''short'' the contract. The price at which the contract trades (the ''contract price'') is determined by relative buying and selling interest on a regulated exchange.

In order to enter into a security futures contract, you must deposit funds with your brokerage firm equal to a specified percentage (usually at least 20 percent) of the current market value of the contract as a performance bond. Moreover, all security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in section 3 of this document. At that time, the account of each buyer and seller reflects the amount of any gain or loss on the security futures contract based on the contract price established at the end of the day for settlement purposes (the ''daily settlement price'').

An open position, either a long or short position, is closed or liquidated by entering into an offsetting transaction (*i.e.*, an equal and opposite transaction to the one that opened the position) prior to the contract expiration. Traditionally, most futures contracts are liquidated prior to expiration through an offsetting transaction and, thus, holders do not incur a settlement obligation.

Examples:

Investor A is long one September XYZ Corp. futures contract. To liquidate the long position in the September XYZ Corp. futures contract, Investor A would sell an identical September XYZ Corp. contract.

Investor B is short one December XYZ Corp. futures contract. To liquidate the short position in the December XYZ Corp. futures contract, Investor B would buy an identical December XYZ Corp. contract.

Security futures contracts that are not liquidated prior to expiration must be settled in accordance with the terms of the contract. Some security futures contracts are settled by physical delivery of the underlying security. At the expiration of a security futures contract that is settled through physical delivery, a person who is long the contract must pay the final settlement price set by the regulated exchange or the clearing organization and take delivery of the underlying shares. Conversely, a person who is short the contract must make delivery of the underlying shares in exchange for the final settlement price.

Other security futures contracts are settled through cash settlement. In this case, the underlying security is not delivered. Instead, any positions in such security futures contracts that are open at the end of the last trading day are settled through a final cash payment based on a final settlement price determined by the exchange or clearing organization. Once this payment is made, neither party has any further obligations on the contract.

Physical delivery and cash settlement are discussed more fully in section 5.

2.2. Purposes of Security Futures

Security futures contracts can be used for speculation, hedging, and risk management. Security futures contracts do not provide capital growth or income.

Speculation

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. A speculator who expects the price of the underlying instrument to increase will buy the security futures contract. A speculator who expects the price of the underlying instrument to decrease will sell the security futures contract. Speculation involves substantial risk and can lead to large losses as well as profits.

The most common trading strategies involving security futures contracts are buying with the hope of profiting from an anticipated price increase and selling with the hope of profiting from an anticipated price decrease. For example, a person who expects the price of XYZ stock to increase by March can buy a March XYZ security futures contract, and a person who expects the price of XYZ stock to decrease by March can sell a March XYZ security futures contract. The following illustrates potential profits and losses if Customer A purchases the security futures contract at $50 a share and Customer B sells the same contract at $50 a share (assuming 100 shares per contract).

Price of XYZ at liquidation	Customer A profit/loss	Customer B profit/loss
$55	$500	−$500
$50	0	0
$45	−500	500

Speculators may also enter into spreads with the hope of profiting from an expected change in price relationships. Spreaders may purchase a contract expiring in one contract month and sell another contract on the same underlying security expiring in a different month (*e.g.*, buy June and sell September XYZ single stock futures). This is commonly referred to as a ''calendar spread.''

Spreaders may also purchase and sell the same contract month in two different but economically correlated security futures contracts. For example, if ABC and XYZ are both pharmaceutical companies and an individual believes that ABC will have stronger growth than XYZ between now and June, he could buy June ABC futures contracts and sell June XYZ futures contracts. Assuming that each contract is 100 shares, the following illustrates how this works.

Opening position	Price at liquidation	Gain or loss	Price at liquidation	Gain or loss
Buy ABC at 50	$53	$300	$53	$300
Sell XYZ at 45	46	−100	50	−500
Net Gain or Loss		200		−200

Speculators can also engage in arbitrage, which is similar to a spread except that the long and short positions occur on two different markets. An arbitrage position can be established by taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Hedging

Generally speaking, hedging involves the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent). A hedger gives up the potential to profit from a favorable price change in the position being hedged in order to minimize the risk of loss from an adverse price change.

An investor who wants to lock in a price now for an anticipated sale of the underlying security at a later date can do so by hedging with security futures. For example, assume an investor owns 1,000 shares of ABC that have appreciated since he bought them. The investor would like to sell them at the current price of $50 per share, but there are tax or other reasons for holding them until September. The investor could sell ten 100-share ABC futures contracts and then buy back those contracts in September when he sells the stock. Assuming the stock price and the futures price change by the same amount, the gain or loss in the stock will be offset by the loss or gain in the futures contracts.

Price in September	Value of 1,000 shares of ABC	Gain or loss on futures	Effective selling price
$40	$40,000	$10,000	$50,000
$50	50,000	0	50,000
$60	60,000	−10,000	50,000

Hedging can also be used to lock in a price now for an anticipated purchase of the stock at a later date. For example, assume that in May a mutual fund expects to buy stocks in a particular industry with the proceeds of bonds that will mature in August. The mutual fund can hedge its risk that the stocks will increase in value between May and August by purchasing security futures contracts on a narrow-based index of stocks from that industry. When the mutual fund buys the stocks in August, it also will liquidate the security futures position in the index. If the relationship between the security futures contract and the stocks in the index is constant, the profit or loss from the futures contract will offset the price change in the stocks, and the mutual fund will have locked in the price that the stocks were selling at in May.

Although hedging mitigates risk, it does not eliminate all risk. For example, the relationship between the price of the security futures contract and the price of the underlying security traditionally tends to remain constant over time, but it can and does vary somewhat. Furthermore, the expiration or liquidation of the security futures contract may not coincide with the exact time the hedger buys or sells the underlying stock. Therefore, hedging may not be a perfect protection against price risk.

Risk Management

Some institutions also use futures contracts to manage portfolio risks without necessarily intending to change the composition of their portfolio by buying or selling the underlying securities. The institution does so by taking a security futures position that is opposite to some or all of its position in the underlying securities. This strategy involves more risk than a traditional hedge because it is not meant to be a substitute for an anticipated purchase or sale.

2.3. Where Security Futures Trade

By law, security futures contracts must trade on a regulated U.S. exchange. Each regulated U.S. exchange that trades security futures contracts is subject to joint regulation by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

A person holding a position in a security futures contract who seeks to liquidate the position must do so either on the regulated exchange where the original trade took place or on another regulated exchange, if any, where a fungible security futures contract trades. (A person may also seek to manage the risk in that position by taking an opposite position in a comparable contract traded on another regulated exchange.)

Security futures contracts traded on one regulated exchange might not be fungible with security futures contracts traded on another regulated exchange for a variety of reasons. Security futures traded on different regulated exchanges may be non-fungible because they have different contract terms (*e.g.*, size, settlement method), or because they are cleared through different clearing organizations. Moreover, a regulated exchange might not permit its security futures contracts to be offset or liquidated by an identical contract traded on another regulated exchange, even though they have the same contract terms and are cleared through the same clearing organization. You should consult your broker about the fungibility of the contract you are considering purchasing or selling, including which exchange(s), if any, on which it may be offset.

Regulated exchanges that trade security futures contracts are required by law to establish certain listing standards. Changes in the underlying security of a security futures contract may, in some cases, cause such contract to no longer meet the regulated exchange's listing standards. Each regulated exchange will have rules governing the continued trading of security futures contracts that no longer meet the exchange's listing standards. These rules may, for example, permit only liquidating trades in security futures contracts that no longer satisfy the listing standards.

2.4. How Security Futures Differ From the Underlying Security

Shares of common stock represent a fractional ownership interest in the issuer of that security. Ownership of securities confers various rights that are not present with positions in security futures contracts. For example, persons owning a share of common stock may be entitled to vote in matters affecting corporate governance. They also may be entitled to receive dividends and corporate disclosure, such as annual and quarterly reports.

The purchaser of a security futures contract, by contrast, has only a contract for future delivery of the underlying security. The purchaser of the security futures contract is not entitled to exercise any voting rights over the underlying security and is not entitled to any dividends that may be paid by the issuer. Moreover, the purchaser of a security futures contract does not receive the corporate disclosures that are received by shareholders of the underlying security, although such corporate disclosures must be made publicly available through the SEC's EDGAR system, which can be accessed at *www.sec.gov.* You should review such disclosures before entering into a security futures contract. See section 9 for further discussion of the impact of corporate events on a security futures contract.

All security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in section 3 of this document. At that time, the account of each buyer and seller is credited with the amount of any gain, or debited by the amount of any loss, on the security futures contract, based on the contract price established at the end

of the day for settlement purposes (the ''daily settlement price''). By contrast, the purchaser or seller of the underlying instrument does not have the profit and loss from his or her investment credited or debited until the position in that instrument is closed out.

Naturally, as with any financial product, the value of the security futures contract and of the underlying security may fluctuate. However, owning the underlying security does not require an investor to settle his or her profits and losses daily. By contrast, as a result of the mark-to-market requirements discussed above, a person who is long a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract decreases. Similarly, a person who is short a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract increases.

Another significant difference is that security futures contracts expire on a specific date. Unlike an owner of the underlying security, a person cannot hold a long position in a security futures contract for an extended period of time in the hope that the price will go up. If you do not liquidate your security futures contract, you will be required to settle the contract when it expires, either through physical delivery or cash settlement. For cash-settled contracts in particular, upon expiration, an individual will no longer have an economic interest in the securities underlying the security futures contract.

2.5. Comparison to Options

Although security futures contracts share some characteristics with options on securities (options contracts), these products are also different in a number of ways. Below are some of the important distinctions between equity options contracts and security futures contracts.

If you purchase an options contract, you have the right, but not the obligation, to buy or sell a security prior to the expiration date. If you sell an options contract, you have the obligation to buy or sell a security prior to the expiration date. By contrast, if you have a position in a security futures contract (either long or short), you have both the right and the obligation to buy or sell a security at a future date. The only way that you can avoid the obligation incurred by the security futures contract is to liquidate the position with an offsetting contract.

A person purchasing an options contract runs the risk of losing the purchase price (premium) for the option contract. Because it is a wasting asset, the purchaser of an options contract who neither liquidates the options contract in the secondary market nor exercises it at or prior to expiration will necessarily lose his or her entire investment in the options contract. However, a purchaser of an options contract cannot lose more than the amount of the premium. Conversely, the seller of an options contract receives the premium and assumes the risk that he or she will be required to buy or sell the underlying security on or prior to the expiration date, in which event his or her losses may exceed the amount of the premium received. Although the seller of an options contract is required to deposit margin to reflect the risk of its obligation, he or she may lose many times his or her initial margin deposit.

By contrast, the purchaser and seller of a security futures contract each enter into an agreement to buy or sell a specific quantity of shares in the underlying security. Based upon the movement in prices of the underlying security, a person who holds a position in a security futures contract can gain or lose many times his or her initial margin deposit. In this respect, the benefits of a security futures contract are similar to the benefits of purchasing an option, while the risks of entering into a security futures contract are similar to the risks of selling an option.

Both the purchaser and the seller of a security futures contract have daily margin obligations. At least once each day, security futures contracts are marked-to-market and the increase or decrease in the value of the contract is credited or debited to the buyer and the seller. As a result, any person who has an open position in a security futures contract may be called upon to meet additional margin requirements or may receive a credit of available funds.

Example:
Assume that Customers A and B each anticipate an increase in the market price of XYZ stock, which is currently $50 a share. Customer A purchases an XYZ 50 call (covering 100 shares of XYZ at a premium of $5 per share). The option premium is $500 ($5 per share × 100 shares). Customer B purchases an XYZ security futures contract (covering 100 shares of XYZ). The total value of the contract is $5000 ($50 share value × 100 shares). The required margin is $1000 (or 20% of the contract value).

Price of XYZ at expiration	Customer A profit/loss	Customer B profit/loss
65	$1000	$1500
60	500	1000
55	0	500
50	−500	0
45	−500	−500
40	−500	−1000
35	−500	−1500

The most that Customer A can lose is $500, the option premium. Customer A breaks even at $55 per share, and makes money at higher prices. Customer B may lose more than his initial margin deposit. Unlike the options premium, the margin on a futures contract is not a cost but a performance bond. The losses for Customer B are not limited by this performance bond. Rather, the losses or gains are determined by the settlement price of the contract, as provided in the example above. Note that if the price of XYZ falls to $35 per share, Customer A loses only $500, whereas Customer B loses $1500.

2.6. Components of a Security Futures Contract

Each regulated exchange can choose the terms of the security futures contracts it lists, and those terms may differ from exchange to exchange or contract to contract. Some of those contract terms are discussed below. However, you should ask your broker for a copy of the contract specifications before trading a particular contract.

2.6.1. Each security futures contract has a set size. The size of a security futures contract is determined by the regulated exchange on which the contract trades. For example, a security futures contract for a single stock may be based on 100 shares of that stock. If prices are reported per share, the value of the contract would be the price times 100. For narrow-based security indices, the value of the contract is the price of the component securities times the multiplier set by the exchange as part of the contract terms.

2.6.2. Security futures contracts expire at set times determined by the listing exchange. For example, a particular contract may expire on a particular day, *e.g.*, the third Friday of the expiration month. Up until expiration, you may liquidate an open position by offsetting your contract with a fungible opposite contract that expires in the same month. If you do not liquidate an open position before it expires, you will be required to make or take delivery of the underlying security or to settle the contract in cash after expiration.

2.6.3. Although security futures contracts on a particular security or a narrow-based security index may be

listed and traded on more than one regulated exchange, the contract specifications may not be the same. Also, prices for contracts on the same security or index may vary on different regulated exchanges because of different contract specifications.

2.6.4. Prices of security futures contracts are usually quoted the same way prices are quoted in the underlying instrument. For example, a contract for an individual security would be quoted in dollars and cents per share. Contracts for indices would be quoted by an index number, usually stated to two decimal places.

2.6.5. Each security futures contract has a minimum price fluctuation (called a tick), which may differ from product to product or exchange to exchange. For example, if a particular security futures contract has a tick size of 1¢, you can buy the contract at $23.21 or $23.22 but not at $23.215.

2.7. Trading Halts

The value of your positions in security futures contracts could be affected if trading is halted in either the security futures contract or the underlying security. In certain circumstances, regulated exchanges are required by law to halt trading in security futures contracts. For example, trading on a particular security futures contract must be halted if trading is halted on the listed market for the underlying security as a result of pending news, regulatory concerns, or market volatility. Similarly, trading of a security futures contract on a narrow-based security index must be halted under such circumstances if trading is halted on securities accounting for at least 50 percent of the market capitalization of the index. In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average (''DJIA'') experiences one-day declines of 10-, 20- and 30-percent. The regulated exchanges may also have discretion under their rules to halt trading in other circumstances—such as when the exchange determines that the halt would be advisable in maintaining a fair and orderly market.

A trading halt, either by a regulated exchange that trades security futures or an exchange trading the underlying security or instrument, could prevent you from liquidating a position in security futures contracts in a timely manner, which could prevent you from liquidating a position in security futures contracts at that time.

2.8. Trading Hours

Each regulated exchange trading a security futures contract may open and close for trading at different times than other regulated exchanges trading security futures contracts or markets trading the underlying security or securities. Trading in security futures contracts prior to the opening or after the close of the primary market for the underlying security may be less liquid than trading during regular market hours.

Section 3—Clearing Organizations and Mark-to-Market Requirements

Every regulated U.S. exchange that trades security futures contracts is required to have a relationship with a clearing organization that serves as the guarantor of each security futures contract traded on that exchange. A clearing organization performs the following functions: matching trades; effecting settlement and payments; guaranteeing performance; and facilitating deliveries.

Throughout each trading day, the clearing organization matches trade data submitted by clearing members on behalf of their customers or for the clearing member's proprietary accounts. If an account is with a brokerage firm that is not a member of the clearing organization, then the brokerage firm will carry the security futures position with another brokerage firm that is a member of the clearing organization. Trade records that do not match, either because of a discrepancy in the details or because one side of the transaction is missing, are returned to the submitting clearing members for resolution. The members are required to resolve such ''out trades'' before or on the open of trading the next morning.

When the required details of a reported transaction have been verified, the clearing organization assumes the legal and financial obligations of the parties to the transaction. One way to think of the role of the clearing organization is that it is the ''buyer to every seller and the seller to every buyer.'' The insertion or substitution of the clearing organization as the counterparty to every transaction enables a customer to liquidate a security futures position without regard to what the other party to the original security futures contract decides to do.

The clearing organization also effects the settlement of gains and losses from security futures contracts between clearing members. At least once each day, clearing member brokerage firms must either pay to, or receive from, the clearing organization the difference between the current price and the trade price earlier in the day, or for a position carried over from the previous day, the difference between the current price and the previous day's settlement price. Whether a clearing organization effects settlement of gains and losses on a daily basis or more frequently will depend on the conventions of the clearing organization and market conditions. Because the clearing organization assumes the legal and financial obligations for each security futures contract, you should expect it to ensure that payments are made promptly to protect its obligations.

Gains and losses in security futures contracts are also reflected in each customer's account on at least a daily basis. Each day's gains and losses are determined based on a daily settlement price disseminated by the regulated exchange trading the security futures contract or its clearing organization. If the daily settlement price of a particular security futures contract rises, the buyer has a gain and the seller a loss. If the daily settlement price declines, the buyer has a loss and the seller a gain. This process is known as ''marking-to-market'' or daily settlement. As a result, individual customers normally will be called on to settle daily.

The one-day gain or loss on a security futures contract is determined by calculating the difference between the current day's settlement price and the previous day's settlement price.

For example, assume a security futures contract is purchased at a price of $120. If the daily settlement price is either $125 (higher) or $117 (lower), the effects would be as follows:

(1 contract representing 100 shares)

Daily settlement value	Buyer's account	Seller's account
$125	$500 gain (credit)	$500 loss (debit)
$117	$300 loss (debit)	$300 gain (credit)

The cumulative gain or loss on a customer's open security futures positions is generally referred to as ''open trade equity'' and is listed as a separate component of account equity on your customer account statement.

A discussion of the role of the clearing organization in effecting delivery is discussed in section 5.

Section 4—Margin and Leverage

When a broker-dealer lends a customer part of the funds needed to purchase a security such as common stock, the term ''margin'' refers to the amount of cash, or down payment, the customer is required to deposit. By contrast, a security futures contract is an obligation and not an asset. A security futures contract has no value as collateral for a loan. Because of the potential for a loss as a result of the daily market-to-market process, however, a margin deposit is required of each party to a security futures contract. This required margin deposit also is referred to as a ''performance bond.''

In the first instance, margin requirements for security futures contracts are set by the exchange on which the contract is traded, subject to certain minimums set by law. The basic margin requirement is 20% of the current value of the security futures contract, although some strategies may have lower margin requirements. Requests for additional margin are known as ''margin calls.'' Both buyer and seller must individually deposit the required margin to their respective accounts.

It is important to understand that individual brokerage firms can, and in many cases do, require margin that is higher than the exchange requirements. Additionally, margin requirements may vary from brokerage firm to brokerage firm. Furthermore, a brokerage firm can increase its ''house'' margin requirements at any time without providing advance notice, and such increases could result in a margin call.

For example, some firms may require margin to be deposited the business day following the day of a deficiency, or some firms may even require deposit on the same day. Some firms may require margin to be on deposit in the account before they will accept an order for a security futures contract. Additionally, brokerage firms may have special requirements as to how margin calls are to be met, such as requiring a wire transfer from a bank, or deposit of a certified or cashier's check. You should thoroughly read and understand the customer agreement with your brokerage firm before entering into any transactions in security futures contracts.

If through the daily cash settlement process, losses in the account of a security futures contract participant reduce the funds on deposit (or equity) below the maintenance margin level (or the firm's higher ''house'' requirement), the brokerage firm will require that additional funds be deposited.

If additional margin is not deposited in accordance with the firm's policies, the firm can liquidate your position in security futures contracts or sell assets in any of your accounts at the firm to cover the margin deficiency. You remain responsible for any shortfall in the account after such liquidations or sales. Unless provided otherwise in your customer agreement or by applicable law, you are not entitled to choose which futures contracts, other securities or other assets are liquidated or sold to meet a margin call or to obtain an extension of time to meet a margin call.

Brokerage firms generally reserve the right to liquidate a customer's security futures contract positions or sell customer assets to meet a margin call at any time without contacting the customer. Brokerage firms may also enter into equivalent but opposite positions for your account in order to manage the risk created by a margin call. Some customers mistakenly believe that a firm is required to contact them for a margin call to be valid, and that the firm is not allowed to liquidate securities or other assets in their accounts to meet a margin call unless the firm has contacted them first. This is not the case. While most firms notify their customers of margin calls and allow some time for deposit of additional margin, they are not required to do so. Even if a firm has notified a customer of a margin call and set a specific due date for a margin deposit, the firm can still take action as necessary to protect its financial interests, including the immediate liquidation of positions without advance notification to the customer.

Here is an example of the margin requirements for a long security futures position.

A customer buys 3 July EJG security futures at 71.50. Assuming each contract represents 100 shares, the nominal value of the position is $21,450 (71.50 × 3 contracts × 100 shares). If the initial margin rate is 20% of the nominal value, then the customer's initial margin requirement would be $4,290. The customer deposits the initial margin, bringing the equity in the account to $4,290.

First, assume that the next day the settlement price of EJG security futures falls to 69.25. The marked-to-market loss in the customer's equity is $675 (71.50 − 69.25 × 3 contacts × 100 shares). The customer's equity decreases to $3,615 ($4,290 − $675). The new nominal value of the contract is $20,775 (69.25 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,155. Because the customer's equity had decreased to $3,615 (see above), the customer would be required to have an additional $540 in margin ($4,155—$3,615).

Alternatively, assume that the next day the settlement price of EJG security futures rises to 75.00. The mark-to-market gain in the customer's equity is $1,050 (75.00—71.50 × 3 contacts × 100 shares). The customer's equity increases to $5,340 ($4,290 + $1,050). The new nominal value of the contract is $22,500 (75.00 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,500. Because the customer's equity had increased to $5,340 (see above), the customer's excess equity would be $840.

The process is exactly the same for a short position, except that margin calls are generated as the settlement price rises rather than as it falls. This is because the customer's equity decreases as the settlement price rises and increases as the settlement price falls.

Because the margin deposit required to open a security futures position is a fraction of the nominal value of the contracts being purchased or sold, security futures contracts are said to be highly leveraged. The smaller the margin requirement in relation to the underlying value of the security futures contract, the greater the leverage. Leverage allows exposure to a given quantity of an underlying asset for a fraction of the investment needed to purchase that quantity outright. In sum, buying (or selling) a security futures contract provides the same dollar and cents profit and loss outcomes as owning (or shorting) the underlying security. However, as a percentage of the margin deposit, the potential immediate exposure to profit or loss is much higher with a security futures contract than with the underlying security.

For example, if a security futures contract is established at a price of $50, the contract has a nominal value of $5,000 (assuming the contract is for 100 shares of stock). The margin requirement may be as low as 20%. In

the example just used, assume the contract price rises from $50 to $52 (a $200 increase in the nominal value). This represents a $200 profit to the buyer of the security futures contract, and a 20% return on the $1,000 deposited as margin. The reverse would be true if the contract price decreased from $50 to $48. This represents a $200 loss to the buyer, or 20% of the $1,000 deposited as margin. Thus, leverage can either benefit or harm an investor.

Note that a 4% decrease in the value of the contract resulted in a loss of 20% of the margin deposited. A 20% decrease would wipe out 100% of the margin deposited on the security futures contract.

Section 5—Settlement

If you do not liquidate your position prior to the end of trading on the last day before the expiration of the security futures contract, you are obligated to either (1) make or accept a cash payment (''cash settlement'') or (2) deliver or accept delivery of the underlying securities in exchange for final payment of the final settlement price (''physical delivery''). The terms of the contract dictate whether it is settled through cash settlement or by physical delivery.

The expiration of a security futures contract is established by the exchange on which the contract is listed. On the expiration day, security futures contracts cease to exist. Typically, the last trading day of a security futures contract will be the third Friday of the expiring contract month, and the expiration day will be the following Saturday. This follows the expiration conventions for stock options and broad-based stock indexes. Please keep in mind that the expiration day is set by the listing exchange and may deviate from these norms.

5.1. Cash Settlement

In the case of cash settlement, no actual securities are delivered at the expiration of the security futures contract. Instead, you must settle any open positions in security futures by making or receiving a cash payment based on the difference between the final settlement price and the previous day's settlement price. Under normal circumstances, the final settlement price for a cash-settled contract will reflect the opening price for the underlying security. Once this payment is made, neither the buyer nor the seller of the security futures contract has any further obligations on the contract.

5.2. Settlement by Physical Delivery

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation (''NSCC''), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the ''invoice price'') to NSCC. If NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of NSCC within the normal clearance and settlement cycle for securities transactions, which currently is three business days.

If you hold a short position in a physically settled security futures contract to expiration, you will be required to make delivery of the underlying securities. If you already own the securities, you may tender them to your brokerage firm. If you do not own the securities, you will be obligated to purchase them. Some brokerage firms may not be able to purchase the securities for you. If your brokerage firm cannot purchase the underlying securities on your behalf to fulfill a settlement obligation, you will have to purchase the securities through a different firm.

Section 6—Customer Account Protections

Positions in security futures contracts may be held either in a securities account or in a futures account. Your brokerage firm may or may not permit you to choose the types of account in which your positions in security futures contracts will be held. The protections for funds deposited or earned by customers in connection with trading in security futures contracts differ depending on whether the positions are carried in a securities account or a futures account. If your positions are carried in a securities account, you will not receive the protections available for futures accounts. Similarly, if your positions are carried in a futures account, you will not receive the protections available for securities accounts. You should ask your broker which of these protections will apply to your funds.

You should be aware that the regulatory protections applicable to your account are not intended to insure you against losses you may incur as a result of a decline or increase in the price of a security futures contract. As with all financial products, you are solely responsible for any market losses in your account.

Your brokerage firm must tell you whether your security futures positions will be held in a securities account or a futures account. If your brokerage firm gives you a choice, it must tell you what you have to do to make the choice and which type of account will be used if you fail to do so. You should understand that certain regulatory protections for your account will depend on whether it is a securities account or a futures account.

6.1. Protections for Securities Accounts

If your positions in security futures contracts are carried in a securities account, they are covered by SEC rules governing the safeguarding of customer funds and securities. These rules prohibit a broker/dealer from using customer funds and securities to finance its business. As a result, the broker/dealer is required to set aside funds equal to the net of all its excess payables to customers over receivables from customers. The rules also require a broker/dealer to segregate all customer fully paid and excess margin securities carried by the broker/dealer for customers.

The Securities Investor Protection Corporation (SIPC) also covers positions held in securities accounts. SIPC was created in 1970 as a non-profit, non-government, membership corporation, funded by member broker/dealers. Its primary role is to return funds and securities to customers if the broker/dealer holding these assets becomes insolvent. SIPC coverage applies to customers of current (and in some cases former) SIPC members. Most broker/dealers registered with the SEC are SIPC members; those few that are not must disclose this fact to their customers. SIPC members must display an official sign showing their membership. To check whether a firm is a SIPC member, go to *www.sipc.org,* call the SIPC Membership Department at (202) 371–8300, or write to SIPC Membership Department, Securities Investor Protection Corporation, 805 Fifteenth Street, NW., Suite 800, Washington, DC 20005–2215.

SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only

a total of $500,000 of those assets will be protected.

For purposes of SIPC coverage, customers are persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC does not protect customer funds placed with a broker/dealer just to earn interest. Insiders of the broker/dealer, such as its owners, officers, and partners, are not customers for purposes of SIPC coverage.

6.2. Protections for Futures Accounts

If your security futures positions are carried in a futures account, they must be segregated from the brokerage firm's own funds and cannot be borrowed or otherwise used for the firm's own purposes. If the funds are deposited with another entity (e.g., a bank, clearing broker, or clearing organization), that entity must acknowledge that the funds belong to customers and cannot be used to satisfy the firm's debts. Moreover, although a brokerage firm may carry funds belonging to different customers in the same bank or clearing account, it may not use the funds of one customer to margin or guarantee the transactions of another customer. As a result, the brokerage firm must add its own funds to its customers' segregated funds to cover customer debits and deficits. Brokerage firms must calculate their segregation requirements daily.

You may not be able to recover the full amount of any funds in your account if the brokerage firm becomes insolvent and has insufficient funds to cover its obligations to all of its customers. However, customers with funds in segregation receive priority in bankruptcy proceedings. Furthermore, all customers whose funds are required to be segregated have the same priority in bankrutpcy, and there is no ceiling on the amount of funds that must be segregated for or can be recovered by a particular customer.

Your brokerage firm is also required to separately maintain funds invested in security futures contracts traded on a foreign exchange. However, these funds may not receive the same protections once they are transferred to a foreign entity (*e.g.*, a foreign broker, exchange or clearing organization) to satisfy margin requirements for those products. You should ask your broker about the bankruptcy protections available in the country where the foreign exchange (or other entity holding the funds) is located.

Section 7—Special Risks for Day Traders

Certain traders who pursue a day trading strategy may seek to use security futures contracts as part of their trading activity. Whether day trading in security futures contracts or other securities, investors engaging in a day trading strategy face a number of risks.

- *Day trading in security futures contracts requires in-depth knowledge of the securities and futures markets and of trading techniques and strategies.* In attempting to profit through day trading, you will compete with professional traders who are knowledgeable and sophisticated in these markets. You should have appropriate experience before engaging in day trading.
- *Day trading in security futures contracts can result in substantial commission charges, even if the per trade cost is low.* The more trades you make, the higher your total commissions will be. The total commissions you pay will add to your losses and reduce your profits. For instance, assuming that a round-turn trade costs $16 and you execute an average of 29 round-turn transactions per day each trading day, you would need to generate an annual profit of $111,360 just to cover your commission expenses.
- *Day trading can be extremely risky.* Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with funds that you cannot afford to lose.

Section 8—Other

8.1. Corporate Events

As noted in section 2.4, an equity security represents a fractional ownership interest in the issuer of that security. By contrast, the purchaser of a security futures contract has only a contract for future delivery of the underlying security. Treatment of dividends and other corporate events affecting the underlying security may be reflected in the security futures contract depending on the applicable clearing organization rules. Consequently, individuals should consider how dividends and other developments affecting security futures in which they transact will be handled by the relevant exchange and clearing organization. The specific adjustments to the terms of a security futures contract are governed by the rules of the applicable clearing organization. Below is a discussion of some of the more common types of adjustments that you may need to consider.

Corporate issuers occasionally announce stock splits. As a result of these splits, owners of the issuer's common stock may own more shares of the stock, or fewer shares in the case of a reverse stock split. The treatment of stock splits for persons owning a security futures contract may vary according to the terms of the security futures contract and the rules of the clearing organization. For example, the terms of the contract may provide for an adjustment in the number of contracts held by each party with a long or short position in a security future, or for an adjustment in the number of shares or units of the instrument underlying each contract, or both.

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.

Corporate issuers occasionally may be involved in mergers and acquisitions. Such events may cause the underlying security of a security futures contact to change over the contract duration. The terms of security futures contracts may also be adjusted to reflect other corporate events affecting the underlying security.

8.2. Position Limits and Large Trader Reporting

All security futures contracts trading on regulated exchanges in the United States are subject to position limits or position accountability limits. Position limits restrict the number of security futures contracts that any one person or group of related persons may hold or control in a particular security futures contract. In contrast, position accountability limits permit the accumulation of positions in excess of the limit without a prior exemption. In general, position limits and position accountability limits are beyond the thresholds of most retail investors. Whether a security futures contract is subject to position limits, and the level for such limits, depends upon the trading activity and market capitalization of the underlying security of the security futures contract.

Position limits apply are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts.

For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an ''Identification of Special Accounts Form'' or a ''Form 102'') to the CFTC and to the exchange on which the reportable position exists within three business days of when a reportable position is first established.

8.3. Transactions on Foreign Exchanges

U.S. customers may not trade security futures on foreign exchanges until authorized by U.S. regulatory authorities. U.S. regulatory authorities do not regulate the activities of foreign exchanges and may not, on their own, compel enforcement of the rules of a foreign exchange or the laws of a foreign country. While U.S. law governs transactions in security futures contracts that are effected in the U.S., regardless of the exchange on which the contracts are listed, the laws and rules governing transactions on foreign exchanges vary depending on the country in which the exchange is located.

8.4. Tax Consequences

For most taxpayers, security futures contracts are not treated like other futures contracts. Instead, the tax consequences of a security futures transaction depend on the status of the taxpayer and the type of position (*e.g.*, long or short, covered or uncovered). Because of the importance of tax considerations to transactions in security futures, readers should consult their tax advisors as to the tax consequences of these transactions.

Section 9—Glossary of Terms

This glossary is intended to assist customers in understanding specialized terms used in the futures and securities industries. It is not inclusive and is not intended to state or suggest the legal significance or meaning of any word or term.

Arbitrage—taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Broad-based security index—a security index that does not fall within the statutory definition of a narrow-based security index (see Narrow-based security index). A future on a broad-based security index is not a security future. This risk disclosure statement applies solely to security futures and generally does not pertain to futures on a broad-based security index. Futures on a broad-based security index are under exclusive jurisdiction of the CFTC.

Cash settlement—a method of settling certain futures contracts by having the buyer (or long) pay the seller (or short) the cash value of the contract according to a procedure set by the exchange.

Clearing broker—a member of the clearing organization for the contract being traded. All trades, and the daily profits or losses from those trades, must go through a clearing broker.

Clearing organization—a regulated entity that is responsible for settling trades, collecting losses and distributing profits, and handling deliveries.

Contract—(1) the unit of trading for a particular futures contract (*e.g.*, one contract may be 100 shares of the underlying security), (2) the type of future being traded (*e.g.*, futures on ABC stock).

Contract month—the last month in which delivery is made against the futures contract or the contract is cash-settled. Sometimes referred to as the delivery month.

Day trading strategy—an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

EDGAR—the SEC's Electronic Data Gathering, Analysis, and Retrieval system maintains electronic copies of corporate information filed with the agency. EDGAR submissions may be accessed through the SEC's Web site, *www.sec.gov.*

Futures contract—a futures contract is (1) an agreement to purchase or sell a commodity for delivery in the future; (2) at a price determined at initiation of the contract; (3) that obligates each party to the contract to fulfill it at the specified price; (4) that is used to assume or shift risk; and (5) that may be satisfied by delivery or offset.

Hedging—the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent).

Illiquid market—a market (or contract) with few buyers and/or sellers. Illiquid markets have little trading activity and those trades that do occur may be done at large price increments.

Liquidation—entering into an offsetting transaction. Selling a contract that was previously purchased liquidates a futures position in exactly the same way that selling 100 shares of a particular stock liquidates an earlier purchase of the same stock. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase.

Liquid market—a market (or contract) with numerous buyers and sellers trading at small price increments.

Long—(1) the buying side of an open futures contact, (2) a person who has bought futures contracts that are still open.

Margin—the amount of money that must be deposited by both buyers and sellers to ensure performance of the person's obligations under a futures contract. Margin on security futures contracts is a performance bond rather than a down payment for the underlying securities.

Mark-to-market—to debit or credit accounts daily to reflect that day's profits and losses.

Narrow-based security index—in general, and subject to certain exclusions, an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities

comprises more than 30% of its weighting; (3) the five highest weighted component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). A security index that is not narrow-based is a ''broad-based security index.'' (See Broad-based security index).

Nominal value—the face value of the futures contract, obtained by multiplying the contract price by the number of shares or units per contract. If XYZ stock index futures are trading at $50.25 and the contract is for 100 shares of XYZ stock, the nominal value of the futures contract would be $5025.00.

Offsetting—liquidating open positions by either selling fungible contracts in the same contract month as an open long position or buying fungible contracts in the same contract month as an open short position.

Open interest—the total number of open long (or short) contracts in a particular contract month.

Open position—a futures contract position that has neither been offset nor closed by cash settlement or physical delivery.

Performance bond—another way to describe margin payments for futures contracts, which are good faith deposits to ensure performance of a person's obligations under a futures contract rather than down payments for the underlying securities.

Physical delivery—the tender and receipt of the actual security underlying the security futures contract in exchange for payment of the final settlement price.

Position—a person's net long or short open contracts.

Regulated exchange—a registered national securities exchange, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934, a designated contract market, a registered derivatives transaction execution facility, or an alternative trading system registered as a broker or dealer.

Security futures contract—a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security (such as common stock, an exchange-traded fund, or ADR) or a narrow-based security index, at a specified price.

Settlement price—(1) the daily price that the clearing organization uses to mark open positions to market for determining profit and loss and margin calls, (2) the price at which open cash settlement contracts are settled on the last trading day and open physical delivery contracts are invoiced for delivery.

Short—(1) the selling side of an open futures contract, (2) a person who has sold futures contracts that are still open.

Speculating—buying and selling futures contracts with the hope of profiting from anticipated price movements.

Spread—(1) holding a long position in one futures contract and a short position in a related futures contract or contract month in order to profit from an anticipated change in the price relationship between the two, (2) the price difference between two contracts or contract months.

Stop limit order—an order that becomes a limit order when the market trades at a specified price. The order can only be filled at the stop limit price or better.

Stop loss order—an order that becomes a market order when the market trades at a specified price. The order will be filled at whatever price the market is trading at. Also called a stop order.

Tick—the smallest price change allowed in a particular contract.

Trader—a professional speculator who trades for his or her own account.

Underlying security—the instrument on which the security futures contract is based. This instrument can be an individual equity security (including common stock and certain exchange-traded funds and American Depositary Receipts) or a narrow-based index.

Volume—the number of contracts bought or sold during a specified period of time. This figure includes liquidating transactions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD has developed sales practice rules governing security futures.[3] Several of these rules—NASD Rule 2856 and IM–2110–7—reference a security futures risk disclosure statement (''Statement''). The proposed rule change contains the text of the Statement to be used by members in complying with these rules, and any other NASD rules that may subsequently reference the Statement. The Statement is a joint effort of NASD, the National Futures Association (''NFA''), the New York Stock Exchange, the Chicago Board Options Exchange, The Options Clearing Corporation, Nasdaq Liffe Markets, OneChicago, and the American Stock Exchange. Comments on this Statement also have been provided by the staffs of the Commission and Commodity Futures Trading Commission (''CFTC'').

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[4] which requires, among other things that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, which will be provided to customers, will help inform customers of the potential risks of security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD requests that the proposed rule change be granted summary effectiveness pursuant to section

[3] *See* Securities Exchange Act Release No. 46186 (July 11, 2002), 67 FR 47412 (July 18, 2002) (SR–NASD–2002–40).

[4] 15 U.S.C. 78*o*–3(b)(6).

19(b)(3) of the Act[5] because it believes that such approval is necessary for the maintenance of fair and orderly markets. Under NASD's proposed security futures rule (NASD Rule 2865), a member must deliver the Statement to a customer prior to opening or approving a customer's account to trade security futures. In addition, NASD's proposed Guidelines for Communications with the Public Regarding Security Futures (IM–2210–7) require, with certain limited exceptions, that all communications concerning security futures shall be accompanied or preceded by the Statement. A delay in the effectiveness of the proposed rule change hinders the ability of members to open customer accounts for security futures and to communicate with customers concerning these new products.

NASD requests that the Commission coordinate its summary approval of the proposed rule change with an identical filing made by the NFA with the CFTC. NASD's understanding is that under CFTC procedures, NFA's proposed rule change will become effective on October 7, 2002.

On preliminary consideration, it appears to the Commission that summary effectiveness is necessary for the maintenance of fair and orderly markets. Accordingly, the foregoing rule change has been put into effect summarily, pursuant to section 19(b)(3)(B) of the Act.[6] At any time within sixty days of the filing of such 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 Act.

Section 19(b)(3)(B) of the Act[7] requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.[8] NASD has filed the proposed rule change[9] under section 19(b)(1) of the Act,[10] and the Commission has issued a notice of the proposed rule change.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–128 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26366 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)

[6] 15 U.S.C. 78s(b)(3)(B).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(1).

[9] File No. SR–NASD–2002–129.

[10] 15 U.S.C. 78s(b)(1).

[11] *See* Securities Exchange Act Release No. 46614 (October 7, 2002) (SR–NASD–2002–129).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46614; File No. SR–NASD–2002–129]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Security Futures Risk Disclosure Statement

October 7, 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 September 25, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is filing with the Commission the security futures risk disclosure statement. The text of the proposed rule change appears below. All text is new.

* * * * *

Risk Disclosure Statement for Security Futures Contracts

This disclosure statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future. The glossary of terms appears at the end of the document.

Customers should be aware that the examples in this document are exclusive of fees and commissions that may decrease their net gains or increase their net losses. The examples also do not include tax consequences, which may differ for each customer.

Section 1—Risks of Security Futures

1.1. Risks of Security Futures Transactions

Trading security futures contracts may not be suitable for all investors. You may lose a substantial amount of money in a very short period of time. The amount you may lose is potentially unlimited and can exceed the amount you originally deposit with your broker. This is because futures trading is highly leveraged, with a relatively small amount of money used to establish a position in assets having a much greater value. If you are uncomfortable with this level of risk, you should not trade security futures contracts.

1.2. General Risks

• *Trading security futures contracts involves risk and may result in potentially unlimited losses that are greater than the amount you deposited with your broker.* As with any high risk financial product, you should not risk any funds that you cannot afford to lose, such as your retirement savings, medical and other emergency funds, funds set aside for purposes such as education or home ownership, proceeds from student loans or mortgages, or

funds required to meet your living expenses.

• *Be cautious of claims that you can make large profits from trading security futures contracts.* Although the high degree of leverage in security futures contracts can result in large and immediate gains, it can also result in large and immediate losses. As with any financial product, there is no such thing as a ''sure winner.''

• *Because of the leverage involved and the nature of security futures contract transactions, you may feel the effects of your losses immediately.* Gains and losses in security futures contracts are credited or debited to your account, at a minimum, on a daily basis. If movements in the markets for security futures contracts or the underlying security decrease the value of your positions in security futures contracts, you may be required to have or make additional funds available to your carrying firm as margin. If your account is under the minimum margin requirements set by the exchange or the brokerage firm, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your account. Margin requirements are addressed in Section 4.

• *Under certain market conditions, it may be difficult or impossible to liquidate a position.* Generally, you must enter into an offsetting transaction in order to liquidate a position in a security futures contract. If you cannot liquidate your position in security futures contracts, you may not be able to realize a gain in the value of your position or prevent losses from mounting. This inability to liquidate could occur, for example, if trading is halted due to unusual trading activity in either the security futures contract or the underlying security; if trading is halted due to recent news events involving the issuer of the underlying security; if systems failures occur on an exchange or at the firm carrying your position; or if the position is on an illiquid market. Even if you can liquidate your position, you may be forced to do so at a price that involves a large loss.

• *Under certain market conditions, it may also be difficult or impossible to manage your risk from open security futures positions by entering into an equivalent but opposite position in another contract month, on another market, or in the underlying security.* This inability to take positions to limit your risk could occur, for example, if trading is halted across markets due to unusual trading activity in the security futures contract or the underlying security or due to recent news events involving the issuer of the underlying security.

• *Under certain market conditions, the prices of security futures contracts may not maintain their customary or anticipated relationships to the prices of the underlying security or index.* These pricing disparities could occur, for example, when the market for the security futures contract is illiquid, when the primary market for the underlying security is closed, or when the reporting of transactions in the underlying security has been delayed. For index products, it could also occur when trading is delayed or halted in some or all of the securities that make up the index.

• *You may be required to settle certain security futures contracts with physical delivery of the underlying security.* If you hold your position in a physically settled security futures contract until the end of the last trading day prior to expiration, you will be obligated to make or take delivery of the underlying securities, which could involve additional costs. The actual settlement terms may vary from contract to contract and exchange to exchange. You should carefully review the settlement and delivery conditions before entering into a security futures contract. Settlement and delivery are discussed in Section 5.

• *You may experience losses due to systems failures.* As with any financial transaction, you may experience losses if your orders for security futures contracts cannot be executed normally due to systems failures on a regulated exchange or at the brokerage firm carrying your position. Your losses may be greater if the brokerage firm carrying your position does not have adequate back-up systems or procedures.

• *All security futures contracts involve risk, and there is no trading strategy that can eliminate it.* Strategies using combinations of positions, such as spreads, may be as risky as outright long or short positions. Trading in security futures contracts requires knowledge of both the securities and the futures markets.

• *Day trading strategies involving security futures contracts and other products pose special risks.* As with any financial product, persons who seek to purchase and sell the same security future in the course of a day to profit from intra-day price movements (''day traders'') face a number of special risks, including substantial commissions, exposure to leverage, and competition with professional traders. You should thoroughly understand these risks and have appropriate experience before engaging in day trading. The special risks for day traders are discussed more fully in Section 7.

• *Placing contingent orders, if permitted, such as ''stop-loss'' or ''stop-limit'' orders, will not necessarily limit your losses to the intended amount.* Some regulated exchanges may permit you to enter into stop-loss or stop-limit orders for security futures contracts, which are intended to limit your exposure to losses due to market fluctuations. However, market conditions may make it impossible to execute the order or to get the stop price.

• *You should thoroughly read and understand the customer account agreement with your brokerage firm before entering into any transactions in security futures contracts.*

• *You should thoroughly understand the regulatory protections available to your funds and positions in the event of the failure of your brokerage firm.* The regulatory protections available to your funds and positions in the event of the failure of your brokerage firm may vary depending on, among other factors, the contract you are trading and whether you are trading through a securities account or a futures account. Firms that allow customers to trade security futures in either securities accounts or futures accounts, or both, are required to disclose to customers the differences in regulatory protections between such accounts, and, where appropriate, how customers may elect to trade in either type of account.

Section 2—Description of a Security Futures Contract

2.1. What Is a Security Futures Contract?

A security futures contract is a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security or of the component securities of a narrow-based security index, at a certain price. A person who buys a security futures contract enters into a contract to purchase an underlying security and is said to be ''long'' the contract. A person who sells a security futures contract enters into a contract to sell the underlying security and is said to be ''short'' the contract. The price at which the contract trades (the ''contract price'') is determined by relative buying and selling interest on a regulated exchange.

In order to enter into a security futures contract, you must deposit funds with your brokerage firm equal to a specified percentage (usually at least 20 percent) of the current market value of the contract as a performance bond. Moreover, all security futures contracts

are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller reflects the amount of any gain or loss on the security futures contract based on the contract price established at the end of the day for settlement purposes (the ''daily settlement price'').

An open position, either a long or short position, is closed or liquidated by entering into an offsetting transaction (*i.e.*, an equal and opposite transaction to the one that opened the position) prior to the contract expiration. Traditionally, most futures contracts are liquidated prior to expiration through an offsetting transaction and, thus, holders do not incur a settlement obligation.

Examples: Investor A is long one September XYZ Corp. futures contract. To liquidate the long position in the September XYZ Corp. futures contract, Investor A would sell an identical September XYZ Corp. contract.

Investor B is short one December XYZ Corp. futures contract. To liquidate the short position in the December XYZ Corp. futures contract, Investor B would buy an identical December XYZ Corp. contract.

Security futures contracts that are not liquidated prior to expiration must be settled in accordance with the terms of the contract. Some security futures contracts are settled by physical delivery of the underlying security. At the expiration of a security futures contract that is settled through physical delivery, a person who is long the contract must pay the final settlement price set by the regulated exchange or the clearing organization and take delivery of the underlying shares. Conversely, a person who is short the contract must make delivery of the underlying shares in exchange for the final settlement price.

Other security futures contracts are settled through cash settlement. In this case, the underlying security is not delivered. Instead, any positions in such security futures contracts that are open at the end of the last trading day are settled through a final cash payment based on a final settlement price determined by the exchange or clearing organization. Once this payment is made, neither party has any further obligations on the contract.

Physical delivery and cash settlement are discussed more fully in Section 5.

2.2. Purposes of Security Futures

Security futures contracts can be used for speculation, hedging, and risk management. Security futures contracts do not provide capital growth or income.

Speculation

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. A speculator who expects the price of the underlying instrument to increase will buy the security futures contract. A speculator who expects the price of the underlying instrument to decrease will sell the security futures contract. Speculation involves substantial risk and can lead to large losses as well as profits.

The most common trading strategies involving security futures contracts are buying with the hope of profiting from an anticipated price increase and selling with the hope of profiting from an anticipated price decrease. For example, a person who expects the price of XYZ stock to increase by March can buy a March XYZ security futures contract, and a person who expects the price of XYZ stock to decrease by March can sell a March XYZ security futures contract. The following illustrates potential profits and losses if Customer A purchases the security futures contract at $50 a share and Customer B sells the same contract at $50 a share (assuming 100 shares per contract).

Price of XYZ at liquidation	Customer A profit/loss	Customer B profit/loss
$55	$500	−$500
$50	0	0
$45	−500	500

Speculators may also enter into spreads with the hope of profiting from an expected change in price relationships. Spreaders may purchase a contract expiring in one contract month and sell another contract on the same underlying security expiring in a different month (*e.g.*, buy June and sell September XYZ single stock futures). This is commonly referred to as a ''calendar spread.''

Spreaders may also purchase and sell the same contract month in two different but economically correlated security futures contracts. For example, if ABC and XYZ are both pharmaceutical companies and an individual believes that ABC will have stronger growth than XYZ between now and June, he could buy June ABC futures contracts and sell June XYZ futures contracts. Assuming that each contract is 100 shares, the following illustrates how this works.

Opening position	Price at liquidation	Gain or loss	Price at liquidation	Gain or loss
Buy ABC at 50	$53	$300	$53	$300
Sell XYZ at 45	46	−100	50	−500
Net Gain or Loss		200		−200

Speculators can also engage in arbitrage, which is similar to a spread except that the long and short positions occur on two different markets. An arbitrage position can be established by taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Hedging

Generally speaking, hedging involves the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent). A hedger gives up the potential to profit from a favorable price change in the position being hedged in order to minimize the risk of loss from an adverse price change.

An investor who wants to lock in a price now for an anticipated sale of the underlying security at a later date can do so by hedging with security futures. For example, assume an investor owns 1,000 shares of ABC that have appreciated since he bought them. The investor would like to sell them at the current price of $50 per share, but there are tax or other reasons for holding them until September. The investor could sell ten 100-share ABC futures contracts and then buy back those contracts in September when he sells the stock. Assuming the stock price and the futures price change by the same amount, the gain or loss in the stock will be offset by the loss or gain in the futures contracts.

Price in September	Value of 1,000 shares of ABC	Gain or loss on futures	Effective selling price
$40	$40,000	$10,000	$50,000
$50	50,000	0	50,000
$60	60,000	−10,000	50,000

Hedging can also be used to lock in a price now for an anticipated purchase of the stock at a later date. For example, assume that in May a mutual fund expects to buy stocks in a particular industry with the proceeds of bonds that will mature in August. The mutual fund can hedge its risk that the stocks will increase in value between May and August by purchasing security futures contracts on a narrow-based index of stocks from that industry. When the mutual fund buys the stocks in August, it also will liquidate the security futures position in the index. If the relationship between the security futures contract and the stocks in the index is constant, the profit or loss from the futures contract will offset the price change in the stocks, and the mutual fund will have locked in the price that the stocks were selling at in May.

Although hedging mitigates risk, it does not eliminate all risk. For example, the relationship between the price of the security futures contract and the price of the underlying security traditionally tends to remain constant over time, but it can and does vary somewhat. Furthermore, the expiration or liquidation of the security futures contract may not coincide with the exact time the hedger buys or sells the underlying stock. Therefore, hedging may not be a perfect protection against price risk.

Risk Management

Some institutions also use futures contracts to manage portfolio risks without necessarily intending to change the composition of their portfolio by buying or selling the underlying securities. The institution does so by taking a security futures position that is opposite to some or all of its position in the underlying securities. This strategy involves more risk than a traditional hedge because it is not meant to be a substitute for an anticipated purchase or sale.

2.3. Where Security Futures Trade

By law, security futures contracts must trade on a regulated U.S. exchange. Each regulated U.S. exchange that trades security futures contracts is subject to joint regulation by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

A person holding a position in a security futures contract who seeks to liquidate the position must do so either on the regulated exchange where the original trade took place or on another regulated exchange, if any, where a fungible security futures contract trades. (A person may also seek to manage the risk in that position by taking an opposite position in a comparable contract traded on another regulated exchange.)

Security futures contracts traded on one regulated exchange might not be fungible with security futures contracts traded on another regulated exchange for a variety of reasons. Security futures traded on different regulated exchanges may be non-fungible because they have different contract terms (*e.g.*, size, settlement method), or because they are cleared through different clearing organizations. Moreover, a regulated exchange might not permit its security futures contracts to be offset or liquidated by an identical contract traded on another regulated exchange, even though they have the same contract terms and are cleared through the same clearing organization. You should consult your broker about the fungibility of the contract you are considering purchasing or selling, including which exchange(s), if any, on which it may be offset.

Regulated exchanges that trade security futures contracts are required by law to establish certain listing standards. Changes in the underlying security of a security futures contract may, in some cases, cause such contract to no longer meet the regulated exchange's listing standards. Each regulated exchange will have rules governing the continued trading of security futures contracts that no longer meet the exchange's listing standards. These rules may, for example, permit only liquidating trades in security futures contracts that no longer satisfy the listing standards.

2.4. How Security Futures Differ From the Underlying Security

Shares of common stock represent a fractional ownership interest in the issuer of that security. Ownership of securities confers various rights that are not present with positions in security futures contracts. For example, persons owning a share of common stock may be entitled to vote in matters affecting corporate governance. They also may be entitled to receive dividends and corporate disclosure, such as annual and quarterly reports.

The purchaser of a security futures contract, by contrast, has only a contract for future delivery of the underlying security. The purchaser of the security futures contract is not entitled to exercise any voting rights over the underlying security and is not entitled to any dividends that may be paid by the issuer. Moreover, the purchaser of a security futures contract does not receive the corporate disclosures that are received by shareholders of the underlying security, although such corporate disclosures must be made publicly available through the SEC's EDGAR system, which can be accessed at www.sec.gov. You should review such disclosures before entering into a security futures contract. See Section 9 for further discussion of the impact of corporate events on a security futures contract.

All security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller is credited with the amount of any gain, or debited by the amount of any loss, on the security futures contract, based on the contract price established at the end of the day for settlement purposes (the ''daily settlement price''). By contrast, the purchaser or seller of the underlying instrument does not have the profit and loss from his or her investment credited or debited until the position in that instrument is closed out.

Naturally, as with any financial product, the value of the security futures contract and of the underlying security may fluctuate. However, owning the underlying security does not require an investor to settle his or her profits and losses daily. By contrast, as a result of the mark-to-market requirements discussed above, a person who is long a security futures contract often will be required to deposit additional funds into his or her account

as the price of the security futures contract decreases. Similarly, a person who is short a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract increases.

Another significant difference is that security futures contracts expire on a specific date. Unlike an owner of the underlying security, a person cannot hold a long position in a security futures contract for an extended period of time in the hope that the price will go up. If you do not liquidate your security futures contract, you will be required to settle the contract when it expires, either through physical delivery or cash settlement. For cash-settled contracts in particular, upon expiration, an individual will no longer have an economic interest in the securities underlying the security futures contract.

2.5. Comparison to Options

Although security futures contracts share some characteristics with options on securities (options contracts), these products are also different in a number of ways. Below are some of the important distinctions between equity options contracts and security futures contracts.

If you purchase an options contract, you have the right, but not the obligation, to buy or sell a security prior to the expiration date. If you sell an options contract, you have the obligation to buy or sell a security prior to the expiration date. By contrast, if you have a position in a security futures contract (either long or short), you have both the right and the obligation to buy or sell a security at a future date. The only way that you can avoid the obligation incurred by the security futures contract is to liquidate the position with an offsetting contract.

A person purchasing an options contract runs the risk of losing the purchase price (premium) for the option contract. Because it is a wasting asset, the purchaser of an options contract who neither liquidates the options contract in the secondary market nor exercises it at or prior to expiration will necessarily lose his or her entire investment in the options contract. However, a purchaser of an options contract cannot lose more than the amount of the premium. Conversely, the seller of an options contract receives the premium and assumes the risk that he or she will be required to buy or sell the underlying security on or prior to the expiration date, in which event his or her losses may exceed the amount of the premium received. Although the seller of an options contract is required to deposit margin to reflect the risk of its obligation, he or she may lose many times his or her initial margin deposit.

By contrast, the purchaser and seller of a security futures contract each enter into an agreement to buy or sell a specific quantity of shares in the underlying security. Based upon the movement in prices of the underlying security, a person who holds a position in a security futures contract can gain or lose many times his or her initial margin deposit. In this respect, the benefits of a security futures contract are similar to the benefits of purchasing an option, while the risks of entering into a security futures contract are similar to the risks of selling an option.

Both the purchaser and the seller of a security futures contract have daily margin obligations. At least once each day, security futures contracts are marked-to-market and the increase or decrease in the value of the contract is credited or debited to the buyer and the seller. As a result, any person who has an open position in a security futures contract may be called upon to meet additional margin requirements or may receive a credit of available funds.

Example:

Assume that Customers A and B each anticipate an increase in the market price of XYZ stock, which is currently $50 a share. Customer A purchases an XYZ 50 call (covering 100 shares of XYZ at a premium of $5 per share). The option premium is $500 ($5 per share × 100 shares). Customer B purchases an XYZ security futures contract (covering 100 shares of XYZ). The total value of the contract is $5000 ($50 share value × 100 shares). The required margin is $1000 (or 20% of the contract value).

Price of XYZ at expiration	Customer A profit/loss	Customer B profit/loss
$65	$1,000	$1,500
$60	500	1,000
$55	0	500
$50	−500	0
$45	−500	−500
$40	−500	−1,000
$35	−500	−1,500

The most that Customer A can lose is $500, the option premium. Customer A breaks even at $55 per share, and makes money at higher prices. Customer B may lose more than his initial margin deposit. Unlike the options premium, the margin on a futures contract is not a cost but a performance bond. The losses for Customer B are not limited by this performance bond. Rather, the losses or gains are determined by the settlement price of the contract, as provided in the example above. Note that if the price of XYZ falls to $35 per share, Customer A loses only $500, whereas Customer B loses $1500.

2.6. Components of a Security Futures Contract

Each regulated exchange can choose the terms of the security futures contracts it lists, and those terms may differ from exchange to exchange or contract to contract. Some of those contract terms are discussed below. However, you should ask your broker for a copy of the contract specifications before trading a particular contract.

2.6.1.

Each security futures contract has a set size. The size of a security futures contract is determined by the regulated exchange on which the contract trades. For example, a security futures contract for a single stock may be based on 100 shares of that stock. If prices are reported per share, the value of the contract would be the price times 100. For narrow-based security indices, the value of the contract is the price of the component securities times the multiplier set by the exchange as part of the contract terms.

2.6.2.

Security futures contracts expire at set times determined by the listing exchange. For example, a particular contract may expire on a particular day, *e.g.*, the third Friday of the expiration month. Up until expiration, you may liquidate an open position by offsetting your contract with a fungible opposite contract that expires in the same month. If you do not liquidate an open position before it expires, you will be required to make or take delivery of the underlying security or to settle the contract in cash after expiration.

2.6.3.

Although security futures contracts on a particular security or a narrow-based security index may be listed and traded on more than one regulated exchange, the contract specifications may not be the same. Also, prices for contracts on the same security or index may vary on different regulated exchanges because of different contract specifications.

2.6.4.

Prices of security futures contracts are usually quoted the same way prices are quoted in the underlying instrument. For example, a contract for an individual security would be quoted in dollars and cents per share. Contracts for indices would be quoted by an index number, usually stated to two decimal places.

2.6.5.

Each security futures contract has a minimum price fluctuation (called a

tick), which may differ from product to product or exchange to exchange. For example, if a particular security futures contract has a tick size of 1¢, you can buy the contract at $23.21 or $23.22 but not at $23.215.

2.7. Trading Halts

The value of your positions in security futures contracts could be affected if trading is halted in either the security futures contract or the underlying security. In certain circumstances, regulated exchanges are required by law to halt trading in security futures contracts. For example, trading on a particular security futures contract must be halted if trading is halted on the listed market for the underlying security as a result of pending news, regulatory concerns, or market volatility. Similarly, trading of a security futures contract on a narrow-based security index must be halted under such circumstances if trading is halted on securities accounting for at least 50 percent of the market capitalization of the index. In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average (''DJIA'') experiences one-day declines of 10-, 20- and 30-percent. The regulated exchanges may also have discretion under their rules to halt trading in other circumstances—such as when the exchange determines that the halt would be advisable in maintaining a fair and orderly market.

A trading halt, either by a regulated exchange that trades security futures or an exchange trading the underlying security or instrument, could prevent you from liquidating a position in security futures contracts in a timely manner, which could prevent you from liquidating a position in security futures contracts at that time.

2.8. Trading Hours

Each regulated exchange trading a security futures contract may open and close for trading at different times than other regulated exchanges trading security futures contracts or markets trading the underlying security or securities. Trading in security futures contracts prior to the opening or after the close of the primary market for the underlying security may be less liquid than trading during regular market hours.

Section 3—Clearing Organizations and Mark-to-Market Requirements

Every regulated U.S. exchange that trades security futures contracts is required to have a relationship with a clearing organization that serves as the guarantor of each security futures contract traded on that exchange. A clearing organization performs the following functions: matching trades; effecting settlement and payments; guaranteeing performance; and facilitating deliveries.

Throughout each trading day, the clearing organization matches trade data submitted by clearing members on behalf of their customers or for the clearing member's proprietary accounts. If an account is with a brokerage firm that is not a member of the clearing organization, then the brokerage firm will carry the security futures position with another brokerage firm that is a member of the clearing organization. Trade records that do not match, either because of a discrepancy in the details or because one side of the transaction is missing, are returned to the submitting clearing members for resolution. The members are required to resolve such ''out trades'' before or on the open of trading the next morning.

When the required details of a reported transaction have been verified, the clearing organization assumes the legal and financial obligations of the parties to the transaction. One way to think of the role of the clearing organization is that it is the ''buyer to every seller and the seller to every buyer.'' The insertion or substitution of the clearing organization as the counterparty to every transaction enables a customer to liquidate a security futures position without regard to what the other party to the original security futures contract decides to do.

The clearing organization also effects the settlement of gains and losses from security futures contracts between clearing members. At least once each day, clearing member brokerage firms must either pay to, or receive from, the clearing organization the difference between the current price and the trade price earlier in the day, or for a position carried over from the previous day, the difference between the current price and the previous day's settlement price. Whether a clearing organization effects settlement of gains and losses on a daily basis or more frequently will depend on the conventions of the clearing organization and market conditions. Because the clearing organization assumes the legal and financial obligations for each security futures contract, you should expect it to ensure that payments are made promptly to protect its obligations.

Gains and losses in security futures contracts are also reflected in each customer's account on at least a daily basis. Each day's gains and losses are determined based on a daily settlement price disseminated by the regulated exchange trading the security futures contract or its clearing organization. If the daily settlement price of a particular security futures contract rises, the buyer has a gain and the seller a loss. If the daily settlement price declines, the buyer has a loss and the seller a gain. This process is known as ''marking-to-market'' or daily settlement. As a result, individual customers normally will be called on to settle daily.

The one-day gain or loss on a security futures contract is determined by calculating the difference between the current day's settlement price and the previous day's settlement price.

For example, assume a security futures contract is purchased at a price of $120. If the daily settlement price is either $125 (higher) or $117 (lower), the effects would be as follows:

(1 contract representing 100 shares)

Daily settlement value	Buyer's account	Seller's account
$125	$500 gain (credit)	$500 loss (debit).
$117	$300 loss (debit)	$300 gain (credit).

The cumulative gain or loss on a customer's open security futures positions is generally referred to as ''open trade equity'' and is listed as a separate component of account equity on your customer account statement.

A discussion of the role of the clearing organization in effecting delivery is discussed in Section 5.

Section 4—Margin and Leverage

When a broker-dealer lends a customer part of the funds needed to purchase a security such as common stock, the term ''margin'' refers to the amount of cash, or down payment, the customer is required to deposit. By contrast, a security futures contract is an obligation and not an asset. A security futures contract has no value as

collateral for a loan. Because of the potential for a loss as a result of the daily marked-to-market process, however, a margin deposit is required of each party to a security futures contract. This required margin deposit also is referred to as a ''performance bond.''

In the first instance, margin requirements for security futures contracts are set by the exchange on which the contract is traded, subject to certain minimums set by law. The basic margin requirement is 20% of the current value of the security futures contract, although some strategies may have lower margin requirements. Requests for additional margin are known as ''margin calls.'' Both buyer and seller must individually deposit the required margin to their respective accounts.

It is important to understand that individual brokerage firms can, and in many cases do, require margin that is higher than the exchange requirements. Additionally, margin requirements may vary from brokerage firm to brokerage firm. Furthermore, a brokerage firm can increase its ''house'' margin requirements at any time without providing advance notice, and such increases could result in a margin call.

For example, some firms may require margin to be deposited the business day following the day of a deficiency, or some firms may even require deposit on the same day. Some firms may require margin to be on deposit in the account before they will accept an order for a security futures contract. Additionally, brokerage firms may have special requirements as to how margin calls are to be met, such as requiring a wire transfer from a bank, or deposit of a certified or cashier's check. You should thoroughly read and understand the customer agreement with your brokerage firm before entering into any transactions in security futures contracts.

If through the daily cash settlement process, losses in the account of a security futures contract participant reduce the funds on deposit (or equity) below the maintenance margin level (or the firm's higher ''house'' requirement), the brokerage firm will require that additional funds be deposited.

If additional margin is not deposited in accordance with the firm's policies, the firm can liquidate your position in security futures contracts or sell assets in any of your accounts at the firm to cover the margin deficiency. You remain responsible for any shortfall in the account after such liquidations or sales. Unless provided otherwise in your customer agreement or by applicable law, you are not entitled to choose which futures contracts, other securities or other assets are liquidated or sold to meet a margin call or to obtain an extension of time to meet a margin call.

Brokerage firms generally reserve the right to liquidate a customer's security futures contract positions or sell customer assets to meet a margin call at any time without contacting the customer. Brokerage firms may also enter into equivalent but opposite positions for your account in order to manage the risk created by a margin call. Some customers mistakenly believe that a firm is required to contact them for a margin call to be valid, and that the firm is not allowed to liquidate securities or other assets in their accounts to meet a margin call unless the firm has contacted them first. This is not the case. While most firms notify their customers of margin calls and allow some time for deposit of additional margin, they are not required to do so. Even if a firm has notified a customer of a margin call and set a specific due date for a margin deposit, the firm can still take action as necessary to protect its financial interests, including the immediate liquidation of positions without advance notification to the customer.

Here is an example of the margin requirements for a long security futures position.

A customer buys 3 July EJG security futures at 71.50. Assuming each contract represents 100 shares, the nominal value of the position is $21,450 (71.50 × 3 contracts × 100 shares). If the initial margin rate is 20% of the nominal value, then the customer's initial margin requirement would be $4,290. The customer deposits the initial margin, bringing the equity in the account to $4,290.

First, assume that the next day the settlement price of EJG security futures falls to 69.25. The marked-to-market loss in the customer's equity is $675 (71.50 − 69.25 × 3 contacts × 100 shares). The customer's equity decreases to $3,615 ($4,290 − $675). The new nominal value of the contract is $20,775 (69.25 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,155. Because the customer's equity had decreased to $3,615 (see above), the customer would be required to have an additional $540 in margin ($4,155 − $3,615).

Alternatively, assume that the next day the settlement price of EJG security futures rises to 75.00. The mark-to-market gain in the customer's equity is $1,050 (75.00 − 71.50 × 3 contacts × 100 shares). The customer's equity increases to $5,340 ($4,290 + $1,050). The new nominal value of the contract is $22,500 (75.00 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,500. Because the customer's equity had increased to $5,340 (see above), the customer's excess equity would be $840.

The process is exactly the same for a short position, except that margin calls are generated as the settlement price rises rather than as it falls. This is because the customer's equity decreases as the settlement price rises and increases as the settlement price falls.

Because the margin deposit required to open a security futures position is a fraction of the nominal value of the contracts being purchased or sold, security futures contracts are said to be highly leveraged. The smaller the margin requirement in relation to the underlying value of the security futures contract, the greater the leverage. Leverage allows exposure to a given quantity of an underlying asset for a fraction of the investment needed to purchase that quantity outright. In sum, buying (or selling) a security futures contract provides the same dollar and cents profit and loss outcomes as owning (or shorting) the underlying security. However, as a percentage of the margin deposit, the potential immediate exposure to profit or loss is much higher with a security futures contract than with the underlying security.

For example, if a security futures contract is established at a price of $50, the contract has a nominal value of $5,000 (assuming the contract is for 100 shares of stock). The margin requirement may be as low as 20%. In the example just used, assume the contract price rises from $50 to $52 (a $200 increase in the nominal value). This represents a $200 profit to the buyer of the security futures contract, and a 20% return on the $1,000 deposited as margin. The reverse would be true if the contract price decreased from $50 to $48. This represents a $200 loss to the buyer, or 20% of the $1,000 deposited as margin. Thus, leverage can either benefit or harm an investor.

Note that a 4% decrease in the value of the contract resulted in a loss of 20% of the margin deposited. A 20% decrease would wipe out 100% of the margin deposited on the security futures contract.

Section 5—Settlement

If you do not liquidate your position prior to the end of trading on the last

day before the expiration of the security futures contract, you are obligated to either (1) make or accept a cash payment (''cash settlement'') or (2) deliver or accept delivery of the underlying securities in exchange for final payment of the final settlement price (''physical delivery''). The terms of the contract dictate whether it is settled through cash settlement or by physical delivery.

The expiration of a security futures contract is established by the exchange on which the contract is listed. On the expiration day, security futures contracts cease to exist. Typically, the last trading day of a security futures contract will be the third Friday of the expiring contract month, and the expiration day will be the following Saturday. This follows the expiration conventions for stock options and broad-based stock indexes. Please keep in mind that the expiration day is set by the listing exchange and may deviate from these norms.

5.1. Cash Settlement

In the case of cash settlement, no actual securities are delivered at the expiration of the security futures contract. Instead, you must settle any open positions in security futures by making or receiving a cash payment based on the difference between the final settlement price and the previous day's settlement price. Under normal circumstances, the final settlement price for a cash-settled contract will reflect the opening price for the underlying security. Once this payment is made, neither the buyer nor the seller of the security futures contract has any further obligations on the contract.

5.2. Settlement by Physical Delivery

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation (''NSCC''), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the ''invoice price'') to NSCC. If NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of NSCC within the normal clearance and settlement cycle for securities transactions, which currently is three business days.

If you hold a short position in a physically settled security futures contract to expiration, you will be required to make delivery of the underlying securities. If you already own the securities, you may tender them to your brokerage firm. If you do not own the securities, you will be obligated to purchase them. Some brokerage firms may not be able to purchase the securities for you. If your brokerage firm cannot purchase the underlying securities on your behalf to fulfill a settlement obligation, you will have to purchase the securities through a different firm.

Section 6—Customer Account Protections

Positions in security futures contracts may be held either in a securities account or in a futures account. Your brokerage firm may or may not permit you to choose the types of account in which your positions in security futures contracts will be held. The protections for funds deposited or earned by customers in connection with trading in security futures contracts differ depending on whether the positions are carried in a securities account or a futures account. If your positions are carried in a securities account, you will not receive the protections available for futures accounts. Similarly, if your positions are carried in a futures account, you will not receive the protections available for securities accounts. You should ask your broker which of these protections will apply to your funds.

You should be aware that the regulatory protections applicable to your account are not intended to insure you against losses you may incur as a result of a decline or increase in the price of a security futures contract. As with all financial products, you are solely responsible for any market losses in your account.

Your brokerage firm must tell you whether your security futures positions will be held in a securities account or a futures account. If your brokerage firm gives you a choice, it must tell you what you have to do to make the choice and which type of account will be used if you fail to do so. You should understand that certain regulatory protections for your account will depend on whether it is a securities account or a futures account.

6.1. Protections for Securities Accounts

If your positions in security futures contracts are carried in a securities account, they are covered by SEC rules governing the safeguarding of customer funds and securities. These rules prohibit a broker/dealer from using customer funds and securities to finance its business. As a result, the broker/dealer is required to set aside funds equal to the net of all its excess payables to customers over receivables from customers. The rules also require a broker/dealer to segregate all customer fully paid and excess margin securities carried by the broker/dealer for customers.

The Securities Investor Protection Corporation (SIPC) also covers positions held in securities accounts. SIPC was created in 1970 as a non-profit, non-government, membership corporation, funded by member broker/dealers. Its primary role is to return funds and securities to customers if the broker/dealer holding these assets becomes insolvent. SIPC coverage applies to customers of current (and in some cases former) SIPC members. Most broker/dealers registered with the SEC are SIPC members; those few that are not must disclose this fact to their customers. SIPC members must display an official sign showing their membership. To check whether a firm is a SIPC member, go to *www.sipc.org,* call the SIPC Membership Department at (202) 371–8300, or write to SIPC Membership Department, Securities Investor Protection Corporation, 805 Fifteenth Street, NW, Suite 800, Washington, DC 20005–2215.

SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only a total of $500,000 of those assets will be protected.

For purposes of SIPC coverage, customers are persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC does not protect customer funds placed with a broker/dealer just to earn interest. Insiders of the broker/dealer, such as its owners, officers, and partners, are not customers for purposes of SIPC coverage.

6.2. Protections for Futures Accounts

If your security futures positions are carried in a futures account, they must be segregated from the brokerage firm's own funds and cannot be borrowed or otherwise used for the firm's own purposes. If the funds are deposited with another entity (*e.g.,* a bank, clearing broker, or clearing organization), that entity must acknowledge that the funds belong to customers and cannot be used to satisfy

the firm's debts. Moreover, although a brokerage firm may carry funds belonging to different customers in the same bank or clearing account, it may not use the funds of one customer to margin or guarantee the transactions of another customer. As a result, the brokerage firm must add its own funds to its customers' segregated funds to cover customer debits and deficits. Brokerage firms must calculate their segregation requirements daily.

You may not be able to recover the full amount of any funds in your account if the brokerage firm becomes insolvent and has insufficient funds to cover its obligations to all of its customers. However, customers with funds in segregation receive priority in bankruptcy proceedings. Furthermore, all customers whose funds are required to be segregated have the same priority in bankrutpcy, and there is no ceiling on the amount of funds that must be segregated for or can be recovered by a particular customer.

Your brokerage firm is also required to separately maintain funds invested in security futures contracts traded on a foreign exchange. However, these funds may not receive the same protections once they are transferred to a foreign entity (*e.g.*, a foreign broker, exchange or clearing organization) to satisfy margin requirements for those products. You should ask your broker about the bankruptcy protections available in the country where the foreign exchange (or other entity holding the funds) is located.

Section 7—Special Risks for Day Traders

Certain traders who pursue a day trading strategy may seek to use security futures contracts as part of their trading activity. Whether day trading in security futures contracts or other securities, investors engaging in a day trading strategy face a number of risks.

- *Day trading in security futures contracts requires in-depth knowledge of the securities and futures markets and of trading techniques and strategies.* In attempting to profit through day trading, you will compete with professional traders who are knowledgeable and sophisticated in these markets. You should have appropriate experience before engaging in day trading.
- *Day trading in security futures contracts can result in substantial commission charges, even if the per trade cost is low.* The more trades you make, the higher your total commissions will be. The total commissions you pay will add to your losses and reduce your profits. For instance, assuming that a round-turn trade costs $16 and you execute an average of 29 round-turn transactions per day each trading day, you would need to generate an annual profit of $111,360 just to cover your commission expenses.
- *Day trading can be extremely risky.* Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with funds that you cannot afford to lose.

Section 8—Other

8.1. Corporate Events

As noted in Section 2.4, an equity security represents a fractional ownership interest in the issuer of that security. By contrast, the purchaser of a security futures contract has only a contract for future delivery of the underlying security. Treatment of dividends and other corporate events affecting the underlying security may be reflected in the security futures contract depending on the applicable clearing organization rules. Consequently, individuals should consider how dividends and other developments affecting security futures in which they transact will be handled by the relevant exchange and clearing organization. The specific adjustments to the terms of a security futures contract are governed by the rules of the applicable clearing organization. Below is a discussion of some of the more common types of adjustments that you may need to consider.

Corporate issuers occasionally announce stock splits. As a result of these splits, owners of the issuer's common stock may own more shares of the stock, or fewer shares in the case of a reverse stock split. The treatment of stock splits for persons owning a security futures contract may vary according to the terms of the security futures contract and the rules of the clearing organization. For example, the terms of the contract may provide for an adjustment in the number of contracts held by each party with a long or short position in a security future, or for an adjustment in the number of shares or units of the instrument underlying each contract, or both.

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.

Corporate issuers occasionally may be involved in mergers and acquisitions. Such events may cause the underlying security of a security futures contact to change over the contract duration. The terms of security futures contracts may also be adjusted to reflect other corporate events affecting the underlying security.

8.2. Position Limits and Large Trader Reporting

All security futures contracts trading on regulated exchanges in the United States are subject to position limits or position accountability limits. Position limits restrict the number of security futures contracts that any one person or group of related persons may hold or control in a particular security futures contract. In contrast, position accountability limits permit the accumulation of positions in excess of the limit without a prior exemption. In general, position limits and position accountability limits are beyond the thresholds of most retail investors. Whether a security futures contract is subject to position limits, and the level for such limits, depends upon the trading activity and market capitalization of the underlying security of the security futures contract.

Position limits apply are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts.

For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security

futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an ''Identification of Special Accounts Form'' or a ''Form 102'') to the CFTC and to the exchange on which the reportable position exists within three business days of when a reportable position is first established.

8.3. Transactions on Foreign Exchanges

U.S. customers may not trade security futures on foreign exchanges until authorized by U.S. regulatory authorities. U.S. regulatory authorities do not regulate the activities of foreign exchanges and may not, on their own, compel enforcement of the rules of a foreign exchange or the laws of a foreign country. While U.S. law governs transactions in security futures contracts that are effected in the U.S., regardless of the exchange on which the contracts are listed, the laws and rules governing transactions on foreign exchanges vary depending on the country in which the exchange is located.

8.4. Tax Consequences

For most taxpayers, security futures contracts are not treated like other futures contracts. Instead, the tax consequences of a security futures transaction depend on the status of the taxpayer and the type of position (*e.g.*, long or short, covered or uncovered). Because of the importance of tax considerations to transactions in security futures, readers should consult their tax advisors as to the tax consequences of these transactions.

Section 9—Glossary of Terms

This glossary is intended to assist customers in understanding specialized terms used in the futures and securities industries. It is not inclusive and is not intended to state or suggest the legal significance or meaning of any word or term.

Arbitrage—taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Broad-based security index—a security index that does not fall within the statutory definition of a narrow-based security index (see Narrow-based security index). A future on a broad-based security index is not a security future. This risk disclosure statement applies solely to security futures and generally does not pertain to futures on a broad-based security index. Futures on a broad-based security index are under exclusive jurisdiction of the CFTC.

Cash settlement—a method of settling certain futures contracts by having the buyer (or long) pay the seller (or short) the cash value of the contract according to a procedure set by the exchange.

Clearing broker—a member of the clearing organization for the contract being traded. All trades, and the daily profits or losses from those trades, must go through a clearing broker.

Clearing organization—a regulated entity that is responsible for settling trades, collecting losses and distributing profits, and handling deliveries.

Contract—(1) the unit of trading for a particular futures contract (*e.g.*, one contract may be 100 shares of the underlying security), (2) the type of future being traded (*e.g.*, futures on ABC stock).

Contract month—the last month in which delivery is made against the futures contract or the contract is cash-settled. Sometimes referred to as the delivery month.

Day trading strategy—an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

EDGAR—the SEC's Electronic Data Gathering, Analysis, and Retrieval system maintains electronic copies of corporate information filed with the agency. EDGAR submissions may be accessed through the SEC's Web site, *www.sec.gov.*

Futures contract—a futures contract is (1) an agreement to purchase or sell a commodity for delivery in the future; (2) at a price determined at initiation of the contract; (3) that obligates each party to the contract to fulfill it at the specified price; (4) that is used to assume or shift risk; and (5) that may be satisfied by delivery or offset.

Hedging—the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent).

Illiquid market—a market (or contract) with few buyers and/or sellers. Illiquid markets have little trading activity and those trades that do occur may be done at large price increments.

Liquidation—entering into an offsetting transaction. Selling a contract that was previously purchased liquidates a futures position in exactly the same way that selling 100 shares of a particular stock liquidates an earlier purchase of the same stock. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase.

Liquid market—a market (or contract) with numerous buyers and sellers trading at small price increments.

Long—(1) the buying side of an open futures contact, (2) a person who has bought futures contracts that are still open.

Margin—the amount of money that must be deposited by both buyers and sellers to ensure performance of the person's obligations under a futures contract. Margin on security futures contracts is a performance bond rather than a down payment for the underlying securities.

Mark-to-market—to debit or credit accounts daily to reflect that day's profits and losses.

Narrow-based security index—in general, and subject to certain exclusions, an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). A security index that is not narrow-based is a ''broad based security index.'' (See Broad-based security index).

Nominal value—the face value of the futures contract, obtained by multiplying the contract price by the number of shares or units per contract. If XYZ stock index futures are trading at $50.25 and the contract is for 100 shares of XYZ stock, the nominal value of the futures contract would be $5025.00.

Offsetting—liquidating open positions by either selling fungible contracts in the same contract month as an open long position or buying fungible

contracts in the same contract month as an open short position.

Open interest—the total number of open long (or short) contracts in a particular contract month.

Open position—a futures contract position that has neither been offset nor closed by cash settlement or physical delivery.

Performance bond—another way to describe margin payments for futures contracts, which are good faith deposits to ensure performance of a person's obligations under a futures contract rather than down payments for the underlying securities.

Physical delivery—the tender and receipt of the actual security underlying the security futures contract in exchange for payment of the final settlement price.

Position—a person's net long or short open contracts.

Regulated exchange—a registered national securities exchange, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934, a designated contract market, a registered derivatives transaction execution facility, or an alternative trading system registered as a broker or dealer.

Security futures contract—a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security (such as common stock, an exchange-traded fund, or ADR) or a narrow-based security index, at a specified price.

Settlement price—(1) the daily price that the clearing organization uses to mark open positions to market for determining profit and loss and margin calls, (2) the price at which open cash settlement contracts are settled on the last trading day and open physical delivery contracts are invoiced for delivery.

Short—(1) the selling side of an open futures contract, (2) a person who has sold futures contracts that are still open.

Speculating—buying and selling futures contracts with the hope of profiting from anticipated price movements.

Spread—(1) holding a long position in one futures contract and a short position in a related futures contract or contract month in order to profit from an anticipated change in the price relationship between the two, (2) the price difference between two contracts or contract months.

Stop limit order—an order that becomes a limit order when the market trades at a specified price. The order can only be filled at the stop limit price or better.

Stop loss order—an order that becomes a market order when the market trades at a specified price. The order will be filled at whatever price the market is trading at. Also called a stop order.

Tick—the smallest price change allowed in a particular contract.

Trader—a professional speculator who trades for his or her own account.

Underlying security—the instrument on which the security futures contract is based. This instrument can be an individual equity security (including common stock and certain exchange-traded funds and American Depositary Receipts) or a narrow-based index.

Volume—the number of contracts bought or sold during a specified period of time. This figure includes liquidating transactions.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD has developed sales practice rules governing security futures.[3] Several of these rules—NASD Rule 2856 and IM–2110–7—reference a security futures risk disclosure statement (''Statement''). The proposed rule change contains the text of the Statement to be used by members in complying with these rules, and any other NASD rules that may subsequently reference the Statement. The Statement is a joint effort of NASD, the National Futures Association (''NFA''), the New York Stock Exchange, the Chicago Board Options Exchange, The Options Clearing Corporation, Nasdaq Liffe Markets, OneChicago, and the American Stock Exchange. Comments on this Statement also have been provided by the staffs of the Commission and Commodity Futures Trading Commission (''CFTC'').

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change, which will be provided to customers, will help inform customers of the potential risks of security futures.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the 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.

In addition, the Commission notes that the proposed rule change has previously been noticed pursuant to section 19(b)(3)(B) of the Act.[5]

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

[3] *See* Securities Exchange Act Release No. 46186 (July 11, 2002), 67 FR 47412 (July 18, 2002) (SR–NASD–2002–40).

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] 15 U.S.C. 78s(b)(3)(B). *See* Securities Exchange Act Release No. 46612 (October 7, 2002).

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–NASD–2002–129 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26368 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46649; File No. SR–NASD–2002–140]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Shareholder Approval for Stock Option Plans or Other Arrangements

October 11, 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 October 9, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On October 10, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4350(i) (''NASD Rule 4350(i)'' or ''Rule'') to strengthen listing standards relating to shareholder approval for stock option plans or other arrangements, adopt interpretative material pertaining to shareholder approval for stock option plans or other arrangements, and to make related conforming changes to NASD Rules 4310(c)(17)(A) and 4320(15)(A).

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Rule 4310. Qualification Requirements for Domestic and Canadian Securities

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(16) No change.

(17) The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A) establishing *or materially amending* a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers, [or] directors, *employees, or consultants* without shareholder approval; or

(B)–(D) No change.

(18)–(29) No change.

(d) No change.

* * * * *

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(14) No change.

(15) The issuer shall be required to notify Nasdaq on the appropriate form no later than 15 calendar days prior to:

(A) establishing *or materially amending* a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers, [or] directors, *employees, or consultants* without shareholder approval; or

(B)–(D) No change.

(16)–(25) No change.

(f) No change.

* * * * *

Rule 4350. Quantitative Listing Requirements for Nasdaq National Market and Nasdaq SmallCap Market Issuers Except for Limited Partnerships

(a)–(h) No change.

(i) Shareholder Approval.

(1) Each issuer shall require shareholder approval [of a plan or arrangement under subparagraph (A) below, or] prior to the issuance of designated securities under subparagraph *(A),* (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established *or materially amended* or other arrangement made pursuant to which options or stock may be acquired by officers, [or] directors, *employees, or consultants,* except for:

(i) warrants or rights issued generally to *all* security holders of the company; or

(ii) [broadly based plans or arrangements including other employees (*e.g.* ESOPs).] *tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's compensation committee or a majority of the issuer's independent directors; or*

(iii) plans relating to an acquisition or merger as permitted under IM–4350–5; or

(iv) [In a case where the shares are] issuances[ed] to a person not previously *an* employee [d by] *or director* of the company, as an inducement [essential] *material* to the individual's entering into [an] employment [contract] with the company, *provided such issuances are approved by the issuer's compensation committee or a majority of the issuer's independent directors.* [shareholder approval will generally not be required. The establishment of a plan or arrangement under which the amount of securities that may be issued does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding, or 25,000 shares will not generally require shareholder approval.]

(B)–(D) No change.

(2)–(6) No change.

(j)–(l) No change.

* * * * *

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 10, 2002 (''Amendment No. 1''). In Amendment No. 1, Nasdaq did the following: (1) made technical corrections to its proposed rule language; (2) clarified the exceptions to shareholder approval for tax qualified, non-discriminatory employee benefit plans, parallel nonqualified plans, and plans relating to an acquisition or merger; and (3) clarified in the purpose section of its filing that it was proposing to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(15)(A).

IM–4350–5. Shareholder Approval for Stock Option Plans or Other Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in the use of stock option plans, given this potential for dilution.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. Along with tax qualified, non-discriminatory employee benefit plans, the Rule also provides an exception for parallel nonqualified plans.[1]

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees, and its interests are directly aligned with the shareholders. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition.

In addition, plans involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. Nasdaq would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise.[2]

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's compensation committee, or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

Footnotes to IM–4350–5

[1] *The term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. § 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted) and (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence.*

[2] *Note that any such shares reserved for listing in connection with the transaction would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required shareholder approval under Rule 4350(i)(1)(D).*

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 4350(i)(1)(A) generally requires shareholder approval for all stock option plans or other arrangements in which officers or directors participate. However, the Rule contains an exception for broadly based plans, that is, plans in which at least a majority of the eligible participants are not officers or directors and at least a majority of the grants go to employees other than officers and directors. Consistent with recent remarks by President Bush and SEC Chairman Pitt, and in order to enhance investor confidence, Nasdaq now proposes to delete the exception for broadly based plans and expand the Rule to generally require that all plans will be subject to shareholder approval.

Nasdaq also proposes to eliminate the *de minimis* exception to the Rule, which allows for the grant of the lesser of 1% of the number of shares of common stock or 25,000 shares, without shareholder approval. Nasdaq believes that this exception is not in accord with the concept of restricting the use of unapproved options.

The remaining exception for warrants or rights offered generally to all shareholders would be retained. In addition, shareholder approval would not be required for tax qualified, non-discriminatory benefit plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. Along with tax qualified, non-discriminatory employee benefit plans, the Rule also proposes an exception for parallel nonqualified plans. The Nasdaq represents that the proposed amendments to the Rule would have no effect on any shareholder approval or other requirements under the Internal Revenue Code or other applicable laws or requirements for such plans.

Further, the exception for inducement grants to new employees would be retained because in these cases a company has an arm's length relationship with the new employees, and its interests are directly aligned with the shareholders. Inducement grants for these purposes would include grants of options or stock to new employees in connection with a merger or acquisition.

In addition, the proposed amendments to the Rule would make clear that plans involving a merger or acquisition would not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. Nasdaq would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. Nasdaq believes that this exception is appropriate because it believes that it will not result in any increase in the aggregate potential dilution of the combined enterprise.

Under the proposed amendments to the Rule, inducement grants, tax qualified, non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's compensation committee, or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund options without prior shareholder approval.

The proposed amendments to the Rule also clarify that material amendments to plans will require shareholder approval. Nasdaq will continue to provide guidance as to what constitutes a material amendment to a plan. Nasdaq currently determines the existence of a material amendment to a plan consistent with the Commission's position under former Rule 16b–3 of the Act. In particular, Nasdaq looks to whether there is a material change to: (1) The benefits available to potential recipients under the plan; (2) the number of shares available under the plan; or (3) the class of eligible participants under the plan. Nasdaq is considering whether these factors can be refined, and may provide further guidance following this consideration.

With respect to implementation of the proposed amendments to the Rule, Nasdaq proposes that the amended Rule become effective upon SEC approval, and that existing plans be grandfathered. Nasdaq represents that any material modification to plans in place or adopted after the effective date of the Rule would require shareholder approval.

Lastly, Nasdaq proposes to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A). These proposed changes will require issuers to notify Nasdaq on the appropriate form no later than 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[4] in general and with Section 15A(b)(6) of the Act,[5] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and a national market system, and in general, to protect investors and the public interest. As previously noted, Nasdaq believes that the proposed rule change will strengthen shareholder approval requirements with respect to stock option plans.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, in consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–140 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26457 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46613; File No. SR–NFA–2002–05]

Self-Regulatory Organizations; Notice of Filing and Effectiveness of Proposed Rule Change by the National Futures Association Concerning Risk Disclosure for Security Futures Contracts

October 7, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on September 27, 2002, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC''). On September 25, 2002, NFA submitted the proposed rule changes to the CFTC for approval and invoked the ''ten-day'' provision of Section 17(j) of the Commodity Exchange Act (''CEA'').[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[4] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[5] The interpretive notice regarding the risk disclosure statement for security futures contracts will apply to these Members.

The proposed interpretive notice identifies the risk disclosure statement that Members and Associates who are not members of NASD are required to provide to a customer at or before the time the member approves the account to trade security futures products. The text of that notice and the risk disclosure statement follow.

NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts; Interpretive Notice

NFA Compliance Rule 2–30(b) requires Members and Associates who are not members of NASD to provide a disclosure statement for security futures products to a customer at or before the time the Member approves the account to trade security futures products. NFA Compliance Rule 2–30(j)(1) requires these Members and Associates to make a record of when the disclosure statement was provided, and Compliance Rule 2–29(j)(12) prohibits Members who are registered as brokers and dealers in security futures products under Section 15(b)(11) of the Securities Exchange Act from including anything other than basic information in promotional material unless the promotional material is preceded or accompanied by the disclosure statement.[6] The disclosure statement for security futures products referred to in these Rules is a uniform statement that has been jointly developed by NFA, NASD, and a number of securities and futures exchanges.

The uniform disclosure statement, which is titled ''Risk Disclosure Statement for Security Futures Contracts,'' can be downloaded from NFA's website at www.nfa.futures.org. Copies are also available by calling NFA's Information Center at 800–621–3570.[7]

Members must be able to demonstrate to NFA, during an audit, that they provided the disclosure statement as required. Members are not, however, required to obtain a written acknowledgment from the customer regarding the disclosure statement.

* * * * *

Risk Disclosure Statement for Security Futures Contracts

This disclosure statement discusses the characteristics and risks of standardized security futures contracts traded on regulated U.S. exchanges. At present, regulated exchanges are authorized to list futures contracts on individual equity securities registered under the Securities Exchange Act of 1934 (including common stock and certain exchange-traded funds and American Depositary Receipts), as well as narrow-based security indices. Futures on other types of securities and options on security futures contracts may be authorized in the future. The glossary of terms appears at the end of the document.

Customers should be aware that the examples in this document are exclusive of fees and commissions that may decrease their net gains or increase their net losses. The examples also do not include tax consequences, which may differ for each customer.

Section 1—Risks of Security Futures

1.1. Risks of Security Futures Transactions

Trading security futures contracts may not be suitable for all investors. You may lose a substantial amount of money in a very short period of time. The amount you may lose is potentially unlimited and can exceed the amount you originally deposit with your broker. This is because futures trading is highly leveraged, with a relatively small amount of money used to establish a position in assets having a much greater value. If you are uncomfortable with this level of risk, you should not trade security futures contracts.

1.2. General Risks

• *Trading security futures contracts involves risk and may result in potentially unlimited losses that are greater than the amount you deposited with your broker.* As with any high risk financial product, you should not risk any funds that you cannot afford to lose, such as your retirement savings, medical and other emergency funds, funds set aside for purposes such as education or home ownership, proceeds from student loans or mortgages, or funds required to meet your living expenses.

• *Be cautious of claims that you can make large profits from trading security futures contracts.* Although the high degree of leverage in security futures contracts can result in large and immediate gains, it can also result in large and immediate losses. As with any financial product, there is no such thing as a ''sure winner.''

• *Because of the leverage involved and the nature of security futures contract transactions, you may feel the effects of your losses immediately.* Gains and losses in security futures contracts are credited or debited to your account, at a minimum, on a daily basis. If movements in the markets for security futures contracts or the underlying security decrease the value of your positions in security futures contracts, you may be required to have or make

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 21j.

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11).

[6] NASD members are subject to equivalent NASD requirements.

[7] There is a small charge for bulk orders.

additional funds available to your carrying firm as margin. If your account is under the minimum margin requirements set by the exchange or the brokerage firm, your position may be liquidated at a loss, and you will be liable for the deficit, if any, in your account. Margin requirements are addressed in Section 4.

• *Under certain market conditions, it may be difficult or impossible to liquidate a position.* Generally, you must enter into an offsetting transaction in order to liquidate a position in a security futures contract. If you cannot liquidate your position in security futures contracts, you may not be able to realize a gain in the value of your position or prevent losses from mounting. This inability to liquidate could occur, for example, if trading is halted due to unusual trading activity in either the security futures contract or the underlying security; if trading is halted due to recent news events involving the issuer of the underlying security; if systems failures occur on an exchange or at the firm carrying your position; or if the position is on an illiquid market. Even if you can liquidate your position, you may be forced to do so at a price that involves a large loss.

• *Under certain market conditions, it may also be difficult or impossible to manage your risk from open security futures positions by entering into an equivalent but opposite position in another contract month, on another market, or in the underlying security.* This inability to take positions to limit your risk could occur, for example, if trading is halted across markets due to unusual trading activity in the security futures contract or the underlying security or due to recent news events involving the issuer of the underlying security.

• *Under certain market conditions, the prices of security futures contracts may not maintain their customary or anticipated relationships to the prices of the underlying security or index.* These pricing disparities could occur, for example, when the market for the security futures contract is illiquid, when the primary market for the underlying security is closed, or when the reporting of transactions in the underlying security has been delayed. For index products, it could also occur when trading is delayed or halted in some or all of the securities that make up the index.

• *You may be required to settle certain security futures contracts with physical delivery of the underlying security.* If you hold your position in a physically settled security futures contract until the end of the last trading day prior to expiration, you will be obligated to make or take delivery of the underlying securities, which could involve additional costs. The actual settlement terms may vary from contract to contract and exchange to exchange. You should carefully review the settlement and delivery conditions before entering into a security futures contract. Settlement and delivery are discussed in Section 5.

• *You may experience losses due to systems failures.* As with any financial transaction, you may experience losses if your orders for security futures contracts cannot be executed normally due to systems failures on a regulated exchange or at the brokerage firm carrying your position. Your losses may be greater if the brokerage firm carrying your position does not have adequate back-up systems or procedures.

• *All security futures contracts involve risk, and there is no trading strategy that can eliminate it.* Strategies using combinations of positions, such as spreads, may be as risky as outright long or short positions. Trading in security futures contracts requires knowledge of both the securities and the futures markets.

• *Day trading strategies involving security futures contracts and other products pose special risks.* As with any financial product, persons who seek to purchase and sell the same security future in the course of a day to profit from intra-day price movements (''day traders'') face a number of special risks, including substantial commissions, exposure to leverage, and competition with professional traders. You should thoroughly understand these risks and have appropriate experience before engaging in day trading. The special risks for day traders are discussed more fully in Section 7.

• *Placing contingent orders, if permitted, such as ''stop-loss'' or ''stop-limit'' orders, will not necessarily limit your losses to the intended amount.* Some regulated exchanges may permit you to enter into stop-loss or stop-limit orders for security futures contracts, which are intended to limit your exposure to losses due to market fluctuations. However, market conditions may make it impossible to execute the order or to get the stop price.

• *You should thoroughly read and understand the customer account agreement with your brokerage firm before entering into any transactions in security futures contracts.*

• *You should thoroughly understand the regulatory protections available to your funds and positions in the event of the failure of your brokerage firm.* The regulatory protections available to your funds and positions in the event of the failure of your brokerage firm may vary depending on, among other factors, the contract you are trading and whether you are trading through a securities account or a futures account. Firms that allow customers to trade security futures in either securities accounts or futures accounts, or both, are required to disclose to customers the differences in regulatory protections between such accounts, and, where appropriate, how customers may elect to trade in either type of account.

Section 2—Description of a Security Futures Contract

2.1. What Is a Security Futures Contract?

A security futures contract is a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security or of the component securities of a narrow-based security index, at a certain price. A person who buys a security futures contract enters into a contract to purchase an underlying security and is said to be ''long'' the contract. A person who sells a security futures contract enters into a contract to sell the underlying security and is said to be ''short'' the contract. The price at which the contract trades (the ''contract price'') is determined by relative buying and selling interest on a regulated exchange.

In order to enter into a security futures contract, you must deposit funds with your brokerage firm equal to a specified percentage (usually at least 20 percent) of the current market value of the contract as a performance bond. Moreover, all security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller reflects the amount of any gain or loss on the security futures contract based on the contract price established at the end of the day for settlement purposes (the ''daily settlement price'').

An open position, either a long or short position, is closed or liquidated by entering into an offsetting transaction (*i.e.*, an equal and opposite transaction to the one that opened the position) prior to the contract expiration. Traditionally, most futures contracts are liquidated prior to expiration through an offsetting transaction and, thus, holders do not incur a settlement obligation.

Examples:

• Investor A is long one September XYZ Corp. futures contract. To liquidate the long position in the September XYZ Corp. futures contract, Investor A would sell an identical September XYZ Corp. contract.

• Investor B is short one December XYZ Corp. futures contract. To liquidate the short position in the December XYZ Corp. futures contract, Investor B would buy an identical December XYZ Corp. contract.

Security futures contracts that are not liquidated prior to expiration must be settled in accordance with the terms of the contract. Some security futures contracts are settled by physical delivery of the underlying security. At the expiration of a security futures contract that is settled through physical delivery, a person who is long the contract must pay the final settlement price set by the regulated exchange or the clearing organization and take delivery of the underlying shares. Conversely, a person who is short the contract must make delivery of the underlying shares in exchange for the final settlement price.

Other security futures contracts are settled through cash settlement. In this case, the underlying security is not delivered. Instead, any positions in such security futures contracts that are open at the end of the last trading day are settled through a final cash payment based on a final settlement price determined by the exchange or clearing organization. Once this payment is made, neither party has any further obligations on the contract.

Physical delivery and cash settlement are discussed more fully in Section 5.

2.2. Purposes of Security Futures

Security futures contracts can be used for speculation, hedging, and risk management. Security futures contracts do not provide capital growth or income.

Speculation

Speculators are individuals or firms who seek to profit from anticipated increases or decreases in futures prices. A speculator who expects the price of the underlying instrument to increase will buy the security futures contract. A speculator who expects the price of the underlying instrument to decrease will sell the security futures contract. Speculation involves substantial risk and can lead to large losses as well as profits.

The most common trading strategies involving security futures contracts are buying with the hope of profiting from an anticipated price increase and selling with the hope of profiting from an anticipated price decrease. For example, a person who expects the price of XYZ stock to increase by March can buy a March XYZ security futures contract, and a person who expects the price of XYZ stock to decrease by March can sell a March XYZ security futures contract. The following illustrates potential profits and losses if Customer A purchases the security futures contract at $50 a share and Customer B sells the same contract at $50 a share (assuming 100 shares per contract).

Price of XYZ at liquidation	Customer A profit/loss	Customer B profit/loss
$55	$500	−$500
$50	0	0
$45	−500	500

Speculators may also enter into spreads with the hope of profiting from an expected change in price relationships. Spreaders may purchase a contract expiring in one contract month and sell another contract on the same underlying security expiring in a different month (*e.g.*, buy June and sell September XYZ single stock futures). This is commonly referred to as a ''calendar spread.''

Spreaders may also purchase and sell the same contract month in two different but economically correlated security futures contracts. For example, if ABC and XYZ are both pharmaceutical companies and an individual believes that ABC will have stronger growth than XYZ between now and June, he could buy June ABC futures contracts and sell June XYZ futures contracts. Assuming that each contract is 100 shares, the following illustrates how this works.

Opening position	Price at liquidation	Gain or loss	Price at liquidation	Gain or loss
Buy ABC at 50	$53	$300	$53	$300
Sell XYZ at 45	46	−100	50	−500
Net Gain or Loss		200		−200

Speculators can also engage in arbitrage, which is similar to a spread except that the long and short positions occur on two different markets. An arbitrage position can be established by taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Hedging

Generally speaking, hedging involves the purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent). A hedger gives up the potential to profit from a favorable price change in the position being hedged in order to minimize the risk of loss from an adverse price change.

An investor who wants to lock in a price now for an anticipated sale of the underlying security at a later date can do so by hedging with security futures. For example, assume an investor owns 1,000 shares of ABC that have appreciated since he bought them. The investor would like to sell them at the current price of $50 per share, but there are tax or other reasons for holding them until September. The investor could sell ten 100-share ABC futures contracts and then buy back those contracts in September when he sells the stock. Assuming the stock price and the futures price change by the same amount, the gain or loss in the stock will be offset by the loss or gain in the futures contracts.

Price in September	Value of 1,000 shares of ABC	Gain or Loss on futures	Effective selling price
$40	$40,000	$10,000	$50,000
$50	50,000	0	50,000

Price in September	Value of 1,000 shares of ABC	Gain or Loss on futures	Effective selling price
$60	60,000	−10,000	50,000

Hedging can also be used to lock in a price now for an anticipated purchase of the stock at a later date. For example, assume that in May a mutual fund expects to buy stocks in a particular industry with the proceeds of bonds that will mature in August. The mutual fund can hedge its risk that the stocks will increase in value between May and August by purchasing security futures contracts on a narrow-based index of stocks from that industry. When the mutual fund buys the stocks in August, it also will liquidate the security futures position in the index. If the relationship between the security futures contract and the stocks in the index is constant, the profit or loss from the futures contract will offset the price change in the stocks, and the mutual fund will have locked in the price that the stocks were selling at in May.

Although hedging mitigates risk, it does not eliminate all risk. For example, the relationship between the price of the security futures contract and the price of the underlying security traditionally tends to remain constant over time, but it can and does vary somewhat. Furthermore, the expiration or liquidation of the security futures contract may not coincide with the exact time the hedger buys or sells the underlying stock. Therefore, hedging may not be a perfect protection against price risk.

Risk Management

Some institutions also use futures contracts to manage portfolio risks without necessarily intending to change the composition of their portfolio by buying or selling the underlying securities. The institution does so by taking a security futures position that is opposite to some or all of its position in the underlying securities. This strategy involves more risk than a traditional hedge because it is not meant to be a substitute for an anticipated purchase or sale.

2.3. Where Security Futures Trade

By law, security futures contracts must trade on a regulated U.S. exchange. Each regulated U.S. exchange that trades security futures contracts is subject to joint regulation by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

A person holding a position in a security futures contract who seeks to liquidate the position must do so either on the regulated exchange where the original trade took place or on another regulated exchange, if any, where a fungible security futures contract trades. (A person may also seek to manage the risk in that position by taking an opposite position in a comparable contract traded on another regulated exchange.)

Security futures contracts traded on one regulated exchange might not be fungible with security futures contracts traded on another regulated exchange for a variety of reasons. Security futures traded on different regulated exchanges may be non-fungible because they have different contract terms (*e.g.*, size, settlement method), or because they are cleared through different clearing organizations. Moreover, a regulated exchange might not permit its security futures contracts to be offset or liquidated by an identical contract traded on another regulated exchange, even though they have the same contract terms and are cleared through the same clearing organization. You should consult your broker about the fungibility of the contract you are considering purchasing or selling, including which exchange(s), if any, on which it may be offset.

Regulated exchanges that trade security futures contracts are required by law to establish certain listing standards. Changes in the underlying security of a security futures contract may, in some cases, cause such contract to no longer meet the regulated exchange's listing standards. Each regulated exchange will have rules governing the continued trading of security futures contracts that no longer meet the exchange's listing standards. These rules may, for example, permit only liquidating trades in security futures contracts that no longer satisfy the listing standards.

2.4. How Security Futures Differ From the Underlying Security

Shares of common stock represent a fractional ownership interest in the issuer of that security. Ownership of securities confers various rights that are not present with positions in security futures contracts. For example, persons owning a share of common stock may be entitled to vote in matters affecting corporate governance. They also may be entitled to receive dividends and corporate disclosure, such as annual and quarterly reports.

The purchaser of a security futures contract, by contrast, has only a contract for future delivery of the underlying security. The purchaser of the security futures contract is not entitled to exercise any voting rights over the underlying security and is not entitled to any dividends that may be paid by the issuer. Moreover, the purchaser of a security futures contract does not receive the corporate disclosures that are received by shareholders of the underlying security, although such corporate disclosures must be made publicly available through the SEC's EDGAR system, which can be accessed at *http://www.sec.gov.* You should review such disclosures before entering into a security futures contract. See Section 9 for further discussion of the impact of corporate events on a security futures contract.

All security futures contracts are marked-to-market at least daily, usually after the close of trading, as described in Section 3 of this document. At that time, the account of each buyer and seller is credited with the amount of any gain, or debited by the amount of any loss, on the security futures contract, based on the contract price established at the end of the day for settlement purposes (the ''daily settlement price''). By contrast, the purchaser or seller of the underlying instrument does not have the profit and loss from his or her investment credited or debited until the position in that instrument is closed out.

Naturally, as with any financial product, the value of the security futures contract and of the underlying security may fluctuate. However, owning the underlying security does not require an investor to settle his or her profits and losses daily. By contrast, as a result of the mark-to-market requirements discussed above, a person who is long a security futures contract often will be required to deposit additional funds into his or her account as the price of the security futures contract decreases. Similarly, a person who is short a security futures contract often will be required to deposit additional funds into his or her account

as the price of the security futures contract increases.

Another significant difference is that security futures contracts expire on a specific date. Unlike an owner of the underlying security, a person cannot hold a long position in a security futures contract for an extended period of time in the hope that the price will go up. If you do not liquidate your security futures contract, you will be required to settle the contract when it expires, either through physical delivery or cash settlement. For cash-settled contracts in particular, upon expiration, an individual will no longer have an economic interest in the securities underlying the security futures contract.

2.5. Comparison to Options

Although security futures contracts share some characteristics with options on securities (options contracts), these products are also different in a number of ways. Below are some of the important distinctions between equity options contracts and security futures contracts.

If you purchase an options contract, you have the right, but not the obligation, to buy or sell a security prior to the expiration date. If you sell an options contract, you have the obligation to buy or sell a security prior to the expiration date. By contrast, if you have a position in a security futures contract (either long or short), you have both the right and the obligation to buy or sell a security at a future date. The only way that you can avoid the obligation incurred by the security futures contract is to liquidate the position with an offsetting contract.

A person purchasing an options contract runs the risk of losing the purchase price (premium) for the option contract. Because it is a wasting asset, the purchaser of an options contract who neither liquidates the options contract in the secondary market nor exercises it at or prior to expiration will necessarily lose his or her entire investment in the options contract. However, a purchaser of an options contract cannot lose more than the amount of the premium. Conversely, the seller of an options contract receives the premium and assumes the risk that he or she will be required to buy or sell the underlying security on or prior to the expiration date, in which event his or her losses may exceed the amount of the premium received. Although the seller of an options contract is required to deposit margin to reflect the risk of its obligation, he or she may lose many times his or her initial margin deposit.

By contrast, the purchaser and seller of a security futures contract each enter into an agreement to buy or sell a specific quantity of shares in the underlying security. Based upon the movement in prices of the underlying security, a person who holds a position in a security futures contract can gain or lose many times his or her initial margin deposit. In this respect, the benefits of a security futures contract are similar to the benefits of purchasing an option, while the risks of entering into a security futures contract are similar to the risks of selling an option. Both the purchaser and the seller of a security futures contract have daily margin obligations. At least once each day, security futures contracts are marked-to-market and the increase or decrease in the value of the contract is credited or debited to the buyer and the seller. As a result, any person who has an open position in a security futures contract may be called upon to meet additional margin requirements or may receive a credit of available funds.

Example: Assume that Customers A and B each anticipate an increase in the market price of XYZ stock, which is currently $50 a share. Customer A purchases an XYZ 50 call (covering 100 shares of XYZ at a premium of $5 per share). The option premium is $500 ($5 per share × 100 shares). Customer B purchases an XYZ security futures contract (covering 100 shares of XYZ). The total value of the contract is $5000 ($50 share value × 100 shares). The required margin is $1000 (or 20% of the contract value).

Price of XYZ at expiration	Customer A profit/loss	Customer B profit/loss
65	1000	1500
60	500	1000
55	0	500
50	−500	0
45	−500	−500
40	−500	−1000
35	−500	−1500

The most that Customer A can lose is $500, the option premium. Customer A breaks even at $55 per share, and makes money at higher prices. Customer B may lose more than his initial margin deposit. Unlike the options premium, the margin on a futures contract is not a cost but a performance bond. The losses for Customer B are not limited by this performance bond. Rather, the losses or gains are determined by the settlement price of the contract, as provided in the example above. Note that if the price of XYZ falls to $35 per share, Customer A loses only $500, whereas Customer B loses $1500.

2.6. Components of a Security Futures Contract

Each regulated exchange can choose the terms of the security futures contracts it lists, and those terms may differ from exchange to exchange or contract to contract. Some of those contract terms are discussed below. However, you should ask your broker for a copy of the contract specifications before trading a particular contract.

2.6.1. Each security futures contract has a set size. The size of a security futures contract is determined by the regulated exchange on which the contract trades. For example, a security futures contract for a single stock may be based on 100 shares of that stock. If prices are reported per share, the value of the contract would be the price times 100. For narrow-based security indices, the value of the contract is the price of the component securities times the multiplier set by the exchange as part of the contract terms.

2.6.2. Security futures contracts expire at set times determined by the listing exchange. For example, a particular contract may expire on a particular day, *e.g.*, the third Friday of the expiration month. Up until expiration, you may liquidate an open position by offsetting your contract with a fungible opposite contract that expires in the same month. If you do not liquidate an open position before it expires, you will be required to make or take delivery of the underlying security or to settle the contract in cash after expiration.

2.6.3. Although security futures contracts on a particular security or a narrow-based security index may be listed and traded on more than one regulated exchange, the contract specifications may not be the same. Also, prices for contracts on the same security or index may vary on different regulated exchanges because of different contract specifications.

2.6.4. Prices of security futures contracts are usually quoted the same way prices are quoted in the underlying instrument. For example, a contract for an individual security would be quoted in dollars and cents per share. Contracts for indices would be quoted by an index number, usually stated to two decimal places.

2.6.5. Each security futures contract has a minimum price fluctuation (called a tick), which may differ from product to product or exchange to exchange. For example, if a particular security futures contract has a tick size of 1¢, you can buy the contract at $23.21 or $23.22 but not at $23.215.

2.7. Trading Halts

The value of your positions in security futures contracts could be affected if trading is halted in either the security futures contract or the underlying security. In certain circumstances, regulated exchanges are required by law to halt trading in

security futures contracts. For example, trading on a particular security futures contract must be halted if trading is halted on the listed market for the underlying security as a result of pending news, regulatory concerns, or market volatility. Similarly, trading of a security futures contract on a narrow-based security index must be halted under such circumstances if trading is halted on securities accounting for at least 50 percent of the market capitalization of the index. In addition, regulated exchanges are required to halt trading in all security futures contracts for a specified period of time when the Dow Jones Industrial Average (''DJIA'') experiences one-day declines of 10-, 20- and 30-percent. The regulated exchanges may also have discretion under their rules to halt trading in other circumstances—such as when the exchange determines that the halt would be advisable in maintaining a fair and orderly market.

A trading halt, either by a regulated exchange that trades security futures or an exchange trading the underlying security or instrument, could prevent you from liquidating a position in security futures contracts in a timely manner, which could prevent you from liquidating a position in security futures contracts at that time.

2.8. Trading Hours

Each regulated exchange trading a security futures contract may open and close for trading at different times than other regulated exchanges trading security futures contracts or markets trading the underlying security or securities. Trading in security futures contracts prior to the opening or after the close of the primary market for the underlying security may be less liquid than trading during regular market hours.

Section 3—Clearing Organizations and Mark-to-Market Requirements

Every regulated U.S. exchange that trades security futures contracts is required to have a relationship with a clearing organization that serves as the guarantor of each security futures contract traded on that exchange. A clearing organization performs the following functions: matching trades; effecting settlement and payments; guaranteeing performance; and facilitating deliveries.

Throughout each trading day, the clearing organization matches trade data submitted by clearing members on behalf of their customers or for the clearing member's proprietary accounts. If an account is with a brokerage firm that is not a member of the clearing organization, then the brokerage firm will carry the security futures position with another brokerage firm that is a member of the clearing organization. Trade records that do not match, either because of a discrepancy in the details or because one side of the transaction is missing, are returned to the submitting clearing members for resolution. The members are required to resolve such ''out trades'' before or on the open of trading the next morning.

When the required details of a reported transaction have been verified, the clearing organization assumes the legal and financial obligations of the parties to the transaction. One way to think of the role of the clearing organization is that it is the ''buyer to every seller and the seller to every buyer.'' The insertion or substitution of the clearing organization as the counterparty to every transaction enables a customer to liquidate a security futures position without regard to what the other party to the original security futures contract decides to do.

The clearing organization also effects the settlement of gains and losses from security futures contracts between clearing members. At least once each day, clearing member brokerage firms must either pay to, or receive from, the clearing organization the difference between the current price and the trade price earlier in the day, or for a position carried over from the previous day, the difference between the current price and the previous day's settlement price. Whether a clearing organization effects settlement of gains and losses on a daily basis or more frequently will depend on the conventions of the clearing organization and market conditions. Because the clearing organization assumes the legal and financial obligations for each security futures contract, you should expect it to ensure that payments are made promptly to protect its obligations.

Gains and losses in security futures contracts are also reflected in each customer's account on at least a daily basis. Each day's gains and losses are determined based on a daily settlement price disseminated by the regulated exchange trading the security futures contract or its clearing organization. If the daily settlement price of a particular security futures contract rises, the buyer has a gain and the seller a loss. If the daily settlement price declines, the buyer has a loss and the seller a gain. This process is known as ''marking-to-market'' or daily settlement. As a result, individual customers normally will be called on to settle daily.

The one-day gain or loss on a security futures contract is determined by calculating the difference between the current day's settlement price and the previous day's settlement price.

For example, assume a security futures contract is purchased at a price of $120. If the daily settlement price is either $125 (higher) or $117 (lower), the effects would be as follows:

(1 contract representing 100 shares)

Daily settlement value	Buyer's account	Seller's account
$125	$500 gain (credit) (debit)	$500 loss.
$117	$300 loss (debit)	$300 gain (credit).

The cumulative gain or loss on a customer's open security futures positions is generally referred to as ''open trade equity'' and is listed as a separate component of account equity on your customer account statement.

A discussion of the role of the clearing organization in effecting delivery is discussed in Section 5.

Section 4—Margin and Leverage

When a broker-dealer lends a customer part of the funds needed to purchase a security such as common stock, the term ''margin'' refers to the amount of cash, or down payment, the customer is required to deposit. By contrast, a security futures contract is an obligation and not an asset. A security futures contract has no value as collateral for a loan. Because of the potential for a loss as a result of the daily marked-to-market process, however, a margin deposit is required of each party to a security futures contract. This required margin deposit also is referred to as a ''performance bond.''

In the first instance, margin requirements for security futures contracts are set by the exchange on which the contract is traded, subject to certain minimums set by law. The basic margin requirement is 20% of the current value of the security futures

contract, although some strategies may have lower margin requirements. Requests for additional margin are known as ''margin calls.'' Both buyer and seller must individually deposit the required margin to their respective accounts.

It is important to understand that individual brokerage firms can, and in many cases do, require margin that is higher than the exchange requirements. Additionally, margin requirements may vary from brokerage firm to brokerage firm. Furthermore, a brokerage firm can increase its ''house'' margin requirements at any time without providing advance notice, and such increases could result in a margin call.

For example, some firms may require margin to be deposited the business day following the day of a deficiency, or some firms may even require deposit on the same day. Some firms may require margin to be on deposit in the account before they will accept an order for a security futures contract. Additionally, brokerage firms may have special requirements as to how margin calls are to be met, such as requiring a wire transfer from a bank, or deposit of a certified or cashier's check. You should thoroughly read and understand the customer agreement with your brokerage firm before entering into any transactions in security futures contracts.

If through the daily cash settlement process, losses in the account of a security futures contract participant reduce the funds on deposit (or equity) below the maintenance margin level (or the firm's higher ''house'' requirement), the brokerage firm will require that additional funds be deposited.

If additional margin is not deposited in accordance with the firm's policies, the firm can liquidate your position in security futures contracts or sell assets in any of your accounts at the firm to cover the margin deficiency. You remain responsible for any shortfall in the account after such liquidations or sales. Unless provided otherwise in your customer agreement or by applicable law, you are not entitled to choose which futures contracts, other securities or other assets are liquidated or sold to meet a margin call or to obtain an extension of time to meet a margin call.

Brokerage firms generally reserve the right to liquidate a customer's security futures contract positions or sell customer assets to meet a margin call at any time without contacting the customer. Brokerage firms may also enter into equivalent but opposite positions for your account in order to manage the risk created by a margin call. Some customers mistakenly believe that a firm is required to contact them for a margin call to be valid, and that the firm is not allowed to liquidate securities or other assets in their accounts to meet a margin call unless the firm has contacted them first. This is not the case. While most firms notify their customers of margin calls and allow some time for deposit of additional margin, they are not required to do so. Even if a firm has notified a customer of a margin call and set a specific due date for a margin deposit, the firm can still take action as necessary to protect its financial interests, including the immediate liquidation of positions without advance notification to the customer.

Here is an example of the margin requirements for a long security futures position.

A customer buys 3 July EJG security futures at 71.50. Assuming each contract represents 100 shares, the nominal value of the position is $21,450 (71.50 × 3 contracts × 100 shares). If the initial margin rate is 20% of the nominal value, then the customer's initial margin requirement would be $4,290. The customer deposits the initial margin, bringing the equity in the account to $4,290.

First, assume that the next day the settlement price of EJG security futures falls to 69.25. The marked-to-market loss in the customer's equity is $675 (71.50 − 69.25 × 3 contacts × 100 shares). The customer's equity decreases to $3,615 ($4,290 − $675). The new nominal value of the contract is $20,775 (69.25 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,155. Because the customer's equity had decreased to $3,615 (see above), the customer would be required to have an additional $540 in margin ($4,155 − $3,615).

Alternatively, assume that the next day the settlement price of EJG security futures rises to 75.00. The mark-to-market gain in the customer's equity is $1,050 (75.00 − 71.50 × 3 contacts × 100 shares). The customer's equity increases to $5,340 ($4,290 + $1,050). The new nominal value of the contract is $22,500 (75.00 × 3 contracts × 100 shares). If the maintenance margin rate is 20% of the nominal value, then the customer's maintenance margin requirement would be $4,500. Because the customer's equity had increased to $5,340 (see above), the customer's excess equity would be $840.

The process is exactly the same for a short position, except that margin calls are generated as the settlement price rises rather than as it falls. This is because the customer's equity decreases as the settlement price rises and increases as the settlement price falls.

Because the margin deposit required to open a security futures position is a fraction of the nominal value of the contracts being purchased or sold, security futures contracts are said to be highly leveraged. The smaller the margin requirement in relation to the underlying value of the security futures contract, the greater the leverage. Leverage allows exposure to a given quantity of an underlying asset for a fraction of the investment needed to purchase that quantity outright. In sum, buying (or selling) a security futures contract provides the same dollar and cents profit and loss outcomes as owning (or shorting) the underlying security. However, as a percentage of the margin deposit, the potential immediate exposure to profit or loss is much higher with a security futures contract than with the underlying security.

For example, if a security futures contract is established at a price of $50, the contract has a nominal value of $5,000 (assuming the contract is for 100 shares of stock). The margin requirement may be as low as 20%. In the example just used, assume the contract price rises from $50 to $52 (a $200 increase in the nominal value). This represents a $200 profit to the buyer of the security futures contract, and a 20% return on the $1,000 deposited as margin. The reverse would be true if the contract price decreased from $50 to $48. This represents a $200 loss to the buyer, or 20% of the $1,000 deposited as margin. Thus, leverage can either benefit or harm an investor.

Note that a 4% decrease in the value of the contract resulted in a loss of 20% of the margin deposited. A 20% decrease would wipe out 100% of the margin deposited on the security futures contract.

Section 5—Settlement

If you do not liquidate your position prior to the end of trading on the last day before the expiration of the security futures contract, you are obligated to either (1) make or accept a cash payment (''cash settlement'') or (2) deliver or accept delivery of the underlying securities in exchange for final payment of the final settlement price (''physical delivery''). The terms of the contract dictate whether it is settled through cash settlement or by physical delivery.

The expiration of a security futures contract is established by the exchange on which the contract is listed. On the

expiration day, security futures contracts cease to exist. Typically, the last trading day of a security futures contract will be the third Friday of the expiring contract month, and the expiration day will be the following Saturday. This follows the expiration conventions for stock options and broad-based stock indexes. Please keep in mind that the expiration day is set by the listing exchange and may deviate from these norms.

5.1. Cash Settlement

In the case of cash settlement, no actual securities are delivered at the expiration of the security futures contract. Instead, you must settle any open positions in security futures by making or receiving a cash payment based on the difference between the final settlement price and the previous day's settlement price. Under normal circumstances, the final settlement price for a cash-settled contract will reflect the opening price for the underlying security. Once this payment is made, neither the buyer nor the seller of the security futures contract has any further obligations on the contract.

5.2. Settlement by Physical Delivery

Settlement by physical delivery is carried out by clearing brokers or their agents with National Securities Clearing Corporation (''NSCC''), an SEC-regulated securities clearing agency. Such settlements are made in much the same way as they are for purchases and sales of the underlying security. Promptly after the last day of trading, the regulated exchange's clearing organization will report a purchase and sale of the underlying stock at the previous day's settlement price (also referred to as the ''invoice price'') to NSCC. If NSCC does not reject the transaction by a time specified in its rules, settlement is effected pursuant to the rules of NSCC within the normal clearance and settlement cycle for securities transactions, which currently is three business days.

If you hold a short position in a physically settled security futures contract to expiration, you will be required to make delivery of the underlying securities. If you already own the securities, you may tender them to your brokerage firm. If you do not own the securities, you will be obligated to purchase them. Some brokerage firms may not be able to purchase the securities for you. If your brokerage firm cannot purchase the underlying securities on your behalf to fulfill a settlement obligation, you will have to purchase the securities through a different firm.

Section 6—Customer Account Protections

Positions in security futures contracts may be held either in a securities account or in a futures account. Your brokerage firm may or may not permit you to choose the types of account in which your positions in security futures contracts will be held. The protections for funds deposited or earned by customers in connection with trading in security futures contracts differ depending on whether the positions are carried in a securities account or a futures account. If your positions are carried in a securities account, you will not receive the protections available for futures accounts. Similarly, if your positions are carried in a futures account, you will not receive the protections available for securities accounts. You should ask your broker which of these protections will apply to your funds.

You should be aware that the regulatory protections applicable to your account are not intended to insure you against losses you may incur as a result of a decline or increase in the price of a security futures contract. As with all financial products, you are solely responsible for any market losses in your account.

Your brokerage firm must tell you whether your security futures positions will be held in a securities account or a futures account. If your brokerage firm gives you a choice, it must tell you what you have to do to make the choice and which type of account will be used if you fail to do so. You should understand that certain regulatory protections for your account will depend on whether it is a securities account or a futures account.

6.1. Protections for Securities Accounts

If your positions in security futures contracts are carried in a securities account, they are covered by SEC rules governing the safeguarding of customer funds and securities. These rules prohibit a broker/dealer from using customer funds and securities to finance its business. As a result, the broker/dealer is required to set aside funds equal to the net of all its excess payables to customers over receivables from customers. The rules also require a broker/dealer to segregate all customer fully paid and excess margin securities carried by the broker/dealer for customers.

The Securities Investor Protection Corporation (SIPC) also covers positions held in securities accounts. SIPC was created in 1970 as a non-profit, non-government, membership corporation, funded by member broker/dealers. Its primary role is to return funds and securities to customers if the broker/dealer holding these assets becomes insolvent. SIPC coverage applies to customers of current (and in some cases former) SIPC members. Most broker/dealers registered with the SEC are SIPC members; those few that are not must disclose this fact to their customers. SIPC members must display an official sign showing their membership. To check whether a firm is a SIPC member, go to *www.sipc.org,* call the SIPC Membership Department at (202) 371–8300, or write to SIPC Membership Department, Securities Investor Protection Corporation, 805 Fifteenth Street, NW., Suite 800, Washington, DC 20005–2215.

SIPC coverage is limited to $500,000 per customer, including up to $100,000 for cash. For example, if a customer has 1,000 shares of XYZ stock valued at $200,000 and $10,000 cash in the account, both the security and the cash balance would be protected. However, if the customer has shares of stock valued at $500,000 and $100,000 in cash, only a total of $500,000 of those assets will be protected.

For purposes of SIPC coverage, customers are persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions. SIPC does not protect customer funds placed with a broker/dealer just to earn interest. Insiders of the broker/dealer, such as its owners, officers, and partners, are not customers for purposes of SIPC coverage.

6.2. Protections for Futures Accounts

If your security futures positions are carried in a futures account, they must be segregated from the brokerage firm's own funds and cannot be borrowed or otherwise used for the firm's own purposes. If the funds are deposited with another entity (*e.g.*, a bank, clearing broker, or clearing organization), that entity must acknowledge that the funds belong to customers and cannot be used to satisfy the firm's debts. Moreover, although a brokerage firm may carry funds belonging to different customers in the same bank or clearing account, it may not use the funds of one customer to margin or guarantee the transactions of another customer. As a result, the brokerage firm must add its own funds to its customers' segregated funds to cover customer debits and deficits. Brokerage firms must calculate their segregation requirements daily.

You may not be able to recover the full amount of any funds in your

account if the brokerage firm becomes insolvent and has insufficient funds to cover its obligations to all of its customers. However, customers with funds in segregation receive priority in bankruptcy proceedings. Furthermore, all customers whose funds are required to be segregated have the same priority in bankruptcy, and there is no ceiling on the amount of funds that must be segregated for or can be recovered by a particular customer.

Your brokerage firm is also required to separately maintain funds invested in security futures contracts traded on a foreign exchange. However, these funds may not receive the same protections once they are transferred to a foreign entity (*e.g.*, a foreign broker, exchange or clearing organization) to satisfy margin requirements for those products. You should ask your broker about the bankruptcy protections available in the country where the foreign exchange (or other entity holding the funds) is located.

Section 7—Special Risks for Day Traders

Certain traders who pursue a day trading strategy may seek to use security futures contracts as part of their trading activity. Whether day trading in security futures contracts or other securities, investors engaging in a day trading strategy face a number of risks.

- *Day trading in security futures contracts requires in-depth knowledge of the securities and futures markets and of trading techniques and strategies.* In attempting to profit through day trading, you will compete with professional traders who are knowledgeable and sophisticated in these markets. You should have appropriate experience before engaging in day trading.
- *Day trading in security futures contracts can result in substantial commission charges, even if the per trade cost is low.* The more trades you make, the higher your total commissions will be. The total commissions you pay will add to your losses and reduce your profits. For instance, assuming that a round-turn trade costs $16 and you execute an average of 29 round-turn transactions per day each trading day, you would need to generate an annual profit of $111,360 just to cover your commission expenses.
- *Day trading can be extremely risky.* Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with funds that you cannot afford to lose.

Section 8—Other

8.1. Corporate Events

As noted in Section 2.4, an equity security represents a fractional ownership interest in the issuer of that security. By contrast, the purchaser of a security futures contract has only a contract for future delivery of the underlying security. Treatment of dividends and other corporate events affecting the underlying security may be reflected in the security futures contract depending on the applicable clearing organization rules. Consequently, individuals should consider how dividends and other developments affecting security futures in which they transact will be handled by the relevant exchange and clearing organization. The specific adjustments to the terms of a security futures contract are governed by the rules of the applicable clearing organization. Below is a discussion of some of the more common types of adjustments that you may need to consider.

Corporate issuers occasionally announce stock splits. As a result of these splits, owners of the issuer's common stock may own more shares of the stock, or fewer shares in the case of a reverse stock split. The treatment of stock splits for persons owning a security futures contract may vary according to the terms of the security futures contract and the rules of the clearing organization. For example, the terms of the contract may provide for an adjustment in the number of contracts held by each party with a long or short position in a security future, or for an adjustment in the number of shares or units of the instrument underlying each contract, or both.

Corporate issuers also occasionally issue special dividends. A special dividend is an announced cash dividend payment outside the normal and customary practice of a corporation. The terms of a security futures contract may be adjusted for special dividends. The adjustments, if any, will be based upon the rules of the exchange and clearing organization. In general, there will be no adjustments for ordinary dividends as they are recognized as a normal and customary practice of an issuer and are already accounted for in the pricing of security futures.

Corporate issuers occasionally may be involved in mergers and acquisitions. Such events may cause the underlying security of a security futures contact to change over the contract duration. The terms of security futures contracts may also be adjusted to reflect other corporate events affecting the underlying security.

8.2. Position Limits and Large Trader Reporting

All security futures contracts trading on regulated exchanges in the United States are subject to position limits or position accountability limits. Position limits restrict the number of security futures contracts that any one person or group of related persons may hold or control in a particular security futures contract. In contrast, position accountability limits permit the accumulation of positions in excess of the limit without a prior exemption. In general, position limits and position accountability limits are beyond the thresholds of most retail investors. Whether a security futures contract is subject to position limits, and the level for such limits, depends upon the trading activity and market capitalization of the underlying security of the security futures contract.

Position limits apply are required for security futures contracts that overlie a security that has an average daily trading volume of 20 million shares or fewer. In the case of a security futures contract overlying a security index, position limits are required if any one of the securities in the index has an average daily trading volume of 20 million shares or fewer. Position limits also apply only to an expiring security futures contract during its last five trading days. A regulated exchange must establish position limits on security futures that are no greater than 13,500 (100 share) contracts, unless the underlying security meets certain volume and shares outstanding thresholds, in which case the limit may be increased to 22,500 (100 share) contracts.

For security futures contracts overlying a security or securities with an average trading volume of more than 20 million shares, regulated exchanges may adopt position accountability rules. Under position accountability rules, a trader holding a position in a security futures contract that exceeds 22,500 contracts (or such lower limit established by an exchange) must agree to provide information regarding the position and consent to halt increasing that position if requested by the exchange.

Brokerage firms must also report large open positions held by one person (or by several persons acting together) to the CFTC as well as to the exchange on which the positions are held. The CFTC's reporting requirements are 1,000 contracts for security futures positions

on individual equity securities and 200 contracts for positions on a narrow-based index. However, individual exchanges may require the reporting of large open positions at levels less than the levels required by the CFTC. In addition, brokerage firms must submit identifying information on the account holding the reportable position (on a form referred to as either an ''Identification of Special Accounts Form'' or a ''Form 102'') to the CFTC and to the exchange on which the reportable position exists within three business days of when a reportable position is first established.

8.3. Transactions on Foreign Exchanges

U.S. customers may not trade security futures on foreign exchanges until authorized by U.S. regulatory authorities. U.S. regulatory authorities do not regulate the activities of foreign exchanges and may not, on their own, compel enforcement of the rules of a foreign exchange or the laws of a foreign country. While U.S. law governs transactions in security futures contracts that are effected in the U.S., regardless of the exchange on which the contracts are listed, the laws and rules governing transactions on foreign exchanges vary depending on the country in which the exchange is located.

8.4. Tax Consequences

For most taxpayers, security futures contracts are not treated like other futures contracts. Instead, the tax consequences of a security futures transaction depend on the status of the taxpayer and the type of position (*e.g.*, long or short, covered or uncovered). Because of the importance of tax considerations to transactions in security futures, readers should consult their tax advisors as to the tax consequences of these transactions.

Section 9—Glossary of Terms

This glossary is intended to assist customers in understanding specialized terms used in the futures and securities industries. It is not inclusive and is not intended to state or suggest the legal significance or meaning of any word or term.

Arbitrage—Taking an economically opposite position in a security futures contract on another exchange, in an options contract, or in the underlying security.

Broad-based security index—A security index that does not fall within the statutory definition of a narrow-based security index (see Narrow-based security index). A future on a broad-based security index is not a security future. This risk disclosure statement applies solely to security futures and generally does not pertain to futures on a broad-based security index. Futures on a broad-based security index are under exclusive jurisdiction of the CFTC.

Cash settlement—A method of settling certain futures contracts by having the buyer (or long) pay the seller (or short) the cash value of the contract according to a procedure set by the exchange.

Clearing broker—A member of the clearing organization for the contract being traded. All trades, and the daily profits or losses from those trades, must go through a clearing broker.

Clearing organization—A regulated entity that is responsible for settling trades, collecting losses and distributing profits, and handling deliveries.

Contract—(1) The unit of trading for a particular futures contract (*e.g.*, one contract may be 100 shares of the underlying security), (2) the type of future being traded (*e.g.*, futures on ABC stock).

Contract month—The last month in which delivery is made against the futures contract or the contract is cash-settled. Sometimes referred to as the delivery month.

Day trading strategy—An overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

EDGAR—The SEC's Electronic Data Gathering, Analysis, and Retrieval system maintains electronic copies of corporate information filed with the agency. EDGAR submissions may be accessed through the SEC's Web site, *www.sec.gov.*

Futures contract—A futures contract is (1) an agreement to purchase or sell a commodity for delivery in the future; (2) at a price determined at initiation of the contract; (3) that obligates each party to the contract to fulfill it at the specified price; (4) that is used to assume or shift risk; and (5) that may be satisfied by delivery or offset.

Hedging—The purchase or sale of a security future to reduce or offset the risk of a position in the underlying security or group of securities (or a close economic equivalent).

Illiquid market—A market (or contract) with few buyers and/or sellers. Illiquid markets have little trading activity and those trades that do occur may be done at large price increments.

Liquidation—entering into an offsetting transaction. Selling a contract that was previously purchased liquidates a futures position in exactly the same way that selling 100 shares of a particular stock liquidates an earlier purchase of the same stock. Similarly, a futures contract that was initially sold can be liquidated by an offsetting purchase.

Liquid market—a market (or contract) with numerous buyers and sellers trading at small price increments.

Long—(1) the buying side of an open futures contact, (2) a person who has bought futures contracts that are still open.

Margin—the amount of money that must be deposited by both buyers and sellers to ensure performance of the person's obligations under a futures contract. Margin on security futures contracts is a performance bond rather than a down payment for the underlying securities.

Mark-to-market—to debit or credit accounts daily to reflect that day's profits and losses.

Narrow-based security index—in general, and subject to certain exclusions, an index that has any one of the following four characteristics: (1) It has nine or fewer component securities; (2) any one of its component securities comprises more than 30% of its weighting; (3) the five highest weighted component securities together comprise more than 60% of its weighting; or (4) the lowest weighted component securities comprising, in the aggregate, 25% of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50 million (or in the case of an index with 15 or more component securities, $30 million). A security index that is not narrow-based is a ''broad based security index.'' (See Broad-based security index).

Nominal value—the face value of the futures contract, obtained by multiplying the contract price by the number of shares or units per contract. If XYZ stock index futures are trading at $50.25 and the contract is for 100 shares of XYZ stock, the nominal value of the futures contract would be $5025.00.

Offsetting—liquidating open positions by either selling fungible contracts in the same contract month as an open long position or buying fungible contracts in the same contract month as an open short position.

Open interest—the total number of open long (or short) contracts in a particular contract month.

Open position—a futures contract position that has neither been offset nor closed by cash settlement or physical delivery.

Performance bond—another way to describe margin payments for futures contracts, which are good faith deposits to ensure performance of a person's obligations under a futures contract

rather than down payments for the underlying securities.

Physical delivery—the tender and receipt of the actual security underlying the security futures contract in exchange for payment of the final settlement price.

Position—a person's net long or short open contracts.

Regulated exchange—a registered national securities exchange, a national securities association registered under Section 15A(a) of the Securities Exchange Act of 1934, a designated contract market, a registered derivatives transaction execution facility, or an alternative trading system registered as a broker or dealer.

Security futures contract—a legally binding agreement between two parties to purchase or sell in the future a specific quantity of shares of a security (such as common stock, an exchange-traded fund, or ADR) or a narrow-based security index, at a specified price.

Settlement price—(1) the daily price that the clearing organization uses to mark open positions to market for determining profit and loss and margin calls, (2) the price at which open cash settlement contracts are settled on the last trading day and open physical delivery contracts are invoiced for delivery.

Short—(1) the selling side of an open futures contract, (2) a person who has sold futures contracts that are still open.

Speculating—buying and selling futures contracts with the hope of profiting from anticipated price movements.

Spread—(1) holding a long position in one futures contract and a short position in a related futures contract or contract month in order to profit from an anticipated change in the price relationship between the two, (2) the price difference between two contracts or contract months.

Stop limit order—an order that becomes a limit order when the market trades at a specified price. The order can only be filled at the stop limit price or better.

Stop loss order—an order that becomes a market order when the market trades at a specified price. The order will be filled at whatever price the market is trading at. Also called a stop order.

Tick—the smallest price change allowed in a particular contract.

Trader—a professional speculator who trades for his or her own account.

Underlying security—the instrument on which the security futures contract is based. This instrument can be an individual equity security (including common stock and certain exchange-traded funds and American Depositary Receipts) or a narrow-based index.

Volume—the number of contracts bought or sold during a specified period of time. This figure includes liquidating transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed interpretive notice states that NFA Compliance Rule 2–30(b) requires Members and Associates who are not members of NASD to provide a disclosure statement for security futures products to a customer at or before the time the member approves the account to trade security futures products. The interpretive notice identifies the statement that must be provided and notifies Members that it is available on NFA's web site.

The risk disclosure statement has nine sections. They are (1) Risks of Security Futures, (2) Description of a Security Futures Contract (including its purposes and characteristics), (3) Clearing Organizations and Mark-to-Market Requirements, (4) Margin and Leverage, (5) Settlement, (6) Customer Account Protections, (7) Special Risks for Day Traders, (8) Other (which covers corporate events, position limits and large trader reporting, transactions on foreign exchanges, and tax consequences), and (9) a Glossary of Terms.

NFA, NASD, and a number of securities and futures exchanges jointly developed the risk disclosure statement for security futures contracts using the statement for listed equity options as the template. Futures and securities firms will both be required to provide this document to security futures customers, regardless of where the products are traded. NFA will make the statement available on its Web site.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act. In fact, the rule change puts all firms on an even playing field because it is consistent with proposed NASD requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

On October 4, 2002, the CFTC determined that review of the proposed rule change was not necessary. Accordingly, pursuant to Section 17(j) of the CEA, NFA has made the proposed rule change effective as of October 7, 2002.[9]

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[8] 15 U.S.C. 78o–3(k).

[9] A related proposed rule change filed by the NASD, SR–NASD–2002–128, became summarily effective on October 7, 2002. *See* Securities Exchange Act Release No. 46612, (October 7, 2002).

[10] 15 U.S.C. 78s(b)(1).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–05 and should be submitted by November 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26367 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46631; File No. SR–NYSE–2002–24]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. (''NYSE'') to Amend NYSE Rule 342 (''Offices—Approval, Supervision and Control'')

October 9, 2002.

On July 12, 2002, the New York Stock Exchange, Inc. (''NYSE'') 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 NYSE Rule 342 (''Offices—Approval, Supervision and Control''). The proposed amendments would recognize the National Association of Securities Dealers' General Securities Principal Examination (''Series 24 Examination'') as an acceptable qualification alternative to the General Securities Sales Supervisor Qualification Examination (''Series 9/10 Examination'') for supervisory persons whose duties do not include the supervision of options or municipal securities sales activity. In addition, the amendments update and clarify certain provisions of the Rule. The NYSE filed an amendment to the proposed rule change on August 16, 2002.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 5, 2002.[4] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission believes that the NYSE's amendments to NYSE Rule 342 to eliminate, when possible, duplicative examination qualification requirements and to update and clarify certain provisions of the Rule are reasonable.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change, as amended (SR–NYSE–2002–24), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26395 Filed 10–16–02; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, *Attn:* Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, D.C. 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer at (410) 965–0454, or by writing to the address listed above.

1. Application for Supplemental Security Income–20 CFR, Subpart C, 416.305–.335–0960–0229

The information collected using Form SSA–8000–BK is needed and used to determine eligibility for Supplemental Security Income (SSI) and the amount of benefits payable. The respondents are applicants for SSI payments.

Type of Request: Revision of an OMB-approved information collection, *Number of Respondents:* 1,249,933, *Frequency of Response:* 1, *Average Burden Per Response:* 40 minutes, *Estimated Annual Burden:* 833,289 hours.

2. Application for Wife's or Husband's Insurance Benefits—20 CFR, Subpart D, 404.330–.333; Subpart G, 404.603–0960–0008

SSA needs and uses the information collected on Form SSA–2–F6 to determine if an applicant (including a divorced applicant) can be entitled to benefits as the spouse of the worker and the amount of the spouse's benefits. The respondents are applicants for wife's or

[11] 17 CFR 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2002, and attachments (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 46425 (August 28, 2002), 67 FR 56863.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

husband's benefits, including those who are divorced.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 700,000, *Frequency of Response:* 1, *Average Burden Per Response:* 15 minutes, *Estimated Annual Burden:* 175,000 hours.

3. Supplemental Security Income Claim Information Notice—20 CFR, Subpart B, 416.210–0960–0324

Form SSA–L8050 is used by SSA to ensure that all sources of potential income, which can be used to provide for the support and maintenance of an individual receiving SSI, are utilized. SSI is intended to supplement other income available to an individual. The respondents are applicants/recipients of SSI who may be eligible for benefits from public or private programs.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 7,500, *Frequency of Response:* 1, *Average Burden Per Response:* 10 minutes, *Estimated Annual Burden:* 1,250 hours.

4. Reporting Changes that Affect Your Social Security Payment —20 CFR 404, Subpart D and Subpart E–0960–0073

SSA uses the information collected on Form SSA–1425 to determine continuing entitlement to title II Social Security benefits and to determine the proper benefit amount. The respondents are Social Security beneficiaries who need to report an event that could affect payments.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 70,000, *Frequency of Response:* 1, *Average Burden Per Response:* 5 minutes, *Estimated Annual Burden:* 5,833.

5. Medicaid Use Report, 20 CFR 416.268—0960–0267

The information required by this regulation is used by SSA to determine if an individual is entitled to special SSI payments. The respondents are SSI recipients whose payments were stopped based on earnings from work.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 60,000, *Frequency of Response:* 1, *Average Burden Per Response:* 3 minutes, *Estimated Annual Burden:* 3,000 hours.

6. Quickstart Enrollment—31 CFR 209 and 210—0960–0564

The information collected is needed by SSA to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security beneficiaries and SSI recipients requesting direct deposit to their financial institutions.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 3,950,000, *Frequency of Response:* 1, *Average Burden Per Response:* 3 minutes, *Estimated Annual Burden:* 197,500 hours.

7. Request for Internet Services Representative Payee, 20 CFR 401.45 Report—0960–NEW

Background

SSA is developing an Internet Representative Payee Report form (I623) to electronically report on the use of benefit payments made on behalf of Social Security beneficiaries and SSI recipients. As part of this process, SSA will conduct a proof of concept (POC) test that will be limited to 40 organizational representative payees. During the projected 6-month POC test, participating organizations will use the I623 to complete and file the representative payee report instead of using the paper SSA–623.

The Collection

Organizations participating in the POC will designate up to three employees that will be authenticated using SSA's existing Integrated Registration for Employers and Submitters (IRES) OMB control number 0960–0626. Once authenticated, the employee will be required to enter a Personal Identification Number (PIN) and Password to gain access to the online I623 application. The PIN and Password will serve as the electronic signature. SSA will use the information collected through the I623 to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are organizational representative payees designated to receive funds on behalf of Social Security beneficiaries and/or SSI recipients.

Type of request: New information collection, *Number of Respondents:* 40 organizations, *Frequency of Response:* 117.5 per respondent, *Average Burden Per Response:* 15 minutes, *Estimated Annual Burden:* 1,175 hours.

8. Letter to Employer Requesting Information about Wages Earned by a Beneficiary—20 CFR, Subpart I, 404.801—0960–0034

SSA uses the data collected on form SSA–L725 to establish the exact amount of wages earned by a beneficiary in situations where the information in SSA records is incomplete or has been questioned. The respondents are employers of wage earners whose earnings records are incomplete or have been questioned.

Type of Request: Extension of an OMB-approved information collection, *Number of Respondents:* 150,000, *Frequency of Response:* 1, *Average Burden Per Response:* 40 minutes, *Estimated Annual Burden:* 100,000 hours.

II

The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Application for Parent's Insurance Benefits—20 CFR 404.370–.374 and 404.601–603—0960–0012

The information collected on form SSA–7 is used by SSA to determine entitlement of an individual to parent's Social Security title II benefits. The respondents are parents who were dependent on the worker for at least one-half of their support.

Type of Request: Revision of an OMB-approved information collection, *Number of Respondents:* 1,400, *Frequency of Response:* 1, *Average Burden Per Response:* 15 minutes, *Estimated Annual Burden:* 350 hours.

Dated: October 10, 2002.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–26392 Filed 10–16–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4164]

Bureau of Educational and Cultural Affairs

Fulbright American Studies Institutes for Foreign University Faculty

NOTICE: Request for Grant Proposals (RFGP).

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for two (2) assistance awards. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(C)(3) may apply to develop and implement one of the following two post-graduate level Fulbright American Studies Institute programs designed for multinational groups of 18 experienced foreign university faculty and educators:

A. Managing Diversity: The American Experience

B. American Political Development: Ideas and Institutions.

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. Programs should therefore be designed to elucidate the topic or theme of the Institute as well as American civilization as a whole.

Programs are six weeks in length and will be conducted during the Summer of 2003.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

It is the Bureau's intention to fund one institute in each of the above two thematic areas, subject to the number and quality of proposals received and the availability of funding.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs.* Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Program Information

Overview and Objectives: Fulbright American Studies Institutes are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American society, culture and institutions. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in universities abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel and site visits, and they should also include some opportunity for limited but well-directed independent research.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. All Fulbright American Studies Institute programs, regardless of their particular thematic focus, should seek to:

1. Provide participants with a survey of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debates within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. It is therefore critical that a variety of scholarly viewpoints be represented, including bringing in presenters from other institutions, as appropriate. Please note that the ways these alternative schools of thought will be presented should be clearly described in the proposal;

2. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content if appropriate;

3. Give participants a multi-dimensional view of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

4. Insure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Descriptions

A. Managing Diversity: The American Experience

The ''Fulbright American Studies Institute on Managing Diversity: The American Experience'' should provide 18 experienced foreign university faculty and scholars with a deeper understanding of the American experience with immigration and race and ethnic relations. The institute should impart an appreciation for how the U.S. has responded to both the challenges and opportunities presented by the increasing national-origin, ethnic and religious diversity of its population. While program might focus on the experience of selected immigrant/ethnic groups, it should include attention to the development of laws and policies governing immigration and citizenship and the impact of immigration on American society, politics and culture more broadly. Other topics/issues that might be addressed include: identity formation in immigrant/ethnic communities; the politics of bilingualism; social, economic, and cultural adaptation and political incorporation of immigrants; coalitions and conflicts among ethnic/racial groups; the role of ethnic lobbies in

foreign and domestic policies; and contemporary debates surrounding issues of citizenship and membership in the U.S.

B. American Political Development: Ideas and Institutions

The ''Fulbright American Studies Institute on American Political Development: Ideas and Institutions'' should provide 18 experienced foreign university faculty and scholars with a deeper understanding of how the interplay between ideas and developments in the spheres of polity, society and economy together have shaped the evolution of American political institutions. Political institutions whose evolution might be examined include (but are not necessarily limited to) the presidency, Congress, the two-party system, the civil service system, interest groups, or the welfare/regulatory state. The institute curriculum might include a focus on the role of labor and/or race and/or gender in American political development. It might involve attention to the evolution of a particular idea, value or principle (*e.g.*, representation, equality, democracy) and its interpretation by institutional and other actors over time. Regardless of the particular perspective adopted or approach taken, the program should aim to provide the institute participants with a clearer understanding of how policy is formulated and the character of public policy debates in the contemporary United States.

Program Dates

Ideally, the programs should be 44 days in length (including participant arrival and departure days) and should begin in late June or early July, 2003.

Participants

As specified in the guidelines in the solicitation package, programs should be designed for multinational groups of 18 highly-motivated and experienced foreign university faculty and scholars who are interested in participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions. Most participants can be expected to come from educational institutions where the study of the U.S. is relatively well developed. Thus, while they may not have in-depth knowledge of the particular institute program theme, most will have had some experience in teaching about the United States. Many will have had sustained professional contact with American scholars and American scholarship, and some may have had substantial prior experience studying in the United States. Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch at the Department of State. Final selection of grantees will be made by the Fulbright Foreign Scholarship Board.

Program Guidelines

While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines

Based on groups of 18 participants, the total Bureau-funded budget (program and administrative) for either program should be approximately $200,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should be approximately $60,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the ''POGI'' in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number

All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

Fulbright American Studies Institute on Managing Diversity: The American Experience—(ECA/A/E/USS–03–01A–Benda).

Fulbright American Studies Institute on American Political Development: Ideas and Institutions —(ECA/A/E/USS–03–01B–Benda).

FOR FURTHER INFORMATION: To request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, SW., Washington, DC 20547, Attention: Peter Benda.
Telephone number: (202) 619–5893.
Fax number: (202) 619–6790.
Internet address: *pbenda@pd.state.gov.*

Please specify Program Officer Peter Benda on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPS/.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, January 13, 2003. Faxed documents will NOT be accepted, nor will documents postmarked January 13, 2003 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (insert appropriate reference number from above, *e.g.* ECA/A/E/USS–

03–01x–Benda), Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW., Washington, DC 20547.

Applicants should also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom, and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to all Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Advisor or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. *Support for Diversity:* Substantive support of the bureau's policy on diversity should be demonstrated. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. *Evaluation and Follow-up:* A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost Effectiveness:* Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful

relations between the United States and the other countries of the world.''

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: October 7, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–26426 Filed 10–16–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34253]

TransitAmerica, LLC—Operation Exemption—Line In Buchanan County, MO

TransitAmerica, LLC (TRAM), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 2.6 miles of rail line, previously owned by the Herzog Contracting Corporation (HCC),[1] between approximately milepost 201.0 and approximately milepost 198.4 east of St. Joseph, MO. TRAM certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier, and that such revenues will not exceed $5 million.

The transaction was scheduled to be consummated on or after September 24, 2002, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] HCC is a limited liability member of TRAM. TRAM recently acquired the right, title and interest in this abandoned railroad right-of-way from HCC.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34253, 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 Kevin M. Sheys, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Ave., 2nd Floor, NW., Washington, DC 20036.

Board decisions and notices are available on our website at ''*www.stb.dot.gov.*''

Decided: October 10, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–26422 Filed 10–16–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office; Government Owned Invention Available for Licensing

AGENCY: Research and Development Office.

ACTION: Notice of Government Owned Invention Available for Licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director Technology Transfer Program, Research and Development Office, 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 275–7228; e-mail at *mindy.aisen@mail.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 10/199,078 ''Firm Contact Apparel Prosthesis for Tremor Suppression and Method of Use Thereof''.

Dated: October 10, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–26486 Filed 10–16–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Proposed Information Collection Request Submitted for Public Comment and Recommendations Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference (USERRA/VP)

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with The Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 C (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed information collection request for the VETS USERRA/VP Form 1010.

DATE: Comments are to be submitted by December 16, 2002.

ADDRESSES: Comments are to be submitted to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–4711. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4728.

FOR FURTHER INFORMATION: Contact Patrick D. Harvey, Division of Investigation and Compliance, Veterans'

Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone: (202) 693–4728 (Voice) or (800) 670–7008 (TTY/TDD). Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Mr. Patrick D. Harvey at (202) 693–4728.

SUPPLEMENTARY INFORMATION:

I. Background

The VETS/USERRA/VP Form 1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service (VETS) under either the Uniformed Services Employment and Reemployment Rights Act (USERRA) or laws/regulations related to veterans' preference (VP) in Federal employment. The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and this information collection requirement include: To protect and facilitate the prompt reemployment of members of the uniformed services (to include National Guard and Reserves); to minimize disruption to the lives of persons who perform service in the uniformed services and their employers; and to encourage individuals to participate in non-career uniformed service. Also, to prohibit discrimination in employment and acts of reprisal against persons because of their obligations in the uniformed services, prior service, intention to join the uniformed services, filing of a USERRA claim, seeking assistance concerning an alleged violation, testifying in a proceeding, or otherwise assisting in an investigation.

The purposes of Veterans' Preference laws and regulations and this information collection requirement include: To provide preference for certain veterans (preference eligibles) over others in Federal hiring from competitive lists of applicants; and to provide preference eligibles with preference over others in retention during reductions in force in Federal agencies.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning the proposed information collection request for the VETS/USERRA/VP Form 1010. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements for VETS/USERRA/VP Form 1010.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: VETS/USERRA/VP Form 1010.

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Total Respondents: Approximately 1,500.

Average Time per Response: 15 minutes.

Total Burden Hours: 375 hours.

Total Annualized Capital/Startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Dated: October 9, 2002.

Charles S. Ciccolella,

Deputy Assistant Secretary, Veterans' Employment and Training.

[FR Doc. 02–26345 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–79–P

Federal Register

Thursday,
October 17, 2002

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 6, 7, 18, et al.
Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

RIN 1219–AA87

Testing and Evaluation by Independent Laboratories and Non-MSHA Product Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Proposed rule, notice of hearing and close of comment period.

SUMMARY: This revised proposed rule would establish alternate requirements for testing and evaluation of products that MSHA approves for use in gassy underground mines. It is being published in response to comments received as the result of a 1994 proposed rule on the same subject. It would permit manufacturers of certain products, who seek MSHA approval, to use an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval. Testing and evaluation as used in this proposed rule means testing, evaluation, or both. This revised proposed rule would also permit manufacturers to have their products approved based on non-MSHA product safety standards. This would occur only after MSHA has determined that such standards are equivalent to its applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The revised rule, as proposed, should increase the availability of a wider variety of mining products having enhanced safety features by reducing costs and broadening the market for mining equipment.

DATES: Comments must be received on or before December 31, 2002. Submit written comments on the information collection requirements by December 16, 2002.

Two public hearings will be held. One in Denver, Colorado on January 7, 2003 and another in Washington, Pennsylvania on January 9, 2003. The first hearing will begin at 9 a.m. and end after the last scheduled speaker appears; no later than 5 p.m. on January 7, 2003.

The second hearing will begin at 9 a.m. and end after the last scheduled speaker appears; no later than 5 p.m. on January 9, 2003. If individuals or organizations wish to make an oral presentation for the record, we ask that you submit your request at least 5 days prior to the hearing dates. However, you do not have to make a written request to speak. Any unallotted time will be made available for persons making same-day requests.

The post-hearing comment period will close 30 days after the second public hearing on February 10, 2003.

ADDRESSES: *Comments.* Send comments on the revised proposed rule—

(1) By mail or hand delivery to MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2352, Arlington, VA 22209–3939;

(2) By facsimile to MSHA, Office of Standards, Regulations and Variances, 202–693–9441; or

(3) By electronic mail to *comments@msha.gov.* If possible, please supplement written comments with computer files on disk. You may contact MSHA with any format questions.

Send written comments on the information collection requirements to both MSHA and the Office of Management and Budget (OMB) as follows:

(1) To OMB by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA; and

(2) To MSHA by one of the following methods:

(a) By mail or hand delivery to MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2352, Arlington, VA 22209–3939;

(b) By facsimile to MSHA, at 202–693–9441; or

(c) By electronic mail to *comments@msha.gov.*

Hearings. (1) The hearing on January 7, 2003 will be held at the DoubleTree Hotel Denver, 3203 Quebec Street, Denver, Colorado 80207 (phone: (303) 321–3333).

(2) The hearing on January 9, 2003 will be held at the Holiday Inn Meadowlands, 340 Racetrack Road, Washington, Pennsylvania 15301 (phone: (724) 222–6200).

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939. Mr. Nichols can be reached at *nichols-marvin@msha.gov* (Internet E-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: You may obtain copies of the revised proposed rule and the Preliminary Regulatory Economic Analysis (PREA) in alternative formats by calling the number in the **FOR FURTHER INFORMATION CONTACT** section above. The alternative formats available are either a large print version of these documents or electronic files that can be sent to you either on a computer disk or an attachment to an e-mail. The documents also are available on the Internet at *http://www.msha.gov/REGSINFO.HTM.* We intend to place the public comments on these documents on our website shortly after we receive them.

I. Background

From its creation by Congress in 1910, MSHA's predecessor, the Bureau of Mines, U.S. Department of Interior (Bureau), was responsible for the testing and evaluation of mining products. Under the Federal Mine Safety and Health Act of 1977 (Mine Act), MSHA is responsible for prescribing the technical design, construction, and the test requirements for certain products used in underground mines, and for testing and evaluating them for approval based on those requirements. These technical requirements are set forth in the Agency's approval regulations in 30 CFR parts 7 through 36.

MSHA's approval regulations govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use in underground mines. Each of these separate approval actions has specific application procedures and technical requirements for testing and evaluation. MSHA currently conducts the testing and evaluation of products for a fee paid by the applicant. Following MSHA approval, manufacturers must ensure that the product continues to conform to the technical requirements tested, evaluated, and approved by MSHA.

When MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package is reviewed to determine whether the technical requirements of the applicable provisions of 30 CFR parts 15 through 36 have been met. Each drawing and specification in the package is cross-checked against these requirements and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. After MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the approval requirements, unless the design obviates the need for testing. If the product

passes the tests and meets all MSHA requirements, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an MSHA approval marking on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product as approved. The MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to an approved product that causes it to differ from the design or construction described in the original documentation approved by MSHA must be submitted to the Agency for approval prior to implementation of the change. If MSHA approves the change, the Agency issues an extension of approval or a notice of acceptance of the modified product to the manufacturer.

In the mid-1980s, the Agency reviewed its product approval program to determine whether it could be restructured to provide improved safety to miners without increasing cost to the applicant. That review resulted in the promulgation in 1988 of 30 CFR part 7, Testing by Applicant or Third-Party, which represented MSHA's first departure from its role of front-end prototype testing of products for approval, by substituting manufacturer or third-party testing of a limited number of products for the testing that previously had been conducted by MSHA.

The objectives of the program were to permit MSHA to redirect its resources to its post-approval product audit functions, as well as to the review of technological improvements in mining products. The Agency's shift in emphasis was intended to enhance the safety of products in mines by providing the mining community a greater assurance that approved products in mines continue to be manufactured as approved, by detecting any problems in manufactured products more effectively, and by enabling a more expeditious introduction of new technology.

Products selected as suitable for applicant or third-party testing under part 7 were those with characteristics which could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. Products whose testing results depend on the experience, judgement, and knowledge of the personnel executing the tests, such as testing a complex intrinsically safe circuit, were not included in the part 7 program.

Under part 7, all product testing is conducted according to MSHA-specified tests and procedures, using calibrated and accurate instruments. Moreover, the product testing is subject to Agency. Part 7 is not a self-certification program. The part 7 concept shifts only the testing of certain products to the applicant or a third party. The evaluation of the test results and the issuance of the approval remain the responsibility of the Agency. This revised proposed rule would not affect the testing aspects of part 7. Part 7, unlike the other approval parts, would continue to permit testing by the applicant or by third party laboratories that are not necessarily independent from the manufacturer.

II. 1994 Proposed Rule

In 1993, MSHA initiated a further review of its approval and certification activities, including its part 7 applicant or third-party testing program. Based on this review, the Agency reaffirmed the objectives of the part 7 concept to increase post-approval product audits and direct more resources to evaluation of safety and technological improvements in products for use underground. However, MSHA determined that while the part 7 program was a step in the right direction, the limited scope of that program did not free up sufficient resources to allow MSHA to fully redirect its efforts to meet those objectives. After considering how best to accomplish those goals, the Agency decided to initiate rulemaking to modify MSHA's approval program in two ways, which it did in 1994. Under the 1994 proposed rule, applicants seeking MSHA product approval would have been required to use independent laboratories recognized by the Occupational Safety and Health Administration (OSHA) under its Nationally-Recognized Testing Laboratories (NRTL) program for the required testing and evaluation. This would have been in place of MSHA testing and evaluation of products. As with the part 7 program, however, MSHA would have continued to verify that approval requirements were met and would have retained full responsibility for issuing the product approval. Thus, the 1994 proposed rule would not have constituted a self-certification program. Second, MSHA or appropriately recognized independent laboratories would have been permitted, upon an applicant's request, to test and evaluate a product for approval based on approval requirements other than the Agency's, as long as those requirements provided an equal or a greater degree of protection. This would have allowed MSHA to approve a product meeting the International Electrotechnical Commission's (IEC) approval standards, or some other approval requirements different from those specified in MSHA's regulations, provided that MSHA first had determined that those requirements were equivalent or could be modified to provide protection equivalent to that afforded by products tested and evaluated according to MSHA approval requirements. In this way, the Agency could have taken advantage of revisions to product safety standards developed by other countries or standards development organizations to address technological advances or improvements in product safety. Such an approach would have permitted the introduction of a wider variety of improved products into U.S. mines more quickly than if the Agency had to undertake rulemaking to address each technological advance or improvement in product safety, capability, and performance.

A notice of proposed rulemaking (NPRM) for a new part 6 was published on November 30, 1994 (59 FR 61376). The NPRM comment period was extended to February 21, 1995 (60 FR 8209). A Public Hearing Notice was published on October 10, 1995 (60 FR 52640), scheduling a public hearing for November 15, 1995. That hearing was rescheduled to April 30, 1996. (61 FR 15743). The post-hearing comment period ended on May 31, 1996. (61 FR 15743). The rule was not published as a final rule. Instead, MSHA is publishing this revised proposed rule (hereafter referred to as the proposed rule).

III. Discussion of Proposed Rule

A. Introduction

The proposed rule would provide a number of significant improvements to the 1994 proposed rule. There were two major concerns expressed by a large number of commenters, primarily representing product manufacturers and mine operators. They objected to the requirement to employ the services of private sector laboratories, and expressed concern over the loss of expertise that MSHA would experience by ceasing to perform tests and evaluations. There was also an overwhelming concern about the effects the mandatory nature of the 1994 proposed rule would have on their costs and turnaround times. Many commenters stated that they had previous experience in dealing with third party laboratories and, in general,

had experienced higher costs and longer turnaround times in those instances.

MSHA has revised the 1994 proposed rule to address these concerns, because we recognize the industry's need to expedite the transfer of technology into the mining environment. This transfer should improve the health and safety of miners. The alternate program in this proposed rule would permit a manufacturer who has had a product tested and evaluated by an independent laboratory to submit the test reports and technical information to MSHA to obtain MSHA approval for the product.

MSHA is aware of certain instruments that are currently listed (approved) by independent laboratories for use in hazardous gas and dust atmospheres that may also be suitable for use in the mine environment. These instruments include: portable methane detectors, air sampling pumps, oxygen deficiency meters, air velocity meters, carbon monoxide detectors, hydrogen sulfide detectors, powered respirators and accessories, toxic gas detectors, portable two-way radios, laser surveying instruments, mine rescue communications system, photometers, temperature sensing devices, personal audible and visual alarms, heat detection systems, voice amplifiers, position sensing devices, tape recorders, pressure sensing devices, data recording instruments, electrical diagnostic test instruments, sound level meters, sound level calibrators, audio dosimeters, and cable fault detectors.

MSHA has issued approvals for a number of instruments that were already listed (approved) by an independent laboratory at the time of application for MSHA approval. Examples of some of these instruments are: Motorola MT2000 and HT1000 Hand-held Radios; MSA Microgard Portable Alarm for warning of low levels of oxygen and high levels of methane; MSA Escort Elf Portable Pump for sampling of the mine atmosphere for dust; MSA Passport and Mini Series Personal Alarms for warning of high levels of toxic and combustible gases; Industrial Scientific Corporation Model SP402 Sampling Pump for remote monitoring of oxygen, toxic and combustible gases; and Industrial Scientific Corporation Model TMX410 Four-Gas Monitor for monitoring and warning of high levels of toxic and combustible gases and low levels of oxygen.

MSHA is aware that there are many more products, including instruments, motors, explosion-proof enclosures, conveyor belts and hydraulic fluids, that are listed by independent laboratories that have not been submitted for MSHA approval. These products, used in other industries, can offer safety-related benefits to the mining industry and are considered potential candidates for the program that would be created by this rule. By permitting acceptance of independent laboratory test and evaluation results, MSHA believes that some of these product manufacturers would be encouraged to submit their products for MSHA approval.

MSHA is also aware that many instruments and products have been listed (approved) by independent laboratories to Underwriter's Laboratories (UL) and Factory Mutual (FM) intrinsic safety standards for use in Class I (explosive gas-air mixtures) and Class II (explosive dust-air mixtures) atmospheres. Many of the same tests and design requirements that MSHA uses under its intrinsic safety regulations are also used in the UL and FM standards. Under this proposed rule, applicants seeking MSHA approval of instruments or other products for intrinsic safety purposes could submit the results of any independent laboratory's testing and evaluation for intrinsic safety to MSHA as part of their applications. If after review, MSHA determined that the testing already conducted was performed properly, MSHA could accept the test results and would not have to repeat testing in cases where the tests were the same. This would reduce costs and the time spent by manufacturers to obtain MSHA approval. If the review raised questions or concerns about the validity of test and evaluations submitted, MSHA would need to perform repeat testing. MSHA, of course, would conduct additional testing and evaluation where the UL and FM intrinsic safety requirements were not the same as MSHA's.

The most significant change from the 1994 proposed rule is that MSHA would retain its testing and evaluation capabilities, but would offer applicants the alternative of submitting an independent laboratory test and evaluation report for MSHA approval. MSHA would have the authority to accept the test and evaluation results in lieu of conducting its own. MSHA also would have the authority to conduct or to observe any additional or repeat test and evaluation to ensure compliance with the MSHA requirements.

MSHA carefully analyzed the comments received in response to the 1994 proposed rule and responded in many instances by revising it. The resultant proposed rule would offer the alternative approval program as well as the equivalency requirements in essentially the 1994 proposed form.

Some commenters expressed concern that MSHA might lose expertise if independent laboratories performed all testing and evaluation. This proposed rule would retain a major role for MSHA. MSHA would be analyzing non-MSHA product safety standards to determine equivalency. This proposed rule would allow MSHA, at the request of the applicant, to approve products based either on its approval regulations or non-MSHA product safety standards that have been determined to be equivalent. Most importantly, MSHA would remain the approval authority, whether MSHA or an independent laboratory does the testing and evaluation.

In developing this proposed rule, MSHA has made every effort to address the comments received on the 1994 proposed rulemaking. Comments addressing both the costs and the benefits of each provision, as well as revisions and deletions, were carefully evaluated against the statutory requirement that nothing in this proposed rule shall reduce the protection afforded miners by an existing mandatory health or safety standard.

B. Section-by-Section Discussion

The 1994 proposed rule, which would have required applicants to use independent laboratories to perform the product testing and evaluation necessary for issuance of MSHA's product approval, was intended to form the foundation of a modified approval program providing enhanced product user protection and more rapid introduction of new technology into the mining industry. The 1994 proposed rule would also have required applicants for product approval to submit to MSHA the test and evaluation data and results obtained from an independent laboratory recognized by OSHA as an NRTL. The 1994 proposed rule also would have permitted applicants to request MSHA approval based on testing and evaluation requirements other than MSHA's once MSHA determined the other requirements to be equivalent to it own requirements in their original or modified form.

MSHA received many comments on the 1994 proposed rule from interested parties, such as mining equipment manufacturers, mine operators, representatives of miners, professional associations, and laboratories. Many of these commenters also participated in the hearing and sent in post-hearing comments on a number of issues. MSHA has extensively modified the 1994 proposed rule based on these comments.

Under this proposed rule, manufacturers seeking MSHA approval could choose to have their products tested and evaluated either by an independent laboratory or by MSHA. MSHA would be able to accept the independent laboratory's test and evaluation results in lieu of performing its own. Also under this proposed rule, the equivalency concept would remain basically the same as originally proposed.

No approvals would be issued under part 6. Instead, any approval issued based on part 6 provisions would continue to be approved under the applicable product approval parts. The necessary conforming language is being proposed to those other approval parts in this **Federal Register** Notice of Proposed Rulemaking.

The following portion of the preamble discusses each provision of the proposed part 6 rule. The text of the proposed rule is included at the end of the document.

Section 6.1 Purpose and Effective Date

This section explains that the purpose of this proposal would be to establish an alternate program for testing and evaluation of products MSHA approves for use in gassy underground mines. It would permit manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for approval. It also would permit manufacturers to request to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA product safety standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as MSHA's requirements.

The provisions of this part would apply to any application for approval or extension of approval filed under 30 CFR parts 18, 19, 20, 22, 23, 27, 33, 35, or 36, and received by MSHA after the effective date of this rule. It would be effective 60 days after publication of the final rule in the **Federal Register**.

Section 6.2 Definitions

This section of the proposed rule would define and clarify the key terms used in part 6. The 1994 proposed rule included definitions for ''approval'' and ''evaluation.'' Commenters on the 1994 proposed rule did not direct any comments to these definitions. The definition of ''approval'' remains unchanged. The definition for ''evaluation'' was removed because MSHA believes the term is self-explanatory.

The additional definitions are provided to clarify certain terms that were not defined in the 1994 proposed rule or to address new terms that were not included in the 1994 proposed rule. These would include ''applicant,'' ''approval holder,'' ''equivalent non-MSHA product safety standard,'' ''independent laboratory,'' ''post-approval product audit'' and ''product safety standard.''

Applicant. This term would be used to describe an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. This term would be used to describe a written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36. The definition would be based on the existing definitions of ''approval'' in the parts specified above. It is expanded to include ''certification'' and ''acceptance'' because these terms also are used to denote MSHA approval.

Approval holder. This term would be used to describe an applicant whose application for approval of a product under part 18, 19, 20, 22, 23, 27, 33, 35, or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standard. This term would be used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36, or which in modified form, provides at least the same degree of protection.

Independent Laboratory. This term would be used to describe a laboratory that: (1) Has been recognized by a laboratory accrediting organization (*e.g.*, OSHA NRTL Program, American Association for Laboratory Accreditation (A2LA), International Electrotechnical Commission (IEC), etc.) to test and evaluate products to a product safety standard, and (2) is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. This term applies to the examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. This term would be used to describe a document, or group of documents that specify the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, include documents addressing the flammability properties of products.

Section 6.10 Use of Independent Laboratories

Under paragraph (a) of the proposed rule, manufacturers who seek approval of certain products would be permitted to use an independent laboratory to perform, in whole or in part, the necessary testing and evaluation for MSHA product approval. Thus, this proposed rule would no longer require manufacturers to use independent laboratories. Instead, it would give manufacturers the option of having either MSHA or an independent laboratory do the testing and evaluation.

Also, under this proposed rule, if independent laboratories were used, applicants would need to submit, as part of the approval application, four items set out in subparagraphs (1), (2), (3), and (4) of section 6.10(a). They would include written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization; a complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements; identification of components or features of the product that are critical to the safety of the product; and all documentation, including drawings and specifications, which are required by the applicable approval part under this chapter.

The language in the 1994 proposed rule, requiring that testing and evaluation of products submitted to MSHA for approval be conducted only by an independent laboratory recognized as a NRTL under OSHA's program, has not been included. There was disagreement with the Agency's 1994 proposal to require that manufacturers use NRTLs to test and evaluate their products prior to requesting MSHA approval. The comments were in two general categories: First, commenters noted that the use of NRTLs would be mandatory; and second, that the 1994 proposal relied exclusively on NRTLs instead of a broader category of independent laboratories.

One commenter stated that it was not opposed to MSHA's acceptance of results produced by a NRTL if MSHA preserved the option for manufacturers to submit their products to MSHA for testing. Various commenters expressed concern that the exclusive use of NRTLs

could create a monopoly. Other commenters expressed concern about the small number of NRTLs and the cost of the equipment necessary to test specialized mining products. These commenters feared that the NRTLs would find it too costly to duplicate MSHA testing equipment, especially when the number of products requiring such testing would be small. Further, they expressed concern that NRTLs would tend to specialize in only one kind of testing, resulting in a monopoly and inhibiting competition. It was also their contention that NRTLs would be unable to respond to numerous requests from competing manufacturers, and would thus reduce the availability of competitive products and limit the mining industry to a few suppliers. Such specialization could also cause bottlenecks in testing and evaluation if multiple manufacturers sought approval concurrently. They also feared that the laboratories would face competing demands for resources and that laboratories might give priority to non-mining industry products. This proposed rule would allow manufacturers to choose whether to have MSHA conduct the testing and evaluation or to have an independent laboratory, recognized by a laboratory accrediting organization, do so. The laboratory would not have to be a NRTL.

Although it is no longer proposing that an independent laboratory used be recognized under OSHA's NRTL program, the Agency determined that it would be essential for the laboratories performing testing and evaluation to be recognized by a laboratory accrediting organization. This is based on comments asserting the need for a system to be in place to determine the qualifications of laboratories. MSHA agrees that competent laboratory accrediting organizations exist and continues to believe that it should not establish its own program and duplicate the work of others. One commenter recommended this by stating, ''[r]ecognizing existing programs [third-party certification programs] should be a significant cost reduction to already overburdened government agencies.''

While MSHA does not want to establish its own laboratory accreditation program, the Agency believes there are two essential qualifications that laboratories would have to meet in order for MSHA and the mining community to have assurance that any product, tested and evaluated by third party laboratories, would be safe in the mining environment. First, MSHA believes that the laboratory must be independent of commercial, financial, or other pressures that could influence the results of the testing and evaluation process. Independence of the testing laboratory from the manufacturer is essential for MSHA and the mining public to have confidence in the results of testing and evaluation conducted outside the Agency's Approval and Certification Center. Second, MSHA would need some evidence that the laboratory is competent to test and evaluate to a particular product safety standard. This proposed rule would permit MSHA to accept testing and evaluation performed by an independent laboratory provided that MSHA receives written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization. MSHA agrees with commenters that there are a number of capable accrediting organizations already in existence and is proposing to accept testing and evaluation by independent laboratories that are accredited by any one of them.

Some commenters pointed to MSHA's existing regulation at 30 CFR part 7 that allows self-testing in certain circumstances, and advocated expansion of that program. However, that regulation clearly spells out the circumstances under which MSHA allows manufacturer testing. The Agency limited such testing to only products that could be objectively tested in a routine and readily reproducible manner, with no elements of subjective analysis. With part 7, MSHA provides the exact testing procedure and components or products either pass or fail. It is not a self-certification program. MSHA continues to evaluate the test results and issue the approval.

This part 6 proposed rule would not allow manufacturer testing and evaluation because of the broad range of products covered by it and because the testing and evaluation often requires subjective analysis. For this type of testing and evaluation, MSHA prefers the use of third party, rather than manufacturer, testing and evaluation results. The use of a third party to conduct the testing would increase confidence in the objectivity of the test results.

As indicated in the prior discussion on proposed definitions, this proposed rule defines an independent laboratory as a laboratory that has been recognized by a laboratory accrediting organization to test and evaluate products to a product safety standard and is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Several commenters expressed concern that results from foreign laboratories would be eliminated with the required use of NRTLs. A commenter suggested that test results for products certified in other countries should be accepted by MSHA in lieu of our tests because many manufacturers market products which have already been certified in other countries for use in underground mines. Another commenter suggested that MSHA would have to add enhancements to the Approval and Certification Center test facilities to accommodate different tests. One commenter stated that MSHA should accept testing by U.S. and non-U.S. facilities as an alternative to MSHA testing.

On the other hand, one commenter objected to any foreign laboratories performing testing and evaluation for MSHA product approvals. This commenter did not believe that a sufficient level of protection could be maintained over products tested in foreign countries for use in U.S. mines. The commenter stated that it would be much more difficult for MSHA to maintain oversight of the quality of foreign laboratories' work. This commenter expressed concern that most foreign laboratories would be inclined to serve the interest of their own countries rather than conform to U.S. approval requirements, especially if the rejection of a product would mean a loss in foreign trade for the country where the laboratory was located. This commenter questioned how MSHA would ensure that foreign laboratories would have the facilities, equipment, and qualified persons to conduct the testing or that test parameters would be met.

MSHA recognizes that some foreign laboratories would meet the criteria for independent laboratories. Therefore, a manufacturer could choose to use a foreign laboratory that has been accredited by a recognized accrediting organization such as the IEC to perform testing and evaluation to MSHA's requirements. Guide 17025 of the International Organization for Standardization (ISO)/IEC ''General requirements for the competence of testing and calibration laboratories'' and ISO/IEC Guide 65 ''General requirements for bodies operating product certification systems'' are the main documents used both nationally and internationally by organizations which accredit laboratories. Moreover, the United States is a member of the World Trade Organization (WTO). The Technical Barriers to Trade Agreement applies to members of the WTO and requires members to ensure that technical regulations are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary

obstacles to international trade. This means that, under the agreement, standards could not be promulgated that would discriminate between foreign and domestic manufacturers and laboratories. Therefore, under this proposed rule, a manufacturer could choose to use independent laboratories recognized under OSHA's NRTL program or laboratories accredited by other national or foreign accrediting organizations.

Additionally, commenters expressed concern that MSHA would lose its expertise if the Agency did not continue to test and evaluate products as part of the approval process. In response to these concerns, MSHA emphasizes that it would continue to test and evaluate products at the manufacturers' request. It would also need to retain testing and evaluation capability for the purposes of post-product approval audits, accident investigations, and for purposes of technical assistance. In addition, as discussed later in § 6.20 of this proposed rule, MSHA would be evaluating other non-MSHA product safety standards to determine equivalency, increasing its testing and evaluation expertise.

Commenters cited many concerns about increased costs. They cited a significant increase in the cost of testing and evaluation done by independent laboratories compared to the fees imposed by MSHA. MSHA's costs are set through a process that determines the direct and indirect hourly costs for the testing, evaluation, and approval of a product. MSHA does not include profit in the fees. MSHA considered the disparity in costs between MSHA and independent laboratories for product testing and evaluation in revising the 1994 proposed rule. Since the revised proposal would no longer require the use of independent laboratories to perform all testing and evaluation for MSHA approval, these increased costs would be eliminated.

MSHA has considered all of these objections to the exclusive mandatory use of NRTLs, and this proposed rule addresses those objections. The proposed rule would allow the optional use of a wide network of independent laboratories, eliminating the concern about monopolies. It also would provide manufacturers the option to have MSHA perform some or all of the testing and evaluation necessary for approval. MSHA believes that assessing other non-MSHA product safety standards' equivalency to MSHA's approval requirements and continuing its responsibility for product audits would have maintained MSHA's expertise. Under this proposed rule, the Agency would continue to be involved in direct product testing and evaluation if manufacturers choose to submit their products to MSHA for testing and evaluation, thus obviating the concern about MSHA expertise. MSHA would also be investigating new technology. By eliminating the requirement for exclusive use of NRTLs, MSHA addresses the concerns raised about audits, cost, and creation of monopolies.

Paragraph (b) of this proposed rule, like the 1994 proposed rule, would require that product testing and evaluation performed by independent laboratories for purposes of MSHA approval comply with MSHA product approval requirements. The proposed rule would not permit an independent laboratory to change a testing standard or any elements incorporated into the standard. This is due to the critical nature of the testing and evaluation of products to be used in a potentially hazardous underground mining environment.

Paragraph (c) of this proposed rule would require product testing to be conducted or witnessed by the independent laboratory's personnel. Revised paragraph (c) would replace the language in the 1994 proposed paragraph (b) that would have required all testing to be conducted at the laboratory site. Generally, commenters were in disagreement with that 1994 proposed requirement. They gave examples of products that could not be transported to a laboratory. That requirement was derived from an OSHA NRTL policy that has since been changed. MSHA considered the comments and has decided to permit off-site testing as long as it is conducted or witnessed by personnel of the independent laboratory.

Under paragraph (d) of this proposed rule, MSHA would notify applicants, after the review of information required under paragraph (a), if additional information and testing would be required. The applicant would be required to provide the information, arrange any additional or repeat tests and notify MSHA of the location, date, and time of the test(s). MSHA could observe additional testing conducted by an independent laboratory. Further, MSHA could decide to conduct the additional or repeated tests at the applicant's expense. The applicant would have to supply any additional components necessary for testing and evaluation. Without a complete application, MSHA would be unable to initiate the technical review of the product.

After determining that an application package is complete, MSHA would initiate a technical review to ensure that the independent laboratory's testing and evaluation results were both reasonable and appropriate for the particular product. If the technical review of the package indicated deficiencies resulting from inadequate data, illogical or unreasonable testing or evaluation results, or the omission of required information, the applicant would be notified of the discrepancy and given a reasonable period of time to provide the needed information and correct the apparent deficiency. If MSHA determined that additional or repeat testing would be required, the applicant would have to arrange for any additional or repeat tests and notify MSHA of the location, date and time of the test(s). MSHA could elect to observe additional testing conducted by an independent laboratory or MSHA could conduct the additional or repeat tests at the applicant's expense. The applicant would need to supply any additional components necessary for testing and evaluation.

Following the administrative and technical reviews of the product approval package, MSHA would issue an approval, or a notice denying approval, to the applicant. A notice denying approval would state the reasons on which the denial was based. If an approval were issued, the approval holder would be authorized and required to place an MSHA marking on the product which signifies to the user of the product that it is approved for use in gassy underground mines. The product drawings and specifications, the independent laboratory's testing and evaluation results and its statement of product compliance with the applicable approval requirements, as well as written evidence of the laboratory's independence and current recognition by an accrediting organization, would be retained in the approval file at MSHA's Approval and Certification Center.

Section 6.10(d) of the 1994 proposed rule would have required that approved products tested and evaluated by NRTLs display both the NRTL and the MSHA marks. Commenters objected to what they considered duplicative and confusing markings and raised issues about changes to products, liability, and proper use of a registered certification mark. Because this proposed rule would eliminate the required use of NRTLs to test and evaluate, the 1994 proposed rule provision for a NRTL marking would no longer be necessary. As a result, the revised proposed rule would not require that manufacturers use the mark of the independent laboratory that tested and evaluated the product or its

components. However, nothing in this proposed rule would prohibit a manufacturer from using the mark of an independent laboratory if it chose to do so, as long as it carries the MSHA mark as well. Since the MSHA marking is the only marking that approval holders would be required to place on approved products, the marking provision of § 6.10(d) of the 1994 proposed rule has been deleted in this proposed rule because each applicable approval part contains its own marking requirement. Further, the requirement that a reference be made on the NRTL marking to the test standard used in testing and evaluation of the product for MSHA approval has also been deleted.

Paragraph (e) in the 1994 proposed rule would have required internal audits, performed by a NRTL as part of the quality control program required by the OSHA accreditation, to be made available for review by MSHA. Additionally, the 1994 proposed paragraph (f) would have required NRTLs recognized by OSHA to perform MSHA testing and evaluation to formulate and implement a ''follow-up'' program in accordance with the OSHA requirements of 29 CFR 1910.7(b)(2). The 1994 proposed paragraph (g) would also have required that NRTLs make available to MSHA for review information gathered by a NRTL during manufacturing site inspections or field audits of manufactured products approved by MSHA. These three provisions, relating to the mandatory use of NRTLs, have not been included in this proposed rule since MSHA is no longer requiring the exclusive use of NRTLs.

Revised proposed paragraph (e), consistent with the 1994 proposed paragraph (g), would require that approval holders of products approved based on independent laboratory testing and evaluation make such products available for audit upon request by MSHA. This would not occur more than once a year, except for cause. Such an audit would be conducted at a mutually agreeable site at no cost to MSHA. This is to ensure that products bearing the MSHA marking meet the approval requirements and are manufactured in accordance with the approved drawings and specifications. Commenters were concerned that the frequency of audits required by the NRTL would lead to excessive costs and operational delays caused by the diversion of resources and the frequent presence of auditors on site. These commenters maintained that NRTL audits would duplicate audits conducted by MSHA. In response to comments, MSHA has deleted the requirement for the exclusive use of NRTLs in the proposed rule and, by doing so, has eliminated the need for NRTL-mandated audits. Although MSHA would no longer specifically require manufacturers to adhere to audits required by independent laboratories, MSHA recognizes that most manufacturers who elect to have their products listed (approved) by independent laboratories generally accept those laboratories' audit requirements to maintain their listing.

MSHA would continue to conduct audits as part of its post-approval product audit program. MSHA conducts audits to ensure conformity with the technical requirements upon which the approval was based. Approved products to be audited by MSHA would be selected by the Agency as representative of those distributed for use in underground mines. When an approved product is requested by MSHA for audit from the approval holder, the Agency would arrange to examine and evaluate it at a mutually agreed upon time and location and would permit the approval holder to observe audit-related tests conducted. This examination and evaluation could take place at an MSHA facility, at the manufacturer's plant or distribution center, or at any other place agreed upon by MSHA and the approval holder. The approval holder would be able to obtain the report resulting from such audits.

A commenter expressed concern that MSHA's post-approval product audits would serve only to remove foreign approved products after a defective product is found and had possibly caused serious harm. The commenter suggested that the rule should provide ''proactive'' protection that is designed to root out such problems before they cause injury and destruction, particularly when MSHA-approved foreign products are involved. In response, MSHA believes that safeguards would be in place to detect a problem prior to a product being placed in a mine. The independent laboratory, either foreign or domestic, would have to be recognized by a laboratory accrediting organization, such as OSHA's NRTL Program, A2LA, or IEC, to test and evaluate products to specific product safety standards.

Additionally, product testing and evaluation performed by both foreign and domestic laboratories for purposes of MSHA approval would have to comply with MSHA product approval requirements. In this regard, under this proposed rule, MSHA would carefully review all product testing and evaluation reports submitted in support of product approval applications prior to an approval decision being made. This would ensure that such testing and evaluation had been performed in accordance with MSHA procedures and requirements. Finally, the manufacturer would be ultimately responsible for any product, under any of the approval parts covered, regardless of who performs the testing (*i.e.*, foreign or domestic independent laboratory or MSHA). Once the product is in the mine, the mine operator is required to maintain the product in approved condition.

This proposed rule would allow MSHA to more effectively determine whether products are, in fact, being manufactured as approved. MSHA, not the manufacturer, would select the product. MSHA also would continue to obtain approved products from sources other than the manufacturer. This approach is particularly useful for products that are ''one of a kind'' or of limited distribution. Because these products are not readily found at mine suppliers or distributors, they would be difficult to locate without the assistance of the approval holder.

In determining which approved products would be subject to audit at any particular time, MSHA would consider a variety of factors such as whether the manufacturer has previously produced the approved product or similar products, whether the approved product is new or part of a new product line, or whether the approved product is intended for a unique application or limited distribution. Other considerations could include product complexity, the manufacturer's previous product audit results, product population in the mining community, and the time since the last audit or since the product was first approved.

Based on MSHA's experience, the Agency anticipates few instances in which more than one approved product would be required to be audited ''for cause'' from any one manufacturer in any one year. There are circumstances or causes, however, under which additional products for audit may be necessary to ascertain compliance with the technical requirements upon which an approval was based. Examples of such circumstances include verified complaints about the safety of an approved product, evidence of product changes that have not been approved, audit test results that warrant further testing to determine compliance, and evaluation of corrective action taken by an approval holder. Under these circumstances, the approval holder would have to provide, at no cost to MSHA, additional approved products so the Agency could ensure that the

approval holder is meeting its obligation to manufacture the product as approved.

When discrepancies are found during MSHA audits of approved products, MSHA would require that the manufacturer take all necessary corrective actions. These actions could include, but are not limited to, the approval holder recalling or retrofitting the approved product involved, and issuing notices of such action to users. Revocation of the approval by MSHA may result when discrepancies in approved products are not corrected.

Revised paragraph (f), is based in part on the 1994 proposed paragraph (f). It would require approval holders to notify MSHA of all product defects they discover, once products are approved. We received very little comment on this section of the 1994 proposed rule. It would be retained as revised proposed paragraph (f).

One commenter suggested that MSHA be more specific about what is considered a ''defect.'' A defect is a nonconformance with the MSHA approved design, including any drawings and specifications. There are varying degrees of significance of defects. It would be MSHA's intent that all defects be reported to the Agency.

Because the use of products with defects could create hazards underground, immediate notification should be made by expedient means, such as by telephone, e-mail, or fax. The telephone notification should be followed-up in writing. The oral and written notification should include a description of the nature and extent of the problem.

In the 1994 proposed rule, paragraph (h) would have required that approval holders submit to MSHA any change to an approved product from the documentation on file at MSHA that affects the technical requirements of the applicable product approval part. MSHA recognizes that changes to approved products are addressed in the individual approval parts. Therefore, the 1994 proposed provision was not included in this revised proposed rule.

In response to comments, it is not the Agency's intent to change its current method of handling requests for modification of approval. MSHA would continue to accept changes through its Revised Approval Modification Program (RAMP), which replaced the Stamped Notification Acceptance Program (SNAP) and the Stamped Revision Acceptance (SRA) program.

The 1994 proposed paragraph (i) would have established the basis and procedures for revocation of NRTL recognition. One commenter asked what would happen if a laboratory's recognition was revoked by OSHA and wanted to know the effect on the approvals (listings) granted by that laboratory. This provision has been deleted in this proposed rule because MSHA would no longer be requiring NRTL recognition. Moreover, revocation of a NRTL recognition or accreditation of an independent laboratory may not necessarily impact the validity of the approval. However, if MSHA believes that the reason for the revocation could affect the safety of products tested, MSHA would take appropriate action on a case-by-case basis. The Agency reserves the right, under every applicable part, to rescind, for cause, any product approval, certification, acceptance, or extension granted under that part.

Section 6.20 MSHA Acceptance of Equivalent Non-MSHA Product Safety Standards.

Section 6.20(a) of this proposed rule is similar to the 1994 proposed § 6.20(a) and states that MSHA would accept non-MSHA product safety standards, or group of standards, as equivalent after determining that they: (1) provide at least the same degree of protection as MSHA's product approval requirements set forth for the product in other parts of this chapter; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements.

Paragraph (b) of this proposed rule provides that MSHA would publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input. This provision has been added in response to comments to the 1994 proposed rule. Many commenters expressed a desire to have input into the equivalency decision-making process. One commenter even proposed that the Agency use the Mine Act's section 101(c) process for petitions for modification of standards. Although MSHA has provided for public input into the equivalency process, it has not accepted the suggestion that the agency use the section 101(c) procedures. Section 101(c) provides that mine operators or miner representatives, not equipment manufacturers, may request that MSHA accept a safety practice that varies from that prescribed by a standard as long as it provides at least the same measure of protection to the miners. MSHA does not interpret this section to allow equipment manufacturers to petition the Agency for the use of non-MSHA product safety standards for products to be used in multiple mines. MSHA encourages public input in the equivalency process. It would solicit such input through a **Federal Register** notice once it decides to evaluate a particular standard or group of standards for equivalency. Because MSHA is solely responsible for the approval of mining products under the Mine Act, MSHA would retain the ultimate decision on equivalency.

Paragraph (c) of this proposed rule would require that MSHA publish a listing of all final equivalency determinations in this part 6 and the applicable approval parts. The listing would state whether MSHA accepts the non-MSHA product safety standards in their original form, or would require modifications to demonstrate equivalency. If modifications were required, they would also be provided in the listing. MSHA would notify the public of each equivalency determination and would publish a summary of the basis for its determination in the Federal Register. MSHA would provide complete equivalency determination reports upon request to the Approval and Certification Center.

Paragraph (d) of this proposed rule would require that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations in the **Federal Register**, applicants could seek MSHA product approval based on such non-MSHA product safety standards.

Non-MSHA product safety standards would be considered equivalent when MSHA determines that, in their original or modified form, they provide at least the same degree of protection as MSHA's product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter.

The Agency believes that this proposed rule would encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In addition, testing and evaluation to ''equivalent'' standards, that provide at least the same degree of protection to miners as those in the various MSHA product approval regulations could achieve multiple objectives. These would include metric conversion, greater compatibility with international standards, and a more competitive posture for U.S. products in the international market.

There was general agreement with the concept of MSHA approving products based on equivalent non-MSHA product safety standards, but many concerns about how it would be implemented. One commenter stated, ''We certainly advocate expanding the design and testing standards that MSHA can accept.'' The commenter went on to

point out practical problems in doing so. Another commenter stated that its organization ''advocates MSHA acceptance of standards other than those developed exclusively by the agency as the basis for approval of products,'' but then stated that MSHA should limit the number of standards for which they would make equivalency determinations. Others echoed this opinion.

Commenters expressed concern about how MSHA would select the standards to receive priority for equivalency determinations. MSHA agrees with commenters that there should be a system for determining the order in which MSHA selects standards for equivalency determinations. Revised proposed § 6.20 provides that MSHA would determine which non-MSHA product safety standards, or groups of standards, were equivalent or could be modified to be equivalent. The decision to perform an equivalency evaluation would be based on MSHA's determination of the overall value of conducting the evaluation. It is MSHA's intention to base its decision on factors such as the number of potential applications for approval using a particular non-MSHA product safety standard, the number of potential products affected, and its knowledge of the standard and the potential for it being equivalent. MSHA began this process some time ago in order to compare its approval requirements to those of other organizations because of the increasing use of those non-MSHA product safety standards in international trade and because of requests from the public. The equivalency analysis would be conducted by the Agency's Approval and Certification Center using personnel with expertise in the approval requirements involved.

Many commenters asked that MSHA adopt international standards without requiring any modifications. They argued that standards such as those of the IEC are widely accepted, even where they differ from MSHA's. It should be noted that most countries that utilize the base IEC standards modify them through national deviations that recognize each country's unique conditions and needs. These national deviations sometime conflict with each other, making adoption of a single global standard impractical. In addition, the base IEC standards may not provide at least the same degree of protection as MSHA's existing product approval requirements. MSHA's equivalency determinations would be based on the objectives of its product approval requirements and the hazards they were designed to address. Section 101(a)(9) of the Mine Act provides that no new standard can reduce the protection afforded miners by an existing standard. For this reason, MSHA must assure that any non-MSHA product safety standard provides at least the same degree of protection for the miners who may use the product approved under that standard. MSHA cannot accept product safety standards, domestic or international, without determining whether they are equivalent or whether some modifications to those product safety standards are needed to achieve the objectives of the existing MSHA product approval requirements. While certain standards, including those accepted by other mining agencies, may be equivalent, MSHA must make that determination on a standard-by-standard basis. It is MSHA's belief that certain product safety standards may well be equivalent without modifications; others may require modification. The Agency would have to do a systematic analysis first to make this determination.

MSHA's equivalency analysis would compare the subject product safety standards, whether domestic or international, and MSHA's applicable product approval requirements. Where they differ, each difference would be examined to assess its effect on overall safety, and the differences as a whole would be assessed. Where the differences do not impact the objectives of the MSHA requirements, MSHA would issue a determination that the standard is equivalent to MSHA's approval requirements. However, if certain design criteria or performance requirements fail to meet MSHA's objectives or could diminish the safety of the product in underground mines, MSHA would specify the modifications necessary to reconcile the differences between the two so that at least the same degree of protection is provided.

Some commenters argued for the use of international standards and suggested that MSHA take a more active role on international standards committees to assure that product safety standards issued by these bodies reflect MSHA requirements, making it unnecessary for MSHA to add modifications. Others were concerned that MSHA would select the most stringent requirements from the MSHA approval requirements and from the non-MSHA product safety standards of other bodies, thus creating a hybrid regulation which would be more stringent, but not necessarily safer. Others stated that MSHA had not demonstrated that its approval requirements were safer than those of other bodies.

Under this proposed rule, when MSHA evaluates a product safety standard to determine equivalency, the Agency would be looking at the standard as a whole and whether it meets the objectives of MSHA's applicable product approval requirements. The Agency recognizes that some non-MSHA product safety standards may have more stringent provisions than MSHA's comparable approval requirements. However, it is not the Agency's intention to require more stringent protections where a non-MSHA product safety standard may afford them. MSHA intends to require modifications only where the non-MSHA standard does not provide equivalent protection. For manufacturers who choose to design products to more stringent standards, for purposes other than MSHA approval, this proposed rule would provide the vehicle for them to obtain MSHA approval even if their products were not designed specifically to MSHA's approval requirements. It is not the Agency's intention to develop a ''hybrid'' regulation, choosing the most stringent requirements from both the MSHA requirements and non-MSHA standards, as some commenters feared. The wording in the 1994 proposed § 6.20(b) would have required modifications to provide the ''same or a greater degree of protection'' as the applicable product approval requirements. This proposed rule, on the other hand, would require modifications to provide at least the same degree of protection as MSHA's product approval requirements.

One commenter expressed concern that MSHA would require the use of its procedures for equivalent standards, by way of modifications, thus creating a standard that would be the same as MSHA's. MSHA does not plan to specify test procedures or protocols for non-MSHA product safety standards determined to be equivalent. The equivalency determination would be based on the overall safety provided by the standard and the ability of the standard to address the hazards the MSHA requirements were designed to address. A non-MSHA product safety standard could be considered equivalent even though all or portions of its testing and evaluation requirements and procedures may differ from MSHA's requirements.

Under this proposed rule, after MSHA has determined that equivalent requirements exist or that certain requirements, other than those in MSHA approval regulations, can be modified to provide at least the same degree of protection, the applicant would be given

the option of requesting that MSHA base its approval on the equivalent, non-MSHA product safety standard, instead of on MSHA's applicable product approval requirements. This option would benefit manufacturers by permitting them to design products to a single set of requirements for sale in multiple markets (domestic and international as well as mining and non-mining applications).

Because this proposed rule would permit approval of mining equipment intended to compete in multiple market areas with differing approval requirements, the approved product design would incorporate the highest level of safety required by any of the intended market areas. For example, if the target areas include mining and non-mining markets, and the non-mining market has a product safety standard with more stringent approval requirements than MSHA for a specific product, MSHA could, at the request of the applicant, issue an approval based on the more stringent requirements. The approval documentation would state that the product fulfills both the more stringent requirements in the non-mining standard and MSHA's approval requirements. In this case, the approved product sold in mining markets would provide a greater degree of protection than that specified by MSHA under existing requirements. Should the non-mining market have product safety standards which are, in some aspects, less stringent than those of MSHA, the applicant would be required to fulfill the non-mining standards' requirements and, in addition, all other requirements deemed necessary to ensure that the product provides at least the same degree of protection demanded by the MSHA approval requirements. In this situation, the approved product would exceed the safety requirements of the non-mining standard and meet those of MSHA's. The same analysis would apply if the targeted areas were foreign and domestic markets.

In these situations, MSHA's approval documentation would show that the product had fulfilled the requirements of any non-MSHA product safety standard and those of MSHA. In the first instance, the product marketed in the non-mining application would embody a higher level of safety, while in the second instance it would embody equivalent safety. In no case would the product provide less protection than mandated by MSHA approval requirements.

The following example illustrates how MSHA would evaluate non-MSHA product safety standards to determine if they provide at least the same degree of protection as MSHA's product approval requirements. MSHA's approval regulation under 30 CFR part 18 performs explosion testing of explosion-proof enclosures using a methane-in-air mixture. The IEC explosion-proof enclosure standard (IEC 60079–1) requires the use of more sensitive test gases. That standard specifies the use of methane to determine ''reference pressures'' and uses a hydrogen/methane fuel mixture to test for flame propagation. The tests used in both MSHA requirements and the IEC standard produce higher pressures/temperatures than would occur during normal operation.

One obvious difference in the two test protocols is MSHA's criterion to observe for the ''discharge of flame'' (hot glowing gases) during any of the tests. The IEC standard does not have this requirement. The reason for this difference is that MSHA tests enclosures ''as manufactured'' without any intentional gaps and, unlike the IEC, does not require flamepath gaps to be enlarged to the maximum specified by design. Therefore, during MSHA testing, flamepaths are not forced open to any appreciable amount, unless there are defects or weaknesses in the enclosure. This is important because MSHA's requirements do not contain provisions for regular prototype pressure testing to supplement the explosion tests, as do the IEC requirements. Such pressure testing is specifically designed to identify faulty products over a broader range of pressures than can be achieved by the MSHA explosion testing protocol.

Considering the above discussion, MSHA's explosion testing protocol, with combustible mixtures of methane as the test gas and using the discharge of flame as an additional criterion to flame propagation for test failure, sets a high evaluation standard for explosion-proof enclosures used on mining equipment in the U.S. However, testing is accomplished without introducing intentional flamepath flange gaps. In contrast, the IEC standard requires that tests be conducted with flamepath gaps intentionally enlarged to within 80% to 100% of the maximum specified design. Thus, the IEC test standard allows for luminous flame to pass, but with insufficient energy to ignite the surrounding atmosphere and uses a more easily ignitable test gas than methane. This concession is significant when flamepath gaps are purposely enlarged for testing. Such a practice could produce non-incendive luminous gas discharges during testing, which would be considered unacceptable under MSHA test protocols. MSHA has no evidence that such a non-incendive luminous gas discharge is unsafe. The MSHA requirement and the IEC standard could be considered equivalent because the MSHA requirement to observe no discharge of flame is offset by the IEC's use of a more easily ignitable test gas and intentional gap enlargement.

With all other factors equal, MSHA could consider the explosion test specified by IEC to be equivalent to the explosion test procedure followed by MSHA in fulfillment of 30 CFR 18.62. In this manner a single test could verify conformity to the test requirements of both product standards with no reduction of safety in either case. This example highlights the methods that would be employed by MSHA when determining if a non-MSHA product safety standard provides at least the same degree of protection as MSHA's product approval requirements. In like fashion, other differences between MSHA requirements and the IEC standards would be analyzed to determine if they are equivalent or if modifications to the IEC standards would be required.

This same process would be applied to all non-MSHA product safety standards that would be evaluated for equivalency. For example, MSHA requires that a component in an intrinsically safe circuit be tested to determine that it would not overheat under fault conditions and ignite a layer of coal dust. UL requires the product to be marked with a maximum temperature rating (also called a ''T-Code'') or tested using a different ignitable dust or gas. MSHA would determine if the temperature rating is below the minimum ignition temperature of a coal dust layer or if the specified dust layer (*e.g.*, grain dust) used in the test has a lower ignition temperature than a coal dust layer currently used in MSHA tests. If equivalency could not be determined, MSHA would require an additional test using a layer of a specified type and size of coal dust to ensure at least the same degree of protection is provided.

MSHA anticipates that savings from use of equivalent non-MSHA product safety standards could reduce the manufacturer's unit cost by permitting more standardized construction and, thus, improve the manufacturer's competitive position. This, together with the need to provide products meeting the highest level of safety demanded by the market areas of interest, could encourage a more rapid introduction of mining products embodying new technology with enhanced safety features. In general, this

proposed rule should provide increased opportunity for direct competition leading to improved safety and performance quality in mining products.

Many commenters agreed that the equivalency provision would permit manufacturers to design a machine or product to a single set of requirements, rather than designing separate machines to comply with the separate requirements of each market place in which business is sought. However, a few commenters were concerned that foreign manufacturers would have an advantage over U.S. manufacturers. One commenter stated that ''if a foreign manufacturer's product(s) met different standards, which MSHA considered equal to or more stringent than the proposed U.S. standard and was granted ''equivalency'' before domestic manufacturers were able to have their revised specifications tested and approved, the foreign manufacturer would enjoy a competitive advantage in the U.S. market.'' The commenter believed that rather than not discriminating between U.S. and foreign manufacturers, the 1994 proposed rule would actually discriminate against U.S. manufacturers. The commenter concluded that MSHA must not favor foreign manufacturers with the competitive advantage or weaken their own audit responsibility to grant unregulated equivalency. Another commenter stated that if a conveyor belt had been approved under a non-MSHA product safety standard which MSHA considered to be equivalent to its requirements, then the submission of those test results and approval details to MSHA would result in that manufacturer being granted an MSHA approval without requiring any MSHA review.

The Agency believes that these commenters misunderstood the intent of the provision. They interpreted the 1994 proposed language to mean that if a non-MSHA product safety standard was determined to be equivalent by MSHA, foreign manufacturers of that product would receive automatic approval by MSHA without further review of the product. This is not the case. Under both the 1994 proposed rule and this revised proposed rule, manufacturers would still be required to apply for MSHA approval of their products, but then could have MSHA base the approval on either MSHA approval requirements or the equivalent non-MSHA product safety standards. MSHA would retain the responsibility of approving or denying an application based on all information submitted in the application.

As is the case with existing MSHA approval regulations, this proposed rule would not discriminate between U.S. and foreign manufacturers. Any manufacturer, either domestic or foreign, wishing to acquire an MSHA product approval would be able to take advantage of this ''equivalency'' program.

Further, this proposed rule would be consistent with the North American Free Trade Agreement and the Agreement on Technical Barriers to Trade (TBT).

Equivalency Under Part 7

MSHA has proposed to add the equivalency concept to part 7 which would operate like the provision for equivalency in proposed § 6.20.

Under this new proposed section, § 7.2 would be amended by adding a new definition of ''equivalent non-MSHA product safety standard.'' This term would be used to describe a non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA technical requirements in the subparts of part 7. This definition would be essentially the same as that in § 6.2 of proposed part 6.

Section 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

New proposed § 7.10(a) is similar to the revised proposed § 6.20(a) and would provide that MSHA would accept non-MSHA product safety standards, or group of standards, as equivalent after determining that they: (1) Provide at least the same degree of protection as MSHA's technical requirements for the products in other subparts of this part; or (2) can be modified to provide at least the same degree of protection as those MSHA requirements.

Paragraph (b) of the new proposed § 7.10 would provide that MSHA publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

Paragraph (c) of the proposed § 7.10 would provide that MSHA publish a listing of all equivalency determinations for this part 7. The listing would state whether MSHA accepts the non-MSHA product safety standards in their original form, or would require modifications to demonstrate equivalency. If modifications were required, they would also be included in this listing for this part 7. MSHA would notify the public of each equivalency determination and would publish a summary of the basis for its determination in the **Federal Register**. MSHA would provide complete equivalency determination reports upon request to the Approval and Certification Center.

Paragraph (d) of the new proposed § 7.10 would provide that after MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants could seek MSHA product approval based on such non-MSHA product safety standards.

MSHA is aware of some foreign and domestic non-MSHA product safety standards that could be used to test and evaluate products approved under the various subparts of part 7. These standards are used in other countries and other industries. Some of these non-MSHA product safety standards could provide at least the same degree of protection as MSHA requirements and could provide consistent, repeatable test results.

MSHA intends to operate its proposed equivalency program under part 7, the same as previously described in the discussion of proposed § 6.20 on equivalency.

Derivation Table

The following derivation table lists: (1) Each section number of this proposed rule and (2) The section number of the 1994 proposed rule from which the section is derived.

DERIVATION TABLE

This Proposed Rule	1994 Proposed Rule
6.1	6.1 & 6.10
6.2 (revised)	6.2
6.10(a) (revised)	6.10(a)
6.10(b) (revised)	6.10(b)
6.10(c) (revised)	6.10(b)
6.10(d) (revised)	6.10(c)
Removed	6.10(d)
Removed	6.10(e)
6.10(e) (revised)	6.10(g)
6.10(f) (revised)	6.10(f)
Removed	6.10(h)
Removed	6.10(i)
6.20(a) (revised)	6.20(a) & (b)
6.20(b)	New
6.20(c) (revised)	6.20(c)
6.20(d) (revised)	6.20(a)
7.2	New
7.10	New
18.6(a)(2) (revised)	18.6(a)(2)
18.6(a)(3) (revised)	18.6(a)(3)
18.6(a)(4) (revised)	18.6(a)(4)
18.15(a)(2) revised)	18.15(a)(2)
19.3 (revised)	19.3
19.13(a)(revised)	19.13(a)
20.3 (revised)	20.3
20.14(a) revised)	20.14(a)
Removed	21.4(a), (b), & (c)
Removed	21.10(a)
22.4 (revised)	22.4
22.11(a) (revised)	22.11(a)

DERIVATION TABLE—Continued

This Proposed Rule	1994 Proposed Rule
23.3 (revised)	23.3
23.14(a) (revised)	23.14(a)
Removed	26.8(a)
Removed	26.19(a)
27.4(a) (revised)	27.4(a)
27.11(a)(revised)	27.11(a)
Removed	29.11(a)
Removed	29.35(a)
33.6(a) (revised)	33.6(a)
33.12(a) (revised)	33.12(a)
35.6(a) (revised)	35.6(a)
35.12(a)(revised)	35.12(a)
36.6(a)	New
36.12(a)	New

Distribution Table

The following distribution table lists: (1) each section number of the 1994 proposed rule and (2) the section number of this proposed rule which contains provisions derived from the corresponding 1994 proposed sections.

DISTRIBUTION TABLE

1994 Proposed Rule	This Proposed Rule
6.1 & 6.10	6.1
6.2	6.2 (revised)
6.10(a)	6.10(a) (revised)
6.10(b)	6.10(b), (c) (revised)
6.10(c)	6.10(d) (revised)
6.10(d)	Removed
6.10(e)	Removed
6.10(f)	6.10(f) (revised)
6.10(g)	6.10(e) (revised)
6.10(h)	Removed
6.10(i)	Removed
6.20(a)	6.20(a), (d) (revised)
6.20(b)	6.20(a) (revised)
6.20(c)	6.20(c) (revised)
18.6(a)(2)	18.6(a)(2) (revised)
18.6(a)(3)	18.6(a)(3) (revised)
18.6(a)(4)	18.6(a)(4) (revised)
18.15(a)(2)	18.15(a)(2) revised)
19.3	19.3 (revised)
19.13(a)	19.13(a) (revised)
20.3	20.3 (revised)
20.14(a)	20.14(a) revised)
21.4(a), (b), & (c)	Removed
21.10(a)	Removed
22.4	22.4 (revised)
22.11(a)	22.11(a) (revised)
23.3	23.3 (revised)
23.14(a)	23.14(a) (revised)
26.8(a)	Removed
26.19(a)	Removed
27.4(a)	27.4(a) (revised)
27.11(a)	27.11(a) (revised)
29.11(a)	Removed
29.35(a)	Removed
33.6(a)	33.6(a) (revised)
33.12(a)	33.12(a) (revised)
35.6(a)	35.6(a) (revised)
35.12(a)	35.12(a) (revised)

IV. Paperwork Reduction Act

This proposed rule would result in a total of approximately 29 burden hours and $645 dollars of related costs. A breakdown of the burden hours and related costs by provision and by applicant size can be found in Chapter VII of the Preliminary Regulatory Economic Analysis (PREA) supporting this proposed rule. The paperwork requirements for applications for approval by MSHA of products and equipment under 30 CFR parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 are cleared under OMB Control Number 1219–0066. The PREA is located on our Web site at *http://www.msha.gov/REGSINFO.HTM.* Comments may be sent to the addresses listed in the **ADDRESSES** section of the preamble.

Under § 6.10 applicants would have to provide information stated in paragraphs (a)(1) through (a)(4) for MSHA to accept testing and evaluation performed by an independent laboratory. Currently, applicants must submit only information requested in paragraph (a)(4). If applicants choose to use independent laboratories, information requested in paragraphs (a)(1) through (a)(3) would be needed because MSHA would no longer be performing all the testing and evaluation associated with the approval application. Providing the information under § 6.10(a)(1) through (a)(3) would result in a total of approximately 24 burden hours and $457 of associated costs.

Section 6.10(d) states that after review of the information required under paragraph (a)(1) through (a)(4), MSHA would notify the applicant if additional information and testing were required. If an independent laboratory conducts any additional or repeat testing, then the applicant would have to send the test results to MSHA. Sending any additional or repeat testing results to MSHA under § 6.10(d) would result in a total of 2 burden hours and $39 of associated costs.

Section 6.10(g) states that, once the product is approved, the approval holder would have to notify MSHA of all product defects of which the approval holder is aware. Notification is assumed to be in the form of a letter to MSHA. Notifying MSHA of product defects under § 6.10(g) would result in a total of 3 burden hours and $149 of associated costs.

V. Executive Order 12866

A. Compliance Costs

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of proposed regulations. MSHA has determined that this proposed rule does not meet the criteria of an economically significant regulatory action pursuant to Executive Order 12866 § 3(f)(1) in that it would not have an effect on the economy of $100 million or otherwise have any material adverse effect. Although this proposed rule is not an economically significant action, MSHA has completed a PREA in which the economic impact of the proposed rule is estimated. For a complete breakdown of the compliance costs for this proposed rule see Chapter IV of the PREA. The PREA is available from MSHA and is summarized as follows.

The proposed rule would result in an annual net cost savings of about $1.5 million. Applicants seeking MSHA product approval employing 500 or fewer workers would realize a net cost savings of $0.66 million. Applicants employing more than 500 workers would realize a net cost savings of $0.86 million.

The net cost savings of $0.66 million, for applicants employing 500 or fewer workers, would consist of cost savings of $0.68 million and compliance costs of $0.02 million. The net cost savings of $0.86 million, for applicants employing more than 500 workers, would consist of cost savings of $0.88 million and compliance costs of $0.02 million.

B. Benefits

This proposed rule should encourage non-mining manufacturers with products that could be applicable to mining to apply for approvals. The proposed modification of the approval process would expedite the introduction of technologically-advanced products into the mine, thus improving miner safety. Finally, the rule would reduce applicants' costs by eliminating repeat testing and evaluation and the need for multiple product lines. For a more complete discussion of the Benefits of this proposed rule, see Chapter III of the PREA.

VI. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small entity and publishes that definition in the **Federal Register** for notice and comment.

For the mining industry, SBA defines ''small'' as a mine with 500 or fewer workers. In addition, most applicants

(manufacturers) that file for an MSHA approval for their products operate in industries such as those involved in measurement, analysis, controlling instruments, photographic instruments, commercial and industrial lighting fixtures, and conveyors. SBA considers the small business size standard for such industries to be 500 or fewer employees. To ensure that this proposed rule conforms to the RFA, MSHA has analyzed the economic impact of the proposed rule on small entities that are defined as those employing 500 or fewer workers.

A. Factual Basis for Certification

Based on its analysis, MSHA has preliminarily determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in Chapter V of the PREA.

B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the revised proposed rule does not include any Federal mandate that would result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than $100 million. MSHA is not aware of any State, local, or tribal governments which manufacture products applicable to mining.

C. Executive Order 13132 (Federalism)

MSHA has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it would not have ''federalism implications.'' The 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.'' MSHA is not aware of any State or local governments which manufacture products applicable to mining.

D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effect of this proposed rule on children. The Agency has determined that the proposed rule would not have an adverse impact on children.

E. Executive Order 13175 (Indian Tribal Governments)

MSHA certifies that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any tribal governments which manufacture products applicable to mining.

F. Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it would not involve implementation of a policy with takings implications.

G. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this proposed rule would not unduly burden the Federal court system. The proposed rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13211 (Energy)

In accordance with Executive Order 13211, MSHA has reviewed this proposed rule for its energy impacts. MSHA has determined that this proposed rule would not have any adverse effects on energy supply, distribution, or use.

I. Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of the PREA, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VII. Conduct of Public Hearings

The hearings will be conducted in an informal manner. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel may ask questions of speakers. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited.

The hearings will begin at 9 a.m. and end after the last scheduled speaker appears; and in any event, not later than 5 p.m.

A verbatim transcript of the proceedings will be prepared and made a part of the rulemaking record. Copies of the transcript will be available to the public. The transcript will also be available on MSHA's Web page at *http://www.msha.gov,* under Statutory and Regulatory Information.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements. Written comments will be included in the rulemaking record.

VIII. Close of Post-hearing Comment Period

The post-hearing comment period will close on February 10, 2003.

List of Subjects in 30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

Mine safety and health, Testing and evaluation by independent laboratories and the use of equivalent Non-MSHA product safety standards, Testing by applicant or third party.

Signed at Arlington, Virginia, this 4th day of October, 2002.

John R. Caylor,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 6 is added to read as follows:

PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND THE USE OF EQUIVALENT NON-MSHA PRODUCT SAFETY STANDARDS

Sec.
6.1 Purpose and effective date.
6.2 Definitions.
6.10 Use of independent laboratories.
6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

Authority: 30 U.S.C. 957.

§ 6.1 Purpose and effective date.

This part sets out alternate requirements for testing and evaluation of products MSHA approves for use in gassy underground mines. It permits manufacturers of certain products who seek MSHA approval to use an

independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval. It also permits manufacturers to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The provisions of this part may be used by applicants for product approval under parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 of this chapter. This part is effective [60 days after publication of the final rule in the **Federal Register**.]

§ 6.2 Definitions.

The following definitions apply in this part.

Applicant. This term is used to describe an individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. This term is used to describe a written document issued by MSHA which states that a product has met the applicable requirements of part 18, 19, 20, 22, 23, 27, 33, 35, or 36 of this chapter. The definition is based on the existing definitions of ''approval'' in the parts specified above. It also includes ''certification'' and ''acceptance'' because these terms also are used to denote MSHA approval.

Approval holder. An applicant whose application for approval of a product under parts 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter has been approved by MSHA.

Equivalent non-MSHA product safety standards. A non-MSHA product safety standard, or group of standards, that is determined by MSHA to provide at least the same degree of protection as the applicable MSHA product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35, and 36 of this chapter, or which in modified form provide at least the same degree of protection.

Independent laboratory. A laboratory that:

(1) Has been recognized by a laboratory accrediting organization to test and evaluate products to a product safety standard, and

(2) Is free from commercial, financial, and other pressures that may influence the results of the testing and evaluation process.

Post-approval product audit. This term applies to the examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the applicable product approval requirements and have been manufactured as approved.

Product safety standard. A document, or group of documents, that specifies the requirements for the testing and evaluation of a product for use in explosive gas and dust atmospheres, and, when appropriate, includes documents addressing the flammability properties of products.

§ 6.10 Use of independent laboratories.

(a) MSHA will accept testing and evaluation performed by an independent laboratory for purposes of MSHA product approval provided that MSHA receives as part of the application:

(1) Written evidence of the laboratory's independence and current recognition by a laboratory accrediting organization;

(2) Complete technical explanation of how the product complies with each requirement in the applicable MSHA product approval requirements;

(3) Identification of components or features of the product that are critical to the safety of the product; and

(4) All documentation, including drawings and specifications, as submitted to the independent laboratory by the applicant and as required by the applicable part under this chapter.

(b) Product testing and evaluation performed by independent laboratories for purposes of MSHA approval must comply with the applicable MSHA product approval requirements.

(c) Product testing and evaluation must be conducted or witnessed by the laboratory's personnel.

(d) After review of the information required under paragraphs (a)(1) through (a)(4) of this section, MSHA will notify the applicant if additional information or testing is required. The applicant must provide this information, arrange any additional or repeat tests and notify MSHA of the location, date, and time of the test(s). MSHA may observe any additional testing conducted by an independent laboratory. Further, MSHA may decide to conduct the additional or repeated tests at the applicant's expense. The applicant must supply any additional components necessary for testing and evaluation.

(e) Upon request by MSHA, but not more than once a year, except for cause, approval holders of products approved based on independent laboratory testing and evaluation must make such products available for post-approval audit at a mutually agreeable site at no cost to MSHA.

(f) Once the product is approved, the approval holder must notify MSHA of all product defects of which they become aware.

§ 6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they:

(1) Provide at least the same degree of protection as MSHA's product approval requirements in parts 18, 19, 20, 22, 23, 27, 33, 35 or 36 of this chapter; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

(c) A listing of all equivalency determinations will be published in this part 6 and the applicable approval parts. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 7—TESTING BY APPLICANT OR THIRD PARTY

2. The authority citation for part 7 continues to read as follows:

Authority: 30 U.S.C. 957.

3. Amend § 7.2 by adding a new definition to read as follows:

§ 7.2 Definitions.

* * * * *

Equivalent non-MSHA product safety standards. A non-MSHA product safety standard, or group of standards, that is determined by MSHA ot provide at least the same degree of protection as the applicable MSHA product technical requirements in the subparts of this part, or can be modified to provide at least the same degree of protection as those MSHA requirements.

* * * * *

4. Amend subpart A by adding a new 7.10 to read as follows:

§ 7.10 MSHA acceptance of equivalent non-MSHA product safety standards.

(a) MSHA will accept non-MSHA product safety standards, or groups of standards, as equivalent after determining that they:

(1) Provide at least the same degree of protection as MSHA's applicable technical requirements for a product in the subparts of this part; or

(2) Can be modified to provide at least the same degree of protection as those MSHA requirements.

(b) MSHA will publish its intent to review any non-MSHA product safety standard for equivalency in the **Federal Register** for the purpose of soliciting public input.

(c) A listing of all equivalency determinations will be published in this part 7. The listing will state whether MSHA accepts the non-MSHA product safety standards in their original form, or whether MSHA will require modifications to demonstrate equivalency. If modifications are required, they will be provided in the listing. MSHA will notify the public of each equivalency determination and will publish a summary of the basis for its determination. MSHA will provide equivalency determination reports to the public upon request to the Approval and Certification Center.

(d) After MSHA has determined that non-MSHA product safety standards are equivalent and has notified the public of such determinations, applicants may seek MSHA product approval based on such non-MSHA product safety standards.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

5. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

5–a. Amend § 18.6 by revising paragraph (a) to read as follows:

§ 18.6 Applications.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

(4) The application, all related documents, and all correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

* * * * *

6. Amend § 18.15 by revising paragraph (a) to read as follows:

§ 18.15 Changes after approval or certification.

* * * * *

(a)(1) Application shall be made as for an original approval or letter of certification requesting that the existing approval or certification be extended to cover the proposed changes and shall be accompanied by drawings, specifications, and related information, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved or certified product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 19—ELECTRIC CAP LAMPS

7. The authority citation for part 19 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

* * * * *

7–a. Revise § 19.3 to read as follows:

§ 19.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation leading to approval of its lamp. This application must be accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees, shall be sent to Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

8. Amend § 19.13 by revising paragraph (a) to read as follows:

§ 19.13 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

9. The authority citation for part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

9–a. Revise § 20.3 to read as follows:

§ 20.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the manufacturer shall make application by letter for an investigation of the lamp. This application must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees. It shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete lamp, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation necessary for approval under this part, the applicant shall include the information required § 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

10. Amend § 20.14 by revising paragraph (a) to read as follows:

§ 20.14 Instructions for handling future changes in lamp design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and describing the change or changes proposed. With this letter the manufacturer should submit a revised drawing or drawings showing the changes in detail, and one of each of the changed lamp parts.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 22—PORTABLE METHANE DETECTORS

11. The authority citation for part 22 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

11–a. Revise § 22.4 to read as follows:

§ 22.4 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any methane detector, the manufacturer shall make application by letter for an investigation leading to approval of the detector. This application must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees. It shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete detector, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

12. Section 22.11 is amended by revising paragraph (a) to read as follows:

§ 22.11 Instructions on handling future changes in design.

* * * * *

(a)(1) The manufacturer must write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 23—TELEPHONES AND SIGNALING DEVICES

13. The authority citation for part 23 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

13–a. Revise § 23.3 to read as follows:

§ 23.3 Applications.

(a) Before MSHA will undertake the active investigation leading to approval of any telephone or signaling device, the manufacturer shall make application by letter for an investigation leading to approval of the device. This application must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees. It shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation.

(b) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(c) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

14. Amend § 23.14 by revising paragraph (a) to read as follows:

§ 23.14 Instructions for handling future changes in design.

* * * * *

(a)(1) The manufacturer shall write to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059, requesting an extension of the original approval and stating the change or changes desired. With this request, the manufacturer should submit a revised drawing or drawings showing the changes in detail, together with one of each of the parts affected.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 27—METHANE-MONITORING SYSTEMS

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

Authority: 30 U.S.C. 957, 961.

15–a. Amend § 27.4 by revising paragraph (a) to read as follows:

§ 27.4 Applications.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application must be accompanied by all drawings, specifications, descriptions, and related materials and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees. The application and all related matters and correspondence concerning it shall be addressed to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this

part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to the product approval requirements under this part.

* * * * *

16. Amend 27.11 by revising paragraph (a) to read as follows:

§ 27.11 Extension of certification.

* * * * *

(a)(1) Application shall be made as for an original certification, requesting that the existing certification be extended to cover the proposed changes. The application shall include complete drawings, specifications, and related data, showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

17. The authority citation for part 33 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

17–a. Amend § 33.6 by revising paragraph (a) to read as follows:

§ 33.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, which must be (except as otherwise provided in paragraph (e) of this section) accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees, and all prescribed drawings, specifications, and all related materials. The application and all related matters and all correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

18. Amend § 33.12 by revising paragraph (a) to read as follows:

§ 33.12 Changes after certification.

* * * * *

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

19. The authority citation for part 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

19–a. Amend § 35.6 by revising paragraph (a) to read as follows:

§ 35.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, which must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees, and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

20. Amend § 35.12 by revising paragraph (a) to read as follows:

§ 35.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

21. The authority for part 36 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

21–a. Amend § 36.6 by revising paragraph (a) to read as follows:

§ 36.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, which must be accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees, and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to the Approval and Certification Center, Rural Route #1, Box 251, Industrial Park Road, Triadelphia, WV 26059.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval under this part, the applicant shall include the information required in 30 CFR 6.10(a).

(3) An applicant may request testing and evaluation to non-MSHA product safety standards which have been determined by MSHA to be equivalent, under § 6.20 of this chapter, to MSHA's product approval requirements under this part.

* * * * *

22. Amend § 36.12 by revising paragraph (a) to read as follows:

§ 36.12 Changes after certification.

* * * * *

(a)(1) Application shall be made, as for an original certificate of approval,

requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used an independent laboratory under part 6 of this chapter to perform, in whole or in part, the necessary testing and evaluation for approval of changes to an approved product under this part, the applicant shall include the information required in 30 CFR 6.10(a).

* * * * *

[FR Doc. 02–25879 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–43–P

Federal Register

Thursday,
October 17, 2002

Part III

Environmental Protection Agency

40 CFR Part 420

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 420

[FRL–7206–7]

RIN 2040–AC90

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Iron and Steel Manufacturing Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule represents the culmination of the Agency's effort to revise Clean Water Act (CWA) effluent limitations guidelines and standards for wastewater discharges from the iron and steel manufacturing industry. The final regulation revises technology-based effluent limitations guidelines and standards for certain wastewater discharges associated with metallurgical cokemaking, sintering, and ironmaking operations; and codifies new effluent limitations guidelines and standards for direct reduced ironmaking, briquetting, and forging. EPA is also revising the regulations for the steelmaking subcategory, to provide an allowance for existing basic oxygen furnaces operating semi-wet air pollution control systems; and to establish technology-based effluent limitations guidelines and standards for electric arc furnaces operating semi-wet pollution control systems. EPA is eliminating rule references to the following obsolete operations: beehive cokemaking in the cokemaking subcategory, ferromanganese blast furnaces in the ironmaking subcategory, and open hearth furnace operations in the steelmaking subcategory. EPA is not revising effluent limitations guidelines and standards for the remaining subcategories within this industrial category: vacuum degassing, continuous casting, hot forming, salt bath descaling, acid pickling, cold forming, alkaline cleaning and hot coating. Nor is EPA codifying a new subcategorization scheme and associated definitions to support the new subcategorization for this industrial category.

EPA expects compliance with this regulation to reduce the discharge of conventional pollutants by at least 351,000 pounds per year and toxic and non-conventional pollutants by at least 1,018,000 pounds per year. EPA estimates the annual cost of the rule will be $12.0 million (pre-tax $2001). EPA estimates that the annual benefits of the rule will range from $1.4 million to $7.3 million ($2001).

DATES: This regulation shall become effective November 18, 2002.

ADDRESSES: The public record for this rulemaking has been established under docket number W–00–25 II and will be located in the Water Docket, East Tower Basement, room #57, 401 M St. SW., Washington, DC 20460 until August 15, 2002. After August 27, 2002 the public record will be located at EPA West, 1301 Constitution Avenue, NW., Room B135, Washington, DC 20460. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials before August 15, call (202) 260–3027 to schedule an appointment. After August 27, call (202) 566–2426. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For technical information concerning today's final rule, contact Mr. George Jett at (202) 566–1070, or Ms. Yu-ting Guilaran at (202) 566–1072. For economic information contact Mr. William Anderson at (202) 566–1008.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include facilities of the following types that discharge pollutants to waters of the U.S.:

Category	Examples of regulated entities	Primary SIC and NAICS codes
Industry	Discharges from facilities engaged in metallurgical cokemaking, sintering, ironmaking, steelmaking, direct reduced ironmaking, briquetting, and forging.	SIC 3312, 3316; NAICS 3311, 3312.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria listed in § 420.01 and the applicability criteria in § 420.10 (metallurgical cokemaking), § 420.40 (steelmaking), and § 420.130 (other operations) of today's rule and applicability criteria in § 420.20 (sintering), § 420.30 (ironmaking), § 420.50 (vacuum degassing), § 420.60 (continuous casting), § 420.70 (hot forming), § 420.80 (salt bath descaling), § 420.90 (acid pickling), § 420.100 (cold forming), § 420.110 (alkaline cleaning), and § 420.120 (hot coating) of Title 40 of the Code of Federal Regulations. The table lists the types of entities that EPA is now aware could potentially be regulated by this action. If you still have questions regarding the applicability of this action to a particular entity (after consulting relevant subsections), consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

In accordance with 40 CFR 23.2, today's rule is promulgated for the purposes of judicial review as of 1 pm Eastern Daylight Time on October 31, 2002. Under section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and standards is available in the United States Circuit Court of Appeals by filing a petition for review within 120 days from the date of promulgation of these guidelines and standards. Under Section 509(b)(2) of the CWA the requirements of this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Compliance Dates

Existing direct dischargers must comply with limitations based on the best practicable control technology currently available (BPT), the best conventional pollutant control technology (BCT), and the best available technology economically achievable (BAT) as soon as their National Pollutant Discharge Elimination System (NDPES) permits include such limitations. Existing indirect dischargers subject to today's regulations must comply with the pretreatment standards for existing sources no later than October 17, 2005. New direct and indirect discharging sources must comply with applicable guidelines and standards on the date the new sources begin discharging. For purposes of new source performance standards (NSPS) and pretreatment standards for new sources (PSNS), a source is a new source if it commenced construction after November 18, 2002.

Supporting Documentation

The final regulations are supported by three major documents:

1. ''Development Document for Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category'' (*EPA–821–R–02–004*), referred to in the preamble as the Technical Development Document (TDD). This TDD presents the technical information that formed the basis for EPA's decisions concerning the final rule. In it, EPA describes, among other things, the data collection activities, the wastewater treatment technology options considered, the pollutants found in the iron and steel manufacturing wastewaters, and the estimation of costs to the industry to comply with the final limitations and standards.

2. ''Economic Analysis of Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category'' (*EPA–821–R–02–006*) referred to in this preamble as the Economic Analysis (EA). The EA estimates the economic and financial costs of compliance with the final regulation on individual process lines, facilities and companies.

3. ''Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category'' (*EPA–821–R–02–005*) referred to as the Environmental Assessment in this preamble.

How To Obtain Supporting Documents

Supporting documents are available on the internet at www.epa.gov/ost/ironsteel and before August 15, 2002 from the Office of Water Resource Center, MC–4100, U.S. EPA, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7786 for publication requests. After August 18, 2002, the Office of Water Resources will be located at 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The telephone number will be 202–566–1729.

Protection of Confidential Business Information (CBI)

EPA notes that certain information and data in the record supporting the final rule have been claimed as CBI and, therefore, are not included in the record that is available to the public in the Water Docket. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential. To support the rulemaking while preserving confidentiality claims, EPA is presenting in the public record certain information in aggregated form or, alternatively, is masking facility identities or employing other strategies. This approach assures that the information in the public record explains the basis for today's final rule without compromising CBI claims.

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I. Legal Authority

The U.S. Environmental Protection Agency is promulgating these regulations under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Legislative Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges for facilities that discharge wastewater through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which pass through, interfere with, or are otherwise incompatible with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to develop and enforce local pretreatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (NPDES) permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

In the regulations, EPA defines BPT effluent limits for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501). EPA has identified 126 pollutants as priority toxic pollutants. See Appendix A to Part 403 (reprinted after 40 CFR 423.17). All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT for discharges from existing industrial point sources. In addition to the other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

3. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (i.e., conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—Section 307(c) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards (''effluent guidelines''); and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published its first Effluent Guidelines Plan (55 FR 80), which established schedules for developing new and revised effluent guidelines for several industry categories.

The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent guidelines (*NRDC, et al.* v. *Reilly,* Civ. No. 89–2980 (D.D.C.)). Plaintiffs and EPA settled the litigation by means of a consent decree entered on January 31, 1992. The consent decree, which has been modified several times, established a schedule by which EPA is to propose and take final action for eleven point source categories identified by name in the decree and for eight other point source categories to be selected by EPA. After completing a preliminary study (EPA 821–R95–037, September 1995) as required by the decree, EPA selected the iron and steel industry as the subject for a revised rule. Under the decree, as modified, the Administrator was required to sign a proposed rule for the iron and steel industry no later than October 31, 2000, and must take final action no later than April 30, 2002.

III. Iron and Steel Manufacturing Industry Effluent Guideline Rulemaking History

A. 1982 Rule and 1984 Amendments

EPA promulgated effluent limitations guidelines and standards for the Iron and Steel Manufacturing Point Source Category, 40 CFR part 420 in May 1982 (47 FR 23258). This rule established BPT, BCT, and BAT effluent limitations that apply to wastewater discharges to waters of the U.S. from existing iron and steel facilities and NSPS limits that apply to wastewater discharges to waters of the U.S. from new iron and steel facilities. It also established pretreatment standards that apply to wastewater discharges to POTWs from existing and new iron and steel facilities (PSES and PSNS).

The 1982 rule was based on an approach that mirrored the sequential process steps through a typical mill. EPA concluded that it was reasonable to establish a subcategorization structure based on the type of manufacturing operation employed. This resulted in twelve subcategories.

The American Iron and Steel Institute, certain members of the iron and steel industry, and NRDC filed petitions to review the 1982 regulation. On February 4, 1983, the parties in the consolidated lawsuit entered into a comprehensive settlement agreement that resolved all issues raised by the petitioners. In accordance with the settlement agreement, EPA modified and clarified certain parts of the Iron and Steel rule and published additional preamble language regarding the rule. The Iron and Steel rule was amended on May 17, 1984 (49 FR 21024). The major changes included in the amendment are discussed in the preamble to the 2000 proposed rule (65 FR 81964–82083) and in Chapter 2 of the Technical Development Document for today's final rule. The 1982 regulation, as amended in 1984, can be found on line at: www.epa.gov/ost/ironsteel/reg.html.

B. Preliminary Study

The Clean Water Act requires EPA to review effluent limitations guidelines and standards periodically to determine whether it is appropriate to revise them. Furthermore, under the consent decree discussed in Section II.B, EPA is also required to undertake rulemaking with respect to the effluent limitations guidelines and standards on a set schedule and was required to complete a study of the iron and steel industry. Accordingly, EPA developed and published the ''Preliminary Study of the Iron and Steel Category'' (EPA 821–R–95–037) in September 1995.

In the preliminary study, EPA assessed the status of the iron and steel industry with respect to the regulation promulgated in 1982 and amended in 1984; identified better performing facilities that use conventional and innovative in-process pollution

prevention and end-of-pipe technologies; estimated possible effluent reduction benefits if the industry were upgraded to the level of better performing facilities; discussed regulatory and implementation issues associated with the current regulation; and identified possible solutions to those issues. This study concluded that the industry has changed substantially in production technology and pollution control since the 1982 regulations were promulgated. Pollutant loadings had decreased due to advances in treatment system operations and improved wastewater treatment processes. In addition, the study also found that many pollution prevention opportunities exist in the areas of increased process water recycle and reuse, the cascade of process wastewaters from one operation to another, residuals management, and non-discharge disposal methods. At the time of the study, many better-performing mills were discharging wastewater loadings far below the current standards; however, not all of the industry had improved wastewater treatment or implemented proactive pollution prevention practices. As a result of the study, EPA initiated this rulemaking to reassess the effluent limitations guidelines and standards for the Iron and Steel Manufacturing Point Source Category. The Preliminary Study can be found on line at www.epa.gov/OST/ironsteel/pstudy.html.

C. October 31, 2000 Proposed Regulation

On October 31, 2000, the EPA Administrator signed proposed revisions to technology-based effluent limitations guidelines and standards for wastewater discharges from new and existing iron and steel facilities. The proposed rule was published in the **Federal Register** on December 27, 2000 (65 FR 81964). EPA proposed to alter the applicability and scope of the existing rule by adding electroplating operations and by including direct iron reduction, briquetting, and forging operations. In addition, EPA proposed excluding from the iron and steel guideline in Part 420 some wiring, cold forming, and hot dip coating operations. In a proposed rule for the Metal Products and Machinery (MP&M) industrial category published on January 3, 2001 (66 FR 424), EPA proposed to address these operations under Part 438.

The Agency proposed to revise the subcategorization scheme to create seven subcategories of iron and steel facilities based on co-treatment of compatible waste streams. This would have replaced the present structure of 12 subcategories. The proposed subcategorization approach would have reflected the way treatment systems are run in the iron and steel industry. EPA proposed the following seven subcategories:

Subcategory	Segment
Subpart A Cokemaking Subcategory	By-product. Non-recovery.
Subpart B Ironmaking Subcategory	Blast Furnace. Sintering.
Subpart C Steelmaking Subcategory	
Subpart D Integrated and Stand Alone Hot Forming Mills Subcategory	Carbon and Alloy. Stainless.
Subpart E Non-integrated Steelmaking and Hot Forming Operations Subcategory	Carbon and Alloy. Stainless.
Subpart F Steel Finishing Subcategory	Carbon and Alloy. Stainless.
Subpart G Other Operations	Direct-Reduced Ironmaking. Forging. Briquetting.

For most of the subcategories, except for cokemaking, finishing, and the newly added subcategory for other operations, the Agency proposed limits based on improved performance and operation of the same technologies that were the basis for the limits and standards promulgated in 1982 and amended in 1984. Consequently, the proposed limitations were more stringent than the limitations promulgated in 1982. For the cokemaking subcategory, EPA proposed BAT limits based on a technology option that was essentially the same as the 1982 technology basis but included an additional treatment step—alkaline chlorination. For finishing, EPA proposed limits based on the 1982 technology basis with the addition of counter-current rinsing and acid purification.

For many of the proposed subcategories, wastewater flow reduction steps, in concert with better performance of the blowdown treatment systems, provided the primary basis for the proposal limits and standards. The subcategorization scheme and technology bases for the proposed limits and standards are summarized below:

PROPOSED SUBCATEGORIES, OPTIONS, AND TECHNICAL COMPONENTS

Subcategory (segment)	Regulatory level	Option proposed	Summary of technical basis
Subpart A. Cokemaking:			
(By-Product Recovery)	BAT/NSPS	BAT–3	Tar removal, equalization, free and fixed ammonia stripping, temperature control, equalization, single-stage biological treatment with nitrification, alkaline chlorination, and sludge dewatering.
	PSES/PSNS	PSES–3	Tar removal, equalization, free and fixed ammonia stripping, temperature control, equalization, and single-stage biological treatment with nitrification.

PROPOSED SUBCATEGORIES, OPTIONS, AND TECHNICAL COMPONENTS—Continued

Subcategory (segment)	Regulatory level	Option proposed	Summary of technical basis
	Co-proposed PSES	PSES–1	Tar removal, equalization, and free and fixed ammonia stripping.
(Non-Recovery)	BAT/NSPS/PSES/PSNS	Zero discharge	No wastewater generated.
Subpart B. Ironmaking:			
(Blast Furnaces and Sintering)	BAT/NSPS	BAT–1	Solids removal, high-rate recycle, metals precipitation, alkaline chlorination, and mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	PSES–1	Solids removal, high-rate recycle and metals precipitation of blowdown and sludge dewatering.
Subpart C. Integrated Steelmaking	BAT/NSPS/PSES/PSNS	BAT–1	Solids removal, high-rate recycle, metals precipitation of blowdown, cooling towers for process wastewaters from vacuum degassing or continuous casting operations, and sludge dewatering.
Subpart D. Integrated and Stand Alone Hot Forming:			
(Carbon & Alloy Steel)	BAT/NSPS	BAT–1	Scale pit with oil skimming, roughing clarifier, cooling tower, high rate recycle, mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	N/A	No proposed modification from existing PSES/PSNS.
(Stainless Steel)	BAT/NSPS	BAT–1	Scale pit with oil skimming, roughing clarifier, cooling tower, high rate recycle, mixed-media filtration of blowdown, and sludge dewatering.
	PSES/PSNS	N/A	No proposed modification from existing PSES/PSNS.
Subpart E. Non-Integrated Steelmaking and Hot Forming:			
(Carbon & Alloy Steel)	BAT	BAT–1	Solids removal, cooling tower, high rate recycle, mixed-media filtration of blowdown or of recycled flow, and sludge dewatering.
	PSES	N/A	No proposed modification from existing PSES.
	NSPS/PSNS	Zero discharge	Water re-use, evaporation, or contract hauling.
(Stainless Steel)	BAT/PSES	BAT–1	Solids removal, cooling tower, high rate recycle, mixed-media filtration of blowdown or of recycled flow, and sludge dewatering.
	NSPS/PSNS	Zero discharge	Water re-use, evaporation, or contract hauling.
Subpart F. Steel Finishing:			
(Carbon & Alloy Steel)	BAT/NSPS/PSNS	BAT–1	Recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, and counter-current rinses.
	PSES	N/A	No proposed modification from existing PSES.
(Stainless Steel)	BAT/NSPS/PSNS	BAT–1	Recycle of fume scrubber water, diversion tank, oil removal, hexavalent chrome reduction (where applicable), equalization, metals precipitation, sedimentation, sludge dewatering, counter-current rinses, and acid purification.
	PSES	NA	No proposed modification from existing PSES.
Subpart G. Other Operations:			
(Direct Reduced Ironmaking)	BPT/BCT/NSPS	BPT–1	Solids removal, clarifier, high-rate recycle, filtration of blowdown, and sludge dewatering.
	BAT/PSES/PSNS	Reserved.	No new facilities expected.
(Forging)	BPT/BCT/NSPS	BPT–1	High rate recycle, and oil/water separator for blowdown.
	BAT/PSES/PSNS	Reserved.	No new facilities expected.
(Briquetting)	BPT/BCT/BAT/.		

PROPOSED SUBCATEGORIES, OPTIONS, AND TECHNICAL COMPONENTS—Continued

Subcategory (segment)	Regulatory level	Option proposed	Summary of technical basis
	NSPS/ PSES/PSNS.	zero discharge	No wastewater generated.

The proposed regulation is on line at: www.epa.gov/ost/ironsteel/notices.html.

D. February 2001 Notice of Data Availability

On February 14, 2001, EPA published a Notice of Data Availability (NODA) at 66 FR 10253. This notice provided additional discussion and clarification on some of the issues raised in the proposal. For example, the notice discussed EPA's new finding that phenol does not pass through POTWs, and indicated that EPA was rethinking its proposal to establish a nation-wide limit on ammonia from steel finishing operations.

EPA also noticed changes to certain portions of the proposed regulation and accompanying preamble to eliminate inconsistencies. Finally, it corrected potentially confusing typographical errors and extended the proposal's comment period from February 26, 2001 to March 26, 2001. The complete details of the February NODA are located on line at: www.epa.gov/ost/ironsteel/reg.html.

E. April 4, 2001 Notice

On April 4, 2001, EPA published a notice (66 FR 17842) reopening the comment period to April 25, 2001.

IV. Current Economic Condition of the Industry

The financial situation of the domestic iron and steel industry changed dramatically between 1997 and 2001 due to factors including the Asian financial crisis, slow economic growth in Eastern Europe, the continued strength of the dollar versus other currencies, a period of increased prices for natural gas and electricity, and a sharp drop in domestic demand as the U.S. economy slowed. The following analysis of economic conditions occurring after the 1995–1997 time frame is based upon publicly available sources such as trade journal reports, Securities and Exchange Commission filings, and trade case filings with the U.S. Department of Commerce and the U.S. International Trade Commission.

The relatively high value of the dollar compared to the currencies of many steel exporting nations has led to a sharp increase in import penetration in the domestic steel market. The U.S. is, and has been, the world's largest steel importer (and a net importer for at least the last two decades); indeed, the U.S. was nearly the only viable steel market to which other countries such as South Korea, Russia and Ukraine could export during 1998. U.S. imports of steel mill products jumped by 10.4 million tons from 31.1 million tons to 41.5 million ton, a 25 percent increase, from 1997 to 1998. The previous record level of imports had been established in 1997. The high levels of imports persisted in 1999 and 2000, with 35.7 million tons and 38.0 million tons, respectively. The sustained high level of steel imports has been associated with a substantial drop in the market value of steel products. The prevailing prices for commodities such as hot rolled sheet, cold rolled sheet, and many other products have fallen by 20 to 40 percent since 1996.

Substantial increases in energy prices, including natural gas and electricity, during the last few years have also affected domestic producers. Natural gas is used extensively in reheat and annealing furnaces, coke oven underfiring and blast furnace injection, as well as in direct reduced iron production. Electricity is necessary throughout the steel production process, with electric arc furnaces, of course, being particularly dependent on electricity costs and availability. Finally, in the last year, the domestic market for steel has declined as domestic industrial production in the United States has fallen. Industries, such as automotive and major appliances, that use significant amounts of steel have been particularly impacted.

The coke industry is comprised of two types of producers: Integrated and merchant. Integrated producers typically supply furnace coke for their own blast furnace facilities. Merchant producers may produce and sell furnace coke (used in blast furnaces), foundry coke (used in foundries to make iron castings) and other industrial coke. Both integrated and merchant producers of furnace coke have been affected by the trends described regarding iron and steel production. Foundry coke producers have been affected by falling automotive production, the largest consumer sector for iron castings. Foundry coke has also been affected by sharply increasing imports from China.

As a result of the increased imports, declining demand, and falling prices, the financial health of the domestic iron and steel industry experienced a precipitous decline after 1997. Based upon publicly available sources, at least twenty companies, that could be subject to the iron and steel effluent guidelines, have filed for bankruptcy since 1997. The companies are Bethlehem Steel, LTV Steel, National Steel, Republic Technologies, Wheeling Pittsburgh Steel, Geneva Steel, Gulf States Steel, Acme Metals, Laclede Steel, Qualitech Steel, Northwestern Steel and Wire, Erie Forge and Steel, CSC Ltd., Heartland Steel, GS Industries, Trico Steel, Freedom Forge, J&L Structural Steel, Empire Specialty Steel and Riverview Steel. In aggregate, these companies represent more than a third of domestic steelmaking capacity. Of the bankrupt firms, Empire Specialty, Acme Steel, Laclede Steel, Qualitech Steel, Gulf States Steel, Northwestern Steel and Wire, CSC Ltd., and LTV Steel have ceased steelmaking operations, affecting over 15,000 employees.

The industry filed numerous countervailing duty and anti-dumping cases over the 1998-2001 period with the U.S. Department of Commerce and U.S. International Trade Commission (hereafter ''ITC''), charging various countries (for example, Japan, Russia, China, and Brazil) with unfair trade practices concerning carbon steel products, stainless steel products, and foundry coke. The ITC ruled in favor of the U.S. industry in many cases (for example, hot rolled carbon sheet and carbon plate), meaning that it determined that the domestic industry was materially injured or threatened with material injury by the unfairly traded imports.

More significantly, on June 22, 2001, the Office of the United States Trade Representative requested the initiation of an investigation by the ITC of certain steel imports under the section 201 of the Trade Act of 1974. A later request from the Senate Finance Committee was consolidated under the same investigation. Investigations under this law may be requested when increased imports of a product from all countries are alleged to be a substantial cause of serious injury, or threat of serious injury, to a U.S. industry. The investigation does not require the finding of an unfair trade practice. The investigation is composed of two phases, the injury phase and, if an

affirmative injury determination is made, the remedy phase. In the remedy phase, the ITC recommends a remedy to the President, who decides what relief, if any, will be imposed. The remedy may consist of tariffs, quantitative restrictions, orderly marketing agreements, and trade adjustment assistance. In addition, the ITC may recommend that the President initiate international negotiations to address the underlying cause of the increase in imports or that he implement any other action authorized under the law that is likely to facilitate positive adjustment to import competition.

On October 22, 2001, the ITC affirmatively determined that 12 products (or product categories) are being imported into the U.S. in such increased quantities that they are a substantial cause of serious injury or threat of serious injury to the U.S. industry. On an additional four products (or product categories), the ITC was evenly divided, meaning these products will continue to be included in the investigation. The imported products covered by the investigation accounted in year 2000 for 27 million tons of steel valued at $10.7 billion. The products include carbon steel slabs, plate, hot rolled sheet, cold rolled sheet, coated sheet, tin mill products, hot rolled bar and light structural shapes, cold finished bar, rebar, welded tube, stainless bar, stainless rod, tool steel, and stainless wire.

The next phase of the investigation is the remedy phase. The ITC voted on a remedy recommendation on December 7, 2001, and forwarded its findings and remedy recommendations to the President on December 20, 2001. The ITC recommended a four-year program of tariffs and tariff-rate quotas, with additional ad valorem duties of up to 20 percent in the first year and declining thereafter.

The President announced his decision on March 5, 2002, to impose temporary safeguards on key steel products to provide relief to those parts of the U.S. steel industry that have been most damaged by import surges. The level of relief varies by product with tariffs of 30 percent imposed on imports of plate, hot-rolled sheet, cold-rolled sheet, coated sheet, tin mill products, hot-rolled bar, and cold-finished bar and tariffs of 15 percent imposed on imports of rebar, stainless steel bar, and stainless steel rod. Imports of slab are subject to tariff rate quotas. Tariff rate quotas are two-part tariffs, with imports up to the quota subject to a lower duty and imports above the quota level subject to a higher duty. In the case of slab, the in-quota volume is set at 5.4 million tons and the out-of-quota (i.e., above the quota level) tariff of 30 percent. The level of relief described reflects the initial safeguard measures, with periodic reductions throughout the three year duration of the measures. Canada and Mexico were excluded from the quota and tariff measures on all products. Developing countries that export only small quantities of steel to the U.S. were also excluded from the quota and tariff measures.

V. Summary of Significant Decisions

A. Decisions Regarding the Content of the Regulations

1. New or Revised Effluent Limitations Guidelines and Standards

EPA has decided to revise effluent limitations guidelines and standards only for current Subpart A (cokemaking), Subpart B (sintering), Subpart C (ironmaking), and Subpart D (steelmaking), and to promulgate new effluent limitations guidelines and standards for new Subpart M (other operations). Also, as a result of EPA's technical and economic review, EPA is promulgating revised BAT limitations, NSPS and pretreatment standards for the cokemaking by-product recovery segment based on technologies that are different than those proposed. Specifically, EPA is promulgating effluent limits based primarily on ammonia still and biological treatment with nitrification for direct dischargers and pretreatment standards based primarily on ammonia still treatment for indirect dischargers. At proposal, EPA had designated the technology option as BAT–1, NSPS–1, PSES–1 and PSNS–1. Section VIII.A explains why the Agency is promulgating limitations and standards based on different model technologies than EPA proposed for the cokemaking subcategory.

For the sintering subcategory, EPA is revising the current regulation to add limitations and standards for one additional pollutant, 2,3,7,8-tetrachlorodibenzofuran (TCDF), while keeping the rest of the limits unchanged. The technology basis for new TCDF limitations and standards for the sintering subcategory remains unchanged from the proposal and is the same as the technology basis for the 1982 regulations except for the addition of mixed-media filtration. EPA is also establishing limitations of no discharge of process wastewater pollutants for new and existing direct dischargers and new and existing indirect dischargers for sintering operations with dry air pollution control systems.

As described in Section V.A.8, ammonia-N pretreatment standards do not apply to cokemaking, ironmaking, and sintering facilities discharging to POTWs with nitrification capability.

For the steelmaking subcategory, EPA is revising BPT, BCT, BAT, and PSES limitations for the semi-wet basic oxygen furnace (BOF) operations to allow discharge of process wastewater, when merited by safety considerations. As explained in the 2001 Notice of Data Availability (NODA) at 66 FR 10253, EPA is allowing discharge of process wastewater because certain safety concerns currently preclude some sites from balancing the water applied for BOF gas conditioning with evaporative losses to achieve zero discharge. Also in the steelmaking subcategory, for the semi-wet EAF operations, EPA is establishing limitations of no discharge of process wastewater pollutants for new direct dischargers and existing and new indirect dischargers, making these limitations equivalent to the previously promulgated BPT, BCT, and BAT limitations applicable to semi-wet electric arc furnace (EAF) operations. EPA received no comments on this proposed change, and identified none of the safety or production concerns discussed for semi-wet BOF operations.

The technology bases for the effluent limitations guidelines and standards for direct reduced iron segment and the briquetting segment of the new subpart M (other operations) are unchanged from proposal. In the case of the forging segment of the new subpart M, the technology basis at proposal was incorrectly described as high rate recycle and oil/water separation. The technology basis should have been described as high rate recycle, oil/water separation, and mixed-media filtration. Section VIII discusses the technology bases for each of these subcategories in more detail.

2. Subcategorization Structure

In 2000, EPA proposed a subcategorization structure that was significantly different from the structure in the 1982 iron and steel rule (see 65 FR 81974–81975). Unlike the 1982 rule, EPA proposed to consolidate operations such as salt bath descaling, acid pickling, and other finishing operations into a single ''Finishing Subcategory.'' Similarly, the Agency proposed to consolidate sintering and ironmaking into a single ''Ironmaking Subcategory.'' The following table presents a comparison of the 1982 subcategorization scheme and the one EPA proposed in 2000:

TABLE V.A.1.—SUBCATEGORY COMPARISON OF 1982 AND THE PROPOSED REGULATIONS

Subcategories promulgated in 1982	Subcategories proposed in 2000	
A. Cokemaking	A. Cokemaking.	
B. Sintering	B. Ironmaking.	
C. Ironmaking		
D. Steelmaking	C. Integrated Steelmaking	D. Non-Integrated Steelmaking and Hot Forming.
E. Vacuum Degassing		
F. Continuous Casting		
G. Hot Forming	E. Integrated and Stand Alone Hot Forming	D. Non-Integrated Steelmaking and Hot Forming.
H. Salt Bath Descaling	F. Steel Finishing.	
I. Acid Pickling		
J. Cold Forming		
K. Alkaline Cleaning		
L. Hot Coating		
	G. Other Operations.	

The Agency proposed a new subcategorization scheme to reflect not only the modern state of the industry, in terms of both process and wastewater management, but also the experience that the Agency and other regulatory entities have gained from implementing the 1982 iron and steel effluent limitations guidelines and standards. EPA also expected that the revised subcategorization scheme would simplify the regulatory structure and reflect co-treatment of compatible wastewaters, which is currently practiced by the industry. As a result, many of the proposed subcategories would have included various operations that are regulated under different segments or subcategories in the 1982 rule. EPA also proposed a number of specialized definitions to support the subcategorization scheme.

In addition to the subcategory structure, EPA proposed segmentation changes in the proposed cokemaking, integrated and stand alone hot forming, non-integrated and stand alone hot forming, finishing, and the integrated steelmaking subcategories. First, EPA proposed to combine two 1982 segments in the cokemaking subcategory, ''Iron and Steel'' and ''Merchant,'' into a single ''By-Product Recovery'' segment because differences in wastewater flow rates observed in the 1982 rulemaking are no longer apparent within the current population of by-product coke plants. In addition to combining all by-product cokemaking operations into one segment, the Agency also proposed a new ''Non-Recovery'' segment to accommodate the two non-recovery coke plants. Second, for the proposed integrated steelmaking and hot forming subcategory, the non-integrated steelmaking and hot forming subcategory, and the steel finishing subcategory, EPA proposed segmenting based on whether facilities primarily make stainless or carbon/alloy steels. Finally, EPA also proposed to eliminate from the rule references to the following obsolete operations: beehive cokemaking in the cokemaking subcategory, ferromanganese blast furnaces in the ironmaking subcategory, and open hearth furnace operations in the steelmaking subcategory.

While EPA did not receive any comments specific to the proposed subcategorization scheme, the Agency did receive a number of comments on the change in segmentation for the cokemaking subcategory. The commenters opposed EPA's proposal to drop the segmentation on the basis of ''iron and steel'' and ''merchant'' coke plants; however, the commenters agreed with EPA's assessment that production process and wastewaters from merchant coke plants are similar to those from the integrated ''iron and steel'' facilities. The Agency also evaluated potential economic differences between ''merchant'' and ''iron and steel'' facilities, but did not find substantial differences in profitability or other factors which might affect economic acheivability, although some difference in facility size was observed. Some commenters also expressed confusion regarding the segmentation of stainless and carbon/alloy steels. No comments were received on eliminating provisions for beehive cokemaking, ferromanganese blast furnaces, or open hearth furnace operations.

As explained in Section V.B, based on comments, the Agency re-evaluated the economic conditions and technology bases of the proposed rule. The Agency decided to promulgate new or revised limits for only five subcategories: cokemaking, sintering, ironmaking, steelmaking, and other operations. Due to the small number of subcategories affected by today's rule, the Agency has decided to retain the 1982 subcategory structure with the addition of an ''other operations'' subcategory. As a result, the final rule covers the following 13 subcategories:

Subcategory A: Cokemaking (includes by-product and non-recovery operations)
Subcategory B: Sintering,
Subcategory C: Ironmaking,
Subcategory D: Steelmaking (includes basic oxygen furnace and electric arc furnace operations)
Subcategory E: Vacuum degassing,
Subcategory F: Continuous casting,
Subcategory G: Hot forming,
Subcategory H: Salt bath descaling,
Subcategory I: Acid pickling,
Subcategory J: Cold forming,
Subcategory K: Alkaline cleaning,
Subcategory L: Hot coating, and
Subcategory M: Other operations (includes forging, direct-reduced ironmaking, and briquetting).

For the cokemaking subcategory, today's rule combines the ''Iron and Steel'' and ''Merchant'' segments into a newly-created ''By-product'' cokemaking segment for most regulatory purposes, although EPA is retaining the ''Iron and Steel'' and ''Merchant'' segments for purposes of reflecting the existing BPT limitations. EPA concluded that this was appropriate because the production processes, wastewater characteristics, and wastewater flow rates from all by-product recovery cokemaking operations, including merchant facilities, are similar.

EPA is also eliminating the segment in BAT for by-product coke plants with physical chemical treatment systems. EPA has determined that technology basis for BAT limitations promulgated in today's rule are technically and economically achievable for all direct discharging by-product coke plants.

EPA is also creating a new cokemaking segment for non-recovery

operations and a new sintering segment for dry air pollution control systems for the reasons stated in the proposal. Because the promulgated rule makes no change to the hot forming, vacuum degassing, casting, or various finishing operations, the segmentation for these operations in the 1982 rule remains applicable. Finally, in today's rule, EPA is eliminating segments for the following obsolete operations: beehive cokemaking, ferromanganese blast furnaces, and open hearth furnaces.

3. Phenol Pass-Through Analysis for Cokemaking

Generally, EPA establishes pretreatment standards for pollutants regulated under BAT that pass through POTWs to waters of the U.S. or interfere with POTW operations or sludge disposal practices. In conducting its pass-through analysis, the Agency generally compares the median percentage of a pollutant removed by well-operated POTWs performing secondary treatment to the median percentage of a pollutant removed by BAT treatment. When the median percentage removed nationwide by well-operated POTWs is less than the median percentage removed by direct dischargers complying with the BAT effluent limits, EPA typically determines that the pollutant passes through.

The February 14, 2001 iron and steel notice explained that EPA planned to use an alternate procedure to determine whether or not the BAT pollutant phenol would pass through for wastewater from cokemaking operations. See 66 FR 10257. This notice explained that EPA planned to determine pass-through for phenol for the cokemaking subcategory using a methodology previously developed for phenol in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) guideline. Under this methodology, EPA determined in the OCPSF rule that phenol did not pass through because phenol is highly biodegradable and is treated by POTWs to the same non-detect levels (10 parts per billion (ppb) or 10 μg/L) that the OCPSF direct dischargers achieve. Additionally, like the OCPSF direct dischargers, the cokemaking direct dischargers receive significantly higher influent phenol concentrations than the POTWs, with the result that the direct dischargers showed higher removals than the performance at the POTWs. Therefore, EPA reasoned that application of the traditional approach to these facts would reflect the significant differences in influent concentrations rather than a real difference in the POTWs' ability to treat phenols. As a result, EPA selected this alternate methodology because the traditional pass-through methodology failed to account for special circumstances presented by phenol in cokemaking wastewater.

The notice explained that, using this alternate methodology, phenol did not pass through in connection with cokemaking operations. The notice further explained that a supplemental analysis using more recent data from a well-operated POTW performing secondary treatment on process cokemaking wastewater supports this determination.

EPA did not receive any comments on the alternate methodology and continues to believe that this alternate methodology is appropriate for determining pass through for phenolic compounds for cokemaking operations. Consequently, for this final rule, EPA has determined, with respect to by-product cokemaking, that phenolic compounds do not pass through. Accordingly, EPA has not established any pretreatment standards for phenols (4AAP) for that segment.

4. Regulation of Phenols (4AAP)

EPA regulated the non-conventional bulk parameter phenol (measured as 4 amino-antipyrene (4AAP)) in 1982 for cokemaking, sintering, and blast furnace ironmaking. In 2000, EPA proposed regulation of the compound phenol (as measured with a gas chromatograph-mass spectrometer (GC–MS)) instead of the bulk parameter phenols (4AAP), because, in general, it believes that, in effluent limitations guidelines, targeting specific pollutants is often more appropriate than regulating a parameter that measures a variety of pollutants. For reasons presented in comments, EPA has decided to continue to regulate phenol (measured as 4AAP) and is not making the change as proposed.

EPA received one comment supporting the proposed approach on the grounds that it would give a much more reliable measure of the actual amount of phenol in the discharge. However, several other commenters disagreed with EPA's proposal. These comments raised three principal objections. First, they expressed concern that changing the regulated parameter from 4AAP to phenol would increase costs for both sampling and analyses, with no environmental benefit. Based on a survey of three labs and assuming two sample events per week, costs at one location would likely increase by over $25,000 per year. Second, the comments asserted that the proposed changes could present unintended adverse environmental effects. One commenter reported that its facility runs several operational samples for phenols (4AAP) as part of the daily routine, which allows it to identify and respond to potential upset conditions. The time required to run the GC–MS analytical method for phenol and the instrumentation required, the commenter said, would discourage onsite monitoring for wastewater treatment process control purposes. Finally, commenters noted that, because phenol is a priority pollutant, it is not eligible for CWA Section 301(g) waivers. These waivers allow facilities to request a variance from effluent limitations for nonconventional bulk pollutants such as phenols (4AAP) based upon cost and economic impact considerations, provided that the facilities comply with all local water quality-based effluent limitations. See Section XIII.C for more information regarding 301(g) waivers. Commenters stated that by regulating phenol instead of the bulk parameter phenols (4AAP), EPA would eliminate the option of obtaining such a waiver. Commenters further stated that because many iron and steel facilities are currently regulated under a 301(g) waiver for phenols (4AAP), this would substantially increase the costs of the proposed rule, and that EPA did not account for these costs at the time of its proposal.

EPA reviewed its record on this issue. The data show that there are two primary phenolic compounds present in iron and steel wastewater: phenol, and 2,4-dimethylphenol. Furthermore, the data show that by controlling the bulk parameter phenols (4AAP), both of these compounds are effectively controlled. Therefore, while EPA agrees with the comment that regulating phenol would provide a more reliable measure of the actual amount of phenol, EPA does not believe that this degree of precision is necessary in view of the other considerations identified in comments. EPA agrees that compliance monitoring costs are greater for phenol than for the bulk parameter phenols (4AAP), and EPA does not want to discourage routine monitoring that allows a mill to identify and respond quickly to potential upset conditions. Also, in light of the current financial conditions of the industry, EPA wants to ensure that iron and steel facilities continue to have the option of the 301(g) waiver. EPA has been unable to find anything in its database to suggest that regulating the bulk parameter phenols (4AAP) instead of the compound phenol would negatively impact the environment. Consequently, after careful review of comments received and its database,

EPA had concluded that it is appropriate to continue to regulate the bulk parameter phenols (4AAP) rather than phenol.

5. Retention of the Central Treatment Provision

Under the applicability Section of the 1982 iron and steel regulation, 40 CFR 420.01(b), EPA identified 21 plants that were temporarily excluded from the provisions of Part 420 because of economic considerations. This exclusion would not be granted unless the owner or operator of the facility requested the Agency to consider establishing alternative effluent limitations and provided the Agency with certain information consistent with 40 CFR 420.01(b)(2) on or before July 26, 1982. *See* 47 FR 23285 (May 27, 1982). At the time of the 2000 proposal, EPA believed that none of the facilities currently had permits based on the central treatment provision and proposed to remove it from Part 420.

The Agency did not receive any comments supporting the removal of the central treatment provision. Rather, commenters asked EPA to expand the provision. Commenters requested this expansion because they were concerned that the costs of the proposed rule would be too high if the limits and standards were made more stringent. Commenters stated that economic conditions were similar to those in 1982 and that the central treatment provision should remain a viable compliance option in Part 420.

EPA disagrees with commenters that it should expand the central treatment provision. Because of the prevailing economic situation in the iron and steel industry, technological reasons in some subcategories, and performance issues in others, EPA has decided to go forward with new or revised regulations for only five subcategories (cokemaking, sintering, ironmaking, steelmaking, and a subcategory for other operations). The five subcategories affected by the final rule have minimal impact on the 21 eligible mills. With the substantially reduced projected economic burden on the industry, the Agency does not believe that expanding § 420.01(b)(2) is necessary.

EPA also reviewed its database in determining whether it should remove the central treatment provision as proposed. EPA confirmed that very few of the twenty-one facilities applied for the central treatment waiver provision. However, contrary to its belief at the time of the proposal, EPA found that, of those that did apply, at least one mill currently has a permit based on the central treatment provision for one parameter (zinc). Because EPA has decided to leave the ironmaking subcategory unchanged from the 1982 regulation, this facility is likely to continue to need the central waste treatment provision available in § 420.01(b). This particular company is projected to need to spend at least two times the model costs to come into compliance with the current Part 420 requirements for this one parameter, and would likely remain eligible for the central treatment waiver provision. One additional facility may also have a current permit based on the central treatment provision.

Based upon EPA's review, today's final rule leaves the central treatment provision (§ 420.01(b)(2)) unchanged from the 1982 regulation. This allows any mill whose permit is based on this provision to continue to use it, but does not extend the provision to any additional mills.

6. Production Basis for Calculating Permit Limits

The limitations and standards promulgated today are expressed in terms of mass (e.g., lbs/day or kg/day). This means that NPDES permit limitations derived from today's rule similarly must be expressed in terms of mass. See 40 CFR 122.45(f). These requirements are for direct discharging facilities. Similar requirements exist for indirect discharging facilities and are found in 40 CFR 403.6(c)(3). In order to convert effluent limitations guidelines and standards expressed as pounds/thousand pounds to a monthly average or daily maximum permit limit, the permitting authority would use a production rate with units of thousand pounds/day. EPA's regulations at 40 CFR 420.04, 122.45(b)(2), and 403.6(c)(3) require that NPDES permit and pretreatment limits be based on a ''reasonable measure of actual production,'' but do not define the term. In its 2000 proposal, EPA solicited comment on whether to codify a definition of that term in part 420 for the iron and steel category. After considering the comments and reviewing the rulemaking record, EPA has decided not to codify a definition of ''reasonable measure of actual production.''

a. Background

As explained above, the current iron and steel regulation does not define what constitutes a ''reasonable measure of actual production,'' although it offers the following examples: ''production during the high month of the previous year, or the monthly average for the highest of the previous five years.'' See 40 CFR 420.04.

EPA believes that some NPDES permitting and pretreatment control authorities have identified production rates that do not reflect a ''reasonable measure of actual production'' specified at 122.45(b)(2)(I), 403.6(c)(3), and 420.04. In some cases, maximum production rates for similar process units discharging to one treatment system were determined from different years or months, which may provide an unrealistically high measure of actual production. In EPA's view, this would occur if the different process units could not reasonably produce at these high rates simultaneously.

In addition, industry stakeholders have also noted that permitting and pretreatment control authorities interpret the reasonable measure of actual production inconsistently. Accordingly, iron and steel industry stakeholders requested that EPA publish a consistent policy on how to implement this requirement. Industry stakeholders have indicated that (1) in order to promote consistency, EPA should codify the method used to determine appropriate production rates for calculating allowable mass loadings, so that the permit writers can all use the same basis; and (2) EPA should use a high production basis, such as maximum monthly production over the previous five year period or maximum design production, in order to ensure that a facility will not be out of compliance during periods of high production.

b. 2000 Proposal

Because the ''reasonable measure of actual production'' concept is inconsistently applied, EPA proposed in 2000 to include in its final iron and steel rulemaking specific direction on making this determination. EPA solicited comment on four alternative approaches to implement the ''reasonable measure of actual production.'' See 65 FR at 82029–82031. Each alternative excluded, from the calculation of operating rates, production from unit operations that do not generate or discharge process wastewater. EPA proposed the following four alternative definitions of reasonable measure of actual production: (a) include production only from units that can operate simultaneously; (b) apply multi-tiered permit limits with different limits for different rates of production as defined in Chapter 5 of U.S. EPA NPDES Permit Writers Manual, EPA 833–B–96–003; (c) use the average daily production from the highest production year during the previous five years; and

(d) use one of the methods for monthly average limits but use concentration limits for daily maximum limits.

Each alternative had its supporters and detractors in comments. Several commenters preferred alternative A, but incorrectly described the alternative as the high month of production over the past five years. No commenters provided data that showed they would be unable to meet the proposed limits and standards under any of the four alternatives.

c. Final Rule

At this time, EPA has decided not to revise section 420.04 in any respect. EPA has also decided not to codify a definition for the term ''reasonable measure of actual production'' applicable to part 420. The Agency has thoroughly evaluated all comments supporting other interpretations and is not convinced that departing from past practices is justified here. Consequently, EPA concludes that continuing to allow flexibility to permitting and pretreatment control authorities to apply site-specific factors in determining a reasonable measure of production is appropriate.

7. Applicability of Part 420 to Electroplating and Certain Finishing Operations

At the time of the proposed rulemaking, the Agency determined that certain facilities subject to the 1982 iron and steel rule operated processes that more closely resemble those in facilities to be covered by the Metal Products and Machinery (MP&M) rule than those found in iron and steel facilities. So that these facilities might be addressed under a regulation that best fits them, EPA proposed to move these types of facilities into the MP&M category, which would be regulated under the part 438 effluent limitations guidelines and standards, when finalized. Specifically, EPA proposed to move the following operations from iron and steel to MP&M: surface finishing or cold forming of steel bar, rod, wire, pipe or tube; batch electroplating on steel; continuous electroplating or hot dip coating of long steel products (e.g.wire, rod, bar); batch hot dip coating of steel; and steel wire drawing. These operations produce finished products such as bars, wire, pipe and tubes, nails, chain link fencing, and steel rope.

EPA received several comments regarding the proposed transfer. The commenters did not support such transfer for two main reasons. First, the stand alone wire companies commented that they would be at a competitive disadvantage because they believe certain non-integrated facilities that also produce and sell wire and wire products would continue to be regulated under part 420 alone. EPA disagrees with the commenters on this issue because, like stand alone wire facilities, the wire operations of the non-integrated steelmaking facilities would be subject to the MP&M category, as regulated under the part 438 effluent limitations guidelines and standards. EPA expects that the discharge permits for these non-integrated facilities would be based on a combined waste stream formula approach.

Additionally, the commenters also claimed that the transferred operations are similar to various operations in the proposed iron and steel finishing subcategory. Furthermore, the commenters also felt that EPA has not demonstrated any significant differences in the wastewater characteristics between the proposed to be transferred operations and the proposed iron and steel finishing operations. Since proposal, EPA revisited the record of the iron and steel finishing operations (all operations with available influent data) and compared the associated wastewater characteristics to those from the wire facilities that were sampled under the MP&M rulemaking effort. EPA confirmed that the wastewater characteristics from the operations EPA proposed to transfer indeed resemble more closely those from the MP&M operations than those from the iron and steel finishing operations. For instance, the average lead and zinc concentrations from the wire facilities are one to three orders of magnitude higher than those from the iron and steel finishing facilities. On the other hand, the concentrations for these pollutants are within the range of pollutant concentrations found in similar MP&M operations.

Furthermore, most of the unit operations present in the facilities EPA proposed to transfer are the same as those found in the MP&M facilities, while only around 30% of these operations are found in the iron and steel finishing facilities. Lastly, EPA performed a comparison of flow rates between the facilities EPA proposed to transfer and the proposed finishing subcategory. The average flow rate from the proposed finishing subcategory is approximately half billion gallons per year, while the average flow rate from the facilities EPA proposed to transfer is less than 30 million gallons per year. EPA also notes that the average flow rate from the general metals subcategory of the MP&M rule is of the same order of magnitude as that from the facilities EPA proposed to transfer. As a result of the above evaluations, EPA preliminarily concluded that the operations EPA proposed to transfer are more appropriately regulated in part 438, the MP&M effluent limitations guidelines and standards.

EPA also proposed moving certain electroplating operations currently subject to the Metal Finishing Part 433 effluent limitations guidelines and standards into the revised part 420. Commenters strongly opposed the incorporation of the continuous electroplating of flat steel products (*e.g.*, sheet, strip, plate) into part 420, indicating the preference for electroplating operations of all types to be considered as a whole (*e.g.*, under the part 433 regulations or eventually the MP&M regulations). For the reasons stated in the comments, EPA agrees. Therefore, EPA is not including wastewater discharges from continuous electroplating of flat steel products in part 420.

For the reasons set forth above, EPA believes that the following operations would be most appropriately regulated as MP&M facilities: surface finishing or cold forming of steel bar, rod, wire, pipe or tube; batch electroplating on steel; continuous electroplating or hot dip coating of long steel products (e.g.wire, rod, bar); batch hot dip coating of steel; and steel wire drawing. However, EPA will not decide whether to establish an MP&M category in part 438 until December 2002. Therefore, it would be premature in today's final rule to change the applicability of the existing iron and steel rule to exclude the operations and EPA has not done so. If EPA finalizes limitations and standards for subcategories of the MP&M regulation (which would encompass these operations), EPA will also amend the applicability section of the iron and steel rulemaking to reflect this change. Until then, these operations continue to be regulated under part 420, respectively.

8. Ammonia-N Standard Waiver for Indirect Discharging Cokemaking, Ironmaking, and Sintering Operations

In today's final rule, EPA is setting or retaining pretreatment standards for ammonia for the cokemaking and sintering subcategories because of the high loads of ammonia in wastewaters from those subcategories to POTWs that do not have nitrification capability. However, EPA is aware that some POTWs treating iron and steel wastewaters from these subcategories have nitrification capability. Consequently, in 2000, EPA proposed to waive the ammonia-N pretreatment standard for the ironmaking (including

sintering) subcategory if the receiving POTW's operations included effective operation of a nitrification system.

EPA received several compelling comments supporting this proposal, and encouraging EPA to extend this mechanism to the cokemaking subcategory also. No commenters opposed this mechanism.

Upon a final review of its record, EPA continues to believe this waiver is appropriate and agrees with commenters that it should apply to the cokemaking, sintering, and ironmaking subcategories. EPA concludes this waiver will be equally protective of the environment and lead to potential cost savings for some iron and steel facilities. Thus, ammonia-N pretreatment standards do not apply to cokemaking, ironmaking, and sintering facilities discharging to POTWs with nitrification capability. As a further point of clarification, EPA is defining nitrification capability as described in the following paragraph.

POTWs with nitrification capability oxidize ammonium salts to nitrites (via Nitrosomas bacteria) and then further oxidize nitrites to nitrates via Nitrobacter bacteria to achieve greater removals of ammonia than POTWs without nitrification. Nitrification can be accomplished in either a single or two-stage activated sludge system. In addition, POTWs that have wetlands which are developed and maintained for the express purpose of removing ammonia with a marsh/pond configuration are also examples of having nitrification capability. Indicators of nitrification capability are: (1) biological monitoring for ammonia oxidizing bacteria (AOB) and nitrite oxidizing bacteria (NOB) to determine if the nitrification is occurring, and (2) analysis of the nitrogen balance to determine if nitrifying bacteria reduce the amount of ammonia and increase the amount of nitrite and nitrate.

9. Nitrates in Acid Pickling Wastewater

In today's final rule, EPA is not establishing nitrate limits for acid pickling operations. The model BAT technology for stainless steel finishing operations includes acid purification units for recovery and reuse of spent nitric and nitric/hydrofluoric acid pickling solutions. This technology comprises removal of dissolved metals (*e.g.*, iron, chromium, nickel) from a side stream of the strong acid pickling solution and return of the purified acid to the acid pickling bath. This essentially extends the life of the pickling acids, thereby reducing the consumption of virgin nitric acid. A reject stream containing dilute acid and the dissolved metals is periodically sent to wastewater treatment.

Commenters provided information to the Agency on the efficiency and performance of acid purification technology, which indicated EPA had substantially overestimated the capability of acid purification units in the proposed rule. No information on potential alternative pollution control equipment was provided in response to the solicitation for cost and performance data. The Agency was also unable to acquire sufficient information on alterative pollution control technologies to provide a best available technology basis for the effluent limitations guidelines and standards.

EPA is aware of a potential problem associated with nitrate discharge from one stainless steel finishing operation with combination (hydrofluoric and nitric) acid pickling. It may be that similar problems are associated with discharges coming from similar operations in other parts of the country. Nitrates, when consumed in drinking water, can be associated with health problems in humans, particularly infants. EPA expects this problem to be addressed through BAT limitations established on a site-specific best professional judgment basis or through water quality-based effluent limitations. For further discussion of the possible technological alternatives for nitrate control in site-specific circumstances, please see Chapter 8 of the TDD.

B. Decisions Regarding Methodology

1. Economic Analysis Methodology

This section presents several important adjustments made to the methodology since proposal. A more detailed discussion of EPA's methodology for analyzing the economic achievability of the candidate BAT options is presented in Section X.C of this preamble and in the EA.

In response to the challenges represented by the significant industry downturn described in Section IV, EPA made two revisions to the economic analysis methodology it employed at proposal. In the case of forecasting future industry cash flows, the Agency added two additional forecast methods to the three used in the proposal. Two of the models used at proposal explicitly address the sharp downturn in the industry after 1997 but differ in reflecting the strength and duration of recovery and subsequent downturns. That is, both address the cyclicality seen in the iron and steel industry, but with differing magnitudes and timing. The third forecasting method used at proposal is a three-year average (1995 to 1997) to provide an upper-bound analysis. For this final rule, EPA employed two additional forecast methods to reflect to the maximum extent possible the effect of the industry downturn. The fourth forecasting method is a six-year average covering 1995 to 2000, with the years 1998 through 2000 scaled by industry level performance. The fifth forecasting method uses only the year 2000 as a lower-bound analysis.

The second revision to the economic methodology since proposal is modification of the scoring test to evaluate potential economic impacts. EPA calculates the baseline status of a site as the present value of forecasted earnings. With five forecasting methods, there are five ways to evaluate each site. If, using a particular forecast method, a site's baseline status is negative (negative present value of forecasted earnings), EPA assigned a score of ''1'' for that forecasting method. A single site, then, may have a score ranging from zero to five (with five indicating negative present value of forecasted earnings under all five forecasts). Similar to the methodology at proposal, EPA considers any sites with negative present value of forecasted earnings in the majority of cases (in this case, a score of ''3'' or higher) to be a baseline closure.

Then for all sites considered viable in the baseline, EPA calculates the post-regulatory status of a site as the present value of forecasted earnings minus the after-tax present value of regulatory costs. With five forecasting methods, there are five ways to evaluate each site. If, using a particular forecast method, a site's post-regulatory status is negative (after-tax present value of regulatory costs exceeds present value of forecasted earnings), EPA assigned a score of ''1'' for that forecasting method. A single site, then, may have a score ranging from zero to five (with five indicating that the after-tax present value of regulatory costs exceeds present value of forecasted earnings under all five forecasts). In an effort to reflect the significant industry downturn, the Agency has chosen to reflect any incremental change in the score from the baseline condition to the post-regulatory condition due to regulatory compliance costs as a potential closure.

One additional item of note was incorporated into the economic analysis of the rule since proposal. Two proposed rules being undertaken by the Agency's Office of Air Quality Planning and Standards may impact iron and steel facilities potentially subject to the current rule: Coke Ovens: Pushing,

Quenching & Battery Stacks (66 FR 35325) and Integrated Iron and Steel (66 FR 36835). As a result, the final economic analysis incorporates in the economic condition of each potentially affected facility and firm the potential regulatory costs projected for the aforementioned proposed rules. This approach is consistent with existing Agency and OMB guidance on conducting economic analysis. Further, the other potential rulemakings represent expenditures which are projected to occur during the analytical and compliance time horizon and the costs must be reflected to insure the Agency does not underestimate adverse economic impacts.

2. Selection of Facilities With Model Treatment and Evaluation of Available Data Sets in Establishing Long Term Averages

EPA uses long term averages (LTAs), which represent the pollutant concentrations achievable, and production normalized flows (PNFs), which reflect volumes of wastewater generated, by model facilities in order to calculate the effluent limitations guidelines and standards in today's rule. See the TDD for more details. EPA received a number of comments on the ability of existing facilities to achieve both the LTAs and the PNFs. This section explains the procedure EPA used to select the BAT facilities upon which it based its LTAs and its updated data editing procedures for LTA and variability calculations. For a discussion of PNFs, see Section V.B.3 and Chapter 13 of the TDD.

First, EPA evaluated each data set to determine what technology or series of technologies the data represented. In this manner, EPA eliminated many data sets because they did not represent a technology basis considered during development of this rule. In a few instances, EPA included data from facilities that employ technologies in addition to the technology bases being considered. In these cases, EPA had data from intermediate sampling points representing the model technologies; in other words, the data EPA employed reflect only the application of technologies under consideration. Next, EPA reviewed the remaining data sets to ensure that each facility was effectively operating its technologies. For example, EPA eliminated facilities that experienced repeated operating problems with their treatment systems or have discharge points located after addition of significant amounts (i.e., greater than 10 percent by volume) of non-process water.

For the data sets that remained, EPA performed a detailed review of the data and all supporting documentation accompanying the data. This includes both EPA sampling data and industry-supplied data (often referred to as industry self monitoring data (ISMD)). EPA performed this review to ensure that the data were obtained during a treatment system's normal operating conditions and to ensure that the data accurately reflect the performance expected by the BAT treatment systems. Thus, EPA excluded data that were collected while a facility was experiencing exceptional incidents or upsets.

After determining the data sets to be included to calculate LTAs and variability for each technology option under consideration for the final rule, EPA applied further data editing criteria on a pollutant-by-pollutant basis. For facilities where EPA possessed paired influent and effluent data, it performed a long-term average test. The test looks at the influent concentrations to ensure a pollutant is present at sufficient concentration to evaluate treatment effectiveness. If a pollutant failed the test (*i.e.,* was not present at a treatable concentration), EPA excluded the data for that pollutant from its LTA and variability calculations. In this manner, EPA would ensure that its limitations resulted from treatment and not simply the absence of that pollutant in the wastestream. In many cases, however, industry supplied EPA with effluent data, but not the corresponding influent data. In these cases, EPA used the effluent data without performing a long-term average test. EPA decided to use these data for two reasons. First, EPA wanted to include as much data as possible in its calculations. Second, the vast majority of pollutants for which industry supplied self-monitoring data are pollutants regulated in the existing iron and steel regulation; EPA has already established the presence of the regulated pollutants in treatable levels in iron and steel wastestreams. Therefore, EPA is confident that these effluent data represent effective treatment and not the absence of the pollutant in the wastestream.

Lastly, in some cases, EPA also had information that the technology at a particular facility, while effective overall, was ineffective for individual pollutants. In these instances, EPA excluded the data from that facility for that particular pollutant only.

The Agency then used the remaining data from the facilities with the model technology basis to calculate the LTA, the associated daily and monthly variability factors, and the limitations. Chapter 14 of the Technical Development Document provides more detailed information on EPA's data editing criteria and the long-term average test. In addition, the final rulemaking record contains supporting documentation on all data exclusions.

3. Reassessment of Production-Normalized Flows (PNFs)

EPA performed a comprehensive review of the data sets used and analyses performed to determine the model PNFs. EPA's revised analyses are described in Section 13 of the TDD, with additional documentation provided in the rulemaking record. The purpose of the review was to identify and correct any errors in the data sets and to ensure that the resulting model PNFs are technically achievable for all facilities in each subcategory and segment. EPA's revised PNF analyses considered age of equipment and facilities, type of process employed, products produced (incorporates product quality needs), geographic location, non-water quality impacts (including air pollution regulations and energy), compliance costs, storm water considerations, and seasonal variation. EPA also considered combinations of these factors and evaluated the pollutant control upgrades considered for each facility to ensure the model PNFs and LTAs are technically feasible for all facilities in each subcategory and segment. In addition, EPA considered whether any individual facilities achieve the model PNFs and LTAs simultaneously, but did not include this factor as a requirement in determining the model LTAs and PNFs.

For two subcategories, ironmaking and steel finishing, EPA's subsequent analyses concluded that the model PNFs were not technically achievable for all facilities, and this was one factor in EPA's decision to retain the existing effluent limitations guidelines and standards for these subcategories as discussed in Sections VIII.C and VIII.H. EPA also made minor adjustments to the model PNFs for some other subcategories and segments.

4. Changes in Methodology for Determining the Baseline Loadings and Average Baseline Concentrations

An important factor in calculating current or baseline pollutant loadings for a facility is the concentration of each pollutant in a facility's discharge. When possible, EPA determined these pollutant concentrations based on information reported by that facility. However, EPA does not have this information for every pollutant at every iron and steel facility. In these

instances, EPA needed to develop a methodology to estimate these concentrations. Consequently, for each subcategory under consideration, where site-specific data are available EPA calculated the site-specific baseline concentrations for each pollutant before averaging the site-specific values across the subcategory to obtain the subcategory-specific average baseline concentrations. These values were then applied to facilities and/or pollutants for which EPA lacked specific data. For some subcategories, EPA estimated baseline concentrations for different technologies, while for others it developed a single set of concentration estimates. At the time of the proposal, EPA eliminated data from facilities that were used in its LTA calculations (i.e., ''BAT facilities''). After a review following the proposal, EPA realized that this procedure assumed that all facilities for which EPA did not have specific pollutant loading calculations were performing at a level less than BAT. EPA's database does not support this conclusion. Consequently, for the final rule, EPA has included all data, including that representing ''BAT facilities,'' in its average pollutant baseline calculations.

In addition, for the proposal, EPA estimated baseline pollutant concentrations for indirect and direct dischargers separately. After a review of its record, EPA recognized that, except for conventional pollutants, effluent pollutant concentrations are largely dependent on the treatment technology used rather than a facility's discharge status. This is not the case for conventional pollutants, however, because most indirect dischargers are not required to control or optimize their treatment systems for the removal of conventional pollutants because they are treated by the receiving POTW. Consequently, for the final rule, except for conventional pollutants, EPA has not distinguished between direct and indirect discharging facilities in estimating baseline pollutant concentrations. Chapter 11 in the TDD contains additional information on EPA's pollutant loadings and average baseline concentration calculations.

5. Determination of POTW Percent Removal Estimates

In its analyses at the time of the proposal, EPA used its traditional approach to determine POTW performance (percent removal). POTW performance is a critical component of the pass-through methodology EPA uses to identify pollutants to be regulated for PSES and PSNS. In addition, the proposal discussed that EPA was considering revising its traditional methodology for determining POTW performance. Specifically, it discussed and requested comment on possible revisions to the methodology EPA uses to calculate POTW percent removals using data from the ''Fate of Priority Pollutants in Publically Owned Treatment Works'' (EPA 440/1–82/303, September 1982), commonly referred to as the ''50–POTW Study.'' See 65 FR 82012–82013.

EPA received only one comment on the methodology changes. As these changes would affect a wide range of industries, EPA had hoped to engage a much broader audience. Consequently, for this final rule, EPA continues to use its traditional approach. EPA also performed its analyses using the revised methodology. EPA found that its conclusions would be the same using either methodology.

As a further point of clarification, EPA also noticed the possible revisions in its POTW performance methodology in its proposed Metal Products and Machinery (MP&M) effluent guidelines and standards (66 FR 424). EPA is currently re-visiting this issue for that rulemaking.

VI. Scope/Applicability of the Regulation

The universe of facilities that are subject to 40 CFR part 420 includes facilities engaged in iron and steel making operations using blast furnaces, basic oxygen furnaces (BOFs), or electric arc furnaces (EAFs). Part 420 also applies to metallurgical cokemaking facilities and stand-alone facilities engaged in hot forming and/or finishing of steel. In a change from the 1982 regulations, today's rule also applies to facilities engaged in other related operations such as direct iron reduction, forging, and iron briquetting. On the other hand, today's rule no longer applies to obsolete operations such as beehive cokemaking, ferromanganese blast furnaces and open hearth furnaces.

A detailed discussion of iron and steel wastewaters is provided in Chapter 7 of the TDD. In summary, all wastewater discharged to a receiving stream or introduced to a publicly owned treatment works from a facility that is within the scope of one of the subparts is subject to the provisions of part 420. See 40 CFR 420.01(a).

VII. Industry Description

EPA estimates there are 254 facilities owned by 115 companies in the iron and steel industry. The iron and steel facilities are located throughout the U.S. with a high concentration of integrated steelmaking and cokemaking facilities in the midwest and northeast. The smaller stand-alone forming and finishing facilities are generally located near larger steel manufacturing sites.

EPA has identified general processes typically found at iron and steel facilities. The following is a brief description of these key manufacturing processes.

Cokemaking

This process turns carbon in raw coal into metallurgical coke, which is subsequently used in the ironmaking process. There are two types of cokemaking operations: By-product and non-recovery. In by-product coke plants, metallurgical coke is produced by distilling coal in refractory-lined, slot-type ovens at high temperatures in the absence of air. In non-recovery coke plants, coal is made into coke in negative pressure, higher temperature coke ovens.

In by-product coke operations, the moisture and volatile components generated from the coal distillation process are collected and processed to recover by-products, such as crude coal tars, light crude oil, etc. Another type of cokemaking process is performed in non-recovery plants. These facilities use higher temperature ovens which destroy volatile organics, and they do not recover any by-products. Furthermore, their negative pressure coke ovens also ensure no leakage of air and smoke to the atmosphere.

In by-product coke plants, wastewater such as waste ammonia liquor is generated from moisture contained in the coal charge to the coke ovens, and some wastewater is generated from the by-product recovery operations. The non-recovery coke plants, on the other hand, do not generate any process wastewater.

Sintering

Sinter plants upgrade the iron content of ores and recover iron from a mixture of wastewater treatment sludges, mill scale from integrated steel mills, and fine coke particles (also known as coke breeze) from cokemaking operations. In sinter plants, the iron source mixture is combined with limestone and charged to a furnace. Sinter of suitable size and weight is formed for charging to the blast furnace. Wastewaters are generated from wet air pollution control devices on the wind box and discharge ends of the sinter furnace. No process wastewater is generated from dry air pollution control systems.

Ironmaking

In ironmaking, blast furnaces are used to produce molten iron, which makes

up about two-thirds of the charge to basic oxygen steelmaking furnaces. The raw materials charged to the top of the blast furnace include coke, limestone, refined iron ores, and sinter. Preheated air is blown into the bottom of the furnace and exits the furnace top as blast furnace gas in enclosed piping. The off-gas is cleaned and cooled in a combination of dry dust catchers and high-energy venturi scrubbers. Direct contact water used in the gas coolers and high-energy scrubbers comprises nearly all of the wastewater from ironmaking blast furnace operations.

Steelmaking

Steelmaking in the United States is conducted either in basic oxygen furnaces (BOFs) or electric arc furnaces (EAFs). BOFs are typically used for high tonnage production of carbon steels at integrated mills, while EAFs are used to produce carbon steels and low tonnage alloy and specialty steels at non-integrated mills.

Integrated steel mills use BOFs to refine a metallic charge consisting of approximately two-thirds molten iron and one-third steel scrap. Off-gases from the furnace are controlled by one of three wet air pollution control methods: Semi-wet, wet-open, and wet-suppressed. Wastewaters are generated from the wet air pollution control devices. On the other hand, non-integrated mills use EAFs to melt and refine a metallic charge of scrap steel. In addition, most mills operate EAFs with dry air cleaning systems, which produce no process wastewater discharges. There are a small number of wet and semi-wet systems.

Vacuum Degassing/Ladle Metallurgy

Vacuum degassing is a batch process where molten steel is subjected to a vacuum for composition control, temperature control, deoxidation, degassing, decarburization, and the removal of impurities from the steel. Oxygen and hydrogen are the principal gases removed from the steel. In most degassing systems, the vacuum is provided by barometric condensers; thus, direct contact between the gases and the barometric water occurs.

Likewise, ladle metallurgy is also a batch process where molten steel is refined in addition to, or in place of, vacuum degassing. These operations include argon bubbling, argon-oxygen decarburization (AOD), electroslag remelting (ESR), and lance injection. These additional refining operations do not generate any process water.

Casting

This process continuously casts the molten steel into semi-finished shapes after the vacuum degassing and/or ladle metallurgy processes. The continuous casting machine includes a receiving vessel for molten steel, water-cooled molds, secondary cooling water sprays, containment rolls, oxygen-acetylene torches for cutoff, and a runout table. Wastewater is generated by a direct contact water system used for spray cooling and for flume flushing to transport scale from below the caster runout table. The other main casting operation type is ingot casting, in which molten steel is poured into ingot molds.

Hot Forming

In this process, ingots, blooms, billets, slabs, or rounds are heated to rolling temperatures so that the products will form under mechanical pressure into semi-finished shapes for further hot or cold rolling or as finished shapes. Process water is used for scale breaking, flume flushing, and direct contact cooling.

Salt Bath Descaling

Oxidizing and reducing molten salt baths are used to remove heavy scale from specialty and high-alloy steels. Process wastewaters originate from quenching and rinsing operations conducted after processing in the molten salt baths. Electrolytic sodium sulfate descaling is performed on stainless steels for essentially the same purposes as salt bath descaling.

Acid Pickling

Solutions of various acids are used to remove oxide scale from the surfaces of semi-finished products prior to further processing by cold rolling, cold drawing, and subsequent cleaning and coating operations. Process wastewaters include spent pickling acids, rinse waters, and pickling line fume scrubber water.

Cold Forming

Cold forming is conducted on hot rolled and pickled steels at ambient temperatures to impart desired mechanical and surface properties in the steel. Process wastewater characteristics result from using synthetic or animal-fat based rolling solutions, many of which are proprietary.

Hot Coating

This process immerses pre-cleaned steel into baths of molten metal. Hot coating is typically used to improve resistance to corrosion, and for some products, to improve appearance and ability to hold paint. Wastewaters result principally from cleaning operations prior to the molten bath.

Direct-Reduced Ironmaking (DRI)

This process produces relatively pure iron by reducing iron ore in a furnace below the melting point of the iron produced. DRI is used as a substitute for scrap steel in non-integrated steelmaking process to minimize contaminant levels in the melted steel and to allow economic steel production when market prices for scrap are high. Process wastewaters are generated from air pollution control devices.

Briquetting

This process of agglomeration forms materials into discrete shapes of sufficient size, strength, and weight so that the material can serve as feed for subsequent processes. Briquetting does not generate process wastewater.

Forging

This is a hot forming operation in which a metal piece is shaped by hammering or by processing in a hydraulic press. Process wastewaters are generated from direct contact cooling water.

The data collected for this rulemaking indicate that, in the past 25 years, much of the steel manufacturing industry has shifted from generally larger, older integrated facilities to newer, smaller non-integrated facilities. In addition, there is a substantial trend toward the establishment of specialized, stand-alone finishing facilities that process semi-finished sheet, strip, bars, and rods obtained from integrated or non-integrated facilities.

Of the 254 iron and steel manufacturing facilities, approximately 133 discharge directly to surface waters of the U.S., 70 discharge indirectly to POTWs, and 56 facilities achieve zero discharge (either because they do not generate process wastewater or because they dispose of their process wastewater through underground injection or other methods not directly involving waters of the United States). Some facilities may discharge both directly to surface waters of the U.S. and to POTWs. In 1997, process wastewater discharges ranged from less than 200 gallons per day for a stand-alone finisher to more than 50 million gallons per day for a larger integrated facility.

VIII. The Final Regulation

For a detailed discussion of all technology options considered in the development of today's final rule, see the proposal (65 FR at 81982–82096) and Chapter 9 of the TDD.

Based on the record before it, EPA has determined that each model technology EPA has chosen as a basis for today's revised BAT and PSES limitations is technically available. EPA has also determined that each is economically achievable for the segment to which it applies. Further, EPA has determined, for the reasons set forth in this section, that none of the chosen technologies has unacceptable adverse non-water quality environmental impacts. Finally, EPA has determined that each chosen technology achieves greater pollutant removals than any other economically achievable technology considered by EPA and, for that reason, also represents the best technology among those considered for the particular segment. EPA also considered the age, size, processes, and other engineering factors pertinent to facilities in the proposed segments for the purpose of evaluating the technology options. None of these factors provides a basis for selecting different technologies than those EPA has selected as its model BAT and PSES technologies for today's rule.

In selecting its NSPS technologies for the segments and subcategories being revised today, EPA considered all of the factors specified in CWA Section 306, including the cost of achieving effluent reductions. The NSPS technologies for these segments are presently being employed at facilities in each segment of these subcategories. Therefore, EPA has concluded that such costs do not present a barrier to entry. The Agency also considered energy requirements and other non-water quality environmental impacts for the NSPS options and concluded that these impacts are acceptable. EPA therefore concluded that the NSPS technology bases chosen for these segments constitute the best available demonstrated control technology for those segments. (These findings also apply to the PSNS for these segments.)

EPA is making no changes to the BPT and BCT limitations previously promulgated for part 420, except for revisions to BPT and BCT limitations for semi-wet BOF operations and the deletion of limitations for obsolete operations (beehive cokemaking in the cokemaking subcategory, ferromanganese blast furnaces in the ironmaking subcategory, and open hearth furnace operations in the steelmaking subcategory). Similarly, EPA is retaining, by cross reference to title 40 of the Code of Federal Regulations, revised as of July 1, 2001, the NSPS promulgated in 1982 in Subparts A and B for new sources that commenced discharge after November 19, 2012 but before November 18, 2002, provided that the new source was constructed to meet those new standards. EPA is also retaining by cross reference, the pretreatment standards for new sources previously promulgated for Subparts A and B for facilities constructed between November 19, 2012 and November 18, 2002, except that EPA is rescinding the pretreatment standards for phenols for Subpart A because EPA has determined in this rulemaking that phenol (measured as 4AAP) does not pass through with respect to the cokemaking subcategory.

This implements the provisions of CWA Section 306(d), which provides that new sources may not be regulated to achieve more stringent technology-based limitations (*e.g.,* revised BAT) for pollutants regulated by NSPS for approximately ten years following completion of construction. EPA's regulations at 40 CFR 122.29(d)(1) specify the precise duration of this grace period. Thereafter, the discharger is subject to any more stringent applicable BPT/BCT/BAT limitations. This means that facilities currently subject to the 1982 NSPS or PSNS remain subject to those standards during a ten-year period beginning on the date of completion of the new source or during the period of depreciation or amortization of such facility, whichever period ends first. After such time, the BAT and PSES limitations promulgated today apply to those dischargers for toxic and nonconventional pollutants. For direct dischargers, limitations on conventional pollutants will be based on the formerly promulgated BPT/BCT limitations corresponding to the BPT/BCT segment applicable to the discharger or on the 1982 NSPS for conventional pollutants, whichever is more stringent.

A. Cokemaking Subcategory

EPA is promulgating limits and standards for two segments within the cokemaking subcategory: by-products recovery cokemaking, and non-recovery cokemaking. EPA is also removing the beehive cokemaking segment from the cokemaking subcategory because the beehive process of cokemaking is obsolete and has not been used in the United States for over 25 years.

1. Best Practicable Control Technology (BPT)

EPA is not revising any existing BPT limitations for the by-products recovery segment of this subcategory (which in the 1982 regulation was divided between ''iron and steel'' and ''merchant'' coke plants). EPA did not propose such revisions, but did solicit comment on the issue in the notice. EPA received no comment on the issue, so EPA is not revising the existing BPT limitations.

EPA is establishing BPT limitations for the non-recovery segment of the cokemaking subcategory. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.1 of the TDD for more information about what constitutes process wastewater for this segment. Because non-recovery cokemaking operations do not generate any process wastewater, the Agency concludes that non-recovery cokemaking operation itself represents the best practicable technology currently available and that no discharge of process wastewater pollutants is a reasonable BPT limitation. For the same reason, the Agency concludes that there are no costs associated with achieving this limitation, and expects that no additional pollutant removals attributable to this segment will occur.

2. Best Conventional Pollutant Control Technology (BCT)

In deciding whether to adopt different BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than adopted for BPT, and whether those technologies are cost-reasonable under the standards established by the CWA, and implemented through regulation. EPA generally refers to the decision criteria as the ''BCT cost test.'' EPA is not revising any existing BCT limitations for the by-products recovery segment of this subcategory (which in the 1982 regulation was divided between ''iron and steel'' and ''merchant'' coke plants) because there are no technologies that achieve greater removals of conventional pollutants than the technology basis for the current BPT and pass the BCT cost test.

For the non-recovery segment of this subcategory, EPA identified no technologies that can achieve greater removals of conventional pollutants than those that are the basis for BPT (*i.e.,* the non-recovery cokemaking operations resulting in no discharge) and, therefore, it cannot perform the BCT cost test. Accordingly, EPA is adopting BCT effluent limitations equal to the BPT effluent limitations for the non-recovery segment of this subcategory.

3. Best Available Technology Economically Achievable (BAT)

EPA is establishing BAT limits for both the by-products recovery and for the non-recovery segments of the cokemaking subcategory.

a. By-products recovery segment.

For this segment, EPA is today establishing BAT limits for five pollutants: ammonia-N, benzo(a)pyrene, cyanide, naphthalene, and phenols (4AAP). EPA is eliminating the 1982 BAT limitations for benzene because control of naphthalene and benzo(a)pyrene should ensure adequate removal of benzene. EPA is promulgating revised BAT limitations for phenols (4AAP), rather than establishing BAT limitations for phenol (GC/MS), as described in Section V.A.4. In addition, in a change from proposal, EPA is not promulgating BAT limitations for this segment for thiocyanate, mercury, or selenium because information in the record shows that the technology basis for this segment would not result in consistent removal of these pollutants, and EPA has identified no other available and economically achievable technology that will do so. Therefore, at this time, these pollutants are not amenable to categorical regulations. Also, EPA is not promulgating BAT limitations for this segment for total recoverable chlorine (TRC). EPA had proposed to regulate this parameter because TRC monitoring can ensure correct operation of alkaline chlorination systems. However, alkaline chlorination is not a component of the technology basis for the limits of this segment; therefore, limitations on TRC are no longer necessary to reflect the application of the model technology.

The technology basis for these BAT limits is cokemaking option BAT1: oil and tar removal, equalization, fixed and free ammonia stripping, heat exchanger, equalization tank, biological treatment with nitrification followed by secondary clarification, and sludge dewatering. (In the proposal, EPA described the heat exchanger component of this treatment train as temperature control. Similarly, EPA had described today's biological treatment component as single-stage biological treatment with nitrification followed by secondary clarification. In each instance, only the names are different; these technologies at proposal and final are substantially identical.)

The BAT technology chosen for this rule is a different technology from the technology for this segment proposed in 2000. In 2000, the proposed technology basis for the BAT limits was BAT3, and consisted of the BAT1 technology plus breakpoint chlorination (EPA erroneously referred to this technology component as alkaline chlorination in the proposal) prior to biological treatment with nitrification. (Prior to proposal, EPA had also considered two other technology options—BAT2 and BAT4—but rejected them for reasons set forth in the proposal preamble at 65 FR at 82016–82017.) EPA has rejected BAT3 because it is not economically achievable. EPA projects that two closures and 500 job losses would result.

The Agency has now concluded that the BAT1 treatment system represents the best available technology economically achievable for this segment of this subcategory. There are several reasons supporting this conclusion. First, the BAT1 technology is readily available to all cokemaking facilities. Approximately 75% of the facilities in this segment currently use it. Second, the BAT1 technology will ensure a high level of removal of all cokemaking pollutants of concern. Well-operated free and fixed ammonia stills will remove gross amounts of ammonia-N, cyanide, and many organic pollutants while biological treatment with nitrification followed by secondary clarification will remove more ammonia-N, phenols (4AAP), and other organic constituents of the wastewater to low levels. Third, adoption of this level of control would represent a significant reduction in conventional, nonconventional, and toxic pollutants discharged into the environment by facilities in this subcategory. Even though 75% of the facilities currently employ this technology, EPA predicts significant removals attributable to this rule because today's limitations reflect substantial improvements in how these technology components are designed and operated. Finally, EPA has evaluated the economic impacts associated with this technology and found it to be economically achievable.

b. Non-recovery cokemaking.

EPA is adopting BAT limitations for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.1 of the TDD for more information about what constitutes process wastewater for this segment. EPA identified no technologies that can achieve greater removals of toxic and non-conventional pollutants than those that are the basis for BPT (*i.e.*, the non-recovery cokemaking operations resulting in no discharge.) EPA has also determined that this basis is economically achievable, because no facilities currently discharge process wastewater pollutants. Therefore, EPA is promulgating BAT limitations equal to BPT.

4. New Source Performance Standards (NSPS)

a. By-products recovery segment.

For the by-products recovery segment of the cokemaking subcategory, EPA is promulgating NSPS that would control the same conventional, priority, and non-conventional pollutants controlled at the BPT, BCT, and BAT levels. The technology basis for NSPS for this segment is BAT1: oil and tar removal, equalization, fixed and free ammonia stripping, heat exchanger, equalization tank, biological treatment with nitrification followed by secondary clarification, and sludge dewatering. The technologies available to control pollutants at existing facilities are also available to new facilities. EPA rejected BAT3 as a basis for NSPS because it determined that the costs associated with this technology were not reasonable. EPA considers BAT1 as the ''best'' demonstrated technology for new sources in the by-product segment of the subcategory. EPA concluded that the chosen technology does not present a barrier to entry because 75% of existing facilities currently employ the technology. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected NSPS. Therefore, EPA is promulgating NSPS for the by-products recovery cokemaking segment that are identical to BAT for toxic and non-conventional pollutants, while also promulgating TSS, oil and grease (measured as HEM), and pH limitations, using the same technology basis.

b. Non-recovery segment.

EPA is promulgating NSPS limitations for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.1 of the TDD for more information about what constitutes process wastewater for this segment. Because non-recovery cokemaking operations do not generate any process wastewater, EPA has determined that the technology basis for today's NSPS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

5. Pretreatment Standards for Existing Sources (PSES)

a. By-products recovery segment.

Based on EPA's evaluation of pass-through potential, EPA is promulgating PSES for three pollutants: ammonia-N, cyanide, and naphthalene. EPA has determined that each of these pollutants would pass through. EPA had proposed to establish PSES for this segment for thiocyanate, selenium, and phenol. The

Agency is not promulgating PSES limits for thiocyanate or selenium for the reasons discussed in connection with BAT. EPA is not establishing PSES for phenol in this segment because, upon re-evaluating the data, EPA concluded that phenolic compounds in cokemaking wastewaters do not pass through. For additional discussion on phenol, see 66 FR 10257 and Section V.A.3.

For naphthalene, EPA has selected 100 μg/L and 83.1 μg/L as the concentration-based values used for today's production-normalized daily maximum standard and monthly average standard, respectively. EPA has determined that well-operated facilities should be capable of operating well below these levels based on the data EPA obtained from mills employing the model technology. When naphthalene was detected, all samples were at or below 33 μg/L. However, naphthalene was not detected in all samples. This is because of analytical difficulties caused by interferences from high levels of phenol in the samples. Although the laboratory overcame the interferences in the five samples for one episode and succeeded in achieving values close to the minimum level of 10 μg/L specified in the analytical method, for the other EPA sampling episode, it could not do so for two samples. Rather, in order to overcome the interferences, the laboratory diluted two of the five samples for analysis; this resulted in a sample-specific minimum level of 100 μg/L for each diluted sample. While there was no evidence of any chromatographic peaks for naphthalene in the chromatograms associated with the two diluted samples, the best that EPA can say with a high degree of confidence is that the naphthalene concentrations were between zero (i.e., not present) and 100 μg/L for these two samples. In order to demonstrate compliance with the naphthalene standard, a sample would have to be analyzed with a sample-specific minimum level of at or below the standard. Because EPA could not overcome the phenol interferences without diluting the two samples, EPA cannot say with confidence that naphthalene samples can be analyzed with a sample-specific minimum level of less than 100 μg/L in every case. For this reason, EPA has determined that 100 μg/L should be the concentration-basis of today's daily maximum standard. EPA also has determined that the concentration-based monthly average standard could be less than 100 μg/L, because EPA assumes that the facilities will monitor for naphthalene more than once a month. (In fact, EPA has assumed that facilities will monitor four times a month and has accounted for those costs in this rule.) EPA expects that laboratories will usually be able to measure at levels lower than 100 μg/L, because most of the data supporting the standards demonstrated that laboratories could overcome interferences in the samples. Thus, it has established a value at 83.1 μg/L as the concentration-basis for the monthly average standard. Section 14 of the TDD describes the derivation of the concentration-based monthly average standard from the daily maximum standard. See Section 4 of the TDD for a discussion of reducing interferences.

EPA recognizes that today's value of 100 μg/L for the daily maximum standard for naphthalene is considerably less than the concentration-basis for the proposed standard of 2030 μg/L. Upon review of the proposed standards, EPA determined that some data should be excluded for various reasons (see DCN IS10816 in section 14.10 of the record) including data that were in excess of the facility's permit and therefore would be inappropriate to use in developing national standards.

EPA is promulgating PSES for by-products recovery cokemaking based on option PSES1: tar/oil removal, equalization, free and fixed ammonia stripping. This is one of two options EPA co-proposed in 2000. The other co-proposed option, PSES3, consisted of PSES1 plus an equalization tank, biological treatment with nitrification followed by secondary clarification, and sludge dewatering. Option PSES3 is identical to option BAT1 that serves as the basis for the BAT limitations adopted today. While PSES3/BAT1 would achieve greater removals than PSES1, EPA has rejected it as the basis for PSES because it is not economically achievable. EPA estimated that costs associated with PSES3 would cause an adverse economic impact on two facilities, resulting in closures and/or job losses. Because there are only eight indirectly discharging by-products recovery cokemaking facilities in the nation, EPA determined that this predicted closure—representing 25% of the related universe—was significant in this case. See Section X for more detail on the economic analysis.

Today, the Agency concludes that PSES1 represents the most appropriate basis for pretreatment standards for the following reasons. First, option PSES1, in combination with treatment occurring at the receiving POTWs, will substantially reduce the levels of all cokemaking pollutants of concern. Well-operated free and fixed ammonia stills will remove gross amounts of ammonia-N, cyanide, and some organic pollutants such as the volatile and semi-volatile organic compounds, while the activated sludge biological treatment at the POTWs will remove additional ammonia-N, cyanide, naphthalene, and the other organic constituents of the wastewater to low levels. Second, EPA has considered the compliance costs associated with this option and determined they are economically achievable.

In today's action, EPA is also establishing a mechanism by which by-product cokemaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Non-recovery segment.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with non-recovery cokemaking, EPA is today promulgating PSES limitations for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for BPT/BAT for this segment. These standards are: No discharge of process wastewater pollutants. There are no incremental costs associated with compliance, and therefore, no economic impacts. Consequently, EPA has determined the technologies are economically achievable.

6. Pretreatment Standards for New Sources (PSNS)

a. By-products Recovery Segment.

EPA is today establishing pretreatment standards for new sources for four pollutants: Ammonia-N, cyanide, naphthalene, and benzo(a)pyrene. The technology basis for these standards is PSES3. EPA considered the cost of PSES3 technology for new facilities in this segment. EPA concluded that such costs are not so great as to constitute a barrier to entry, as demonstrated by the fact that three of the eight currently operating indirect discharging facilities are using these technologies. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected PSNS.

In today's action, EPA is also establishing a mechanism by which by-product cokemaking facilities discharging to POTWs with nitrification capability would not be subject to the

pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Non-recovery segment.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with non-recovery cokemaking, EPA is today promulgating PSNS for the non-recovery segment of the cokemaking subcategory based on the same technologies selected as the basis for PSES for this segment. These standards are: No discharge of process wastewater pollutants. Because non-recovery cokemaking operations do not generate any process wastewater, EPA has determined that the technology basis for today's PSNS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

B. Sintering Subcategory

Today, EPA is promulgating an effluent limitations guideline and standard for one parameter, 2,3,7,8-TCDF, for sintering operations with wet air pollution control systems in this subcategory, establishing a mechanism by which sintering facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N, and otherwise leaving unchanged existing limits and standards for all other parameters. This is a change from what was proposed in October 2000.

In October 2000, EPA proposed combining the sintering and ironmaking subcategories from the 1982 regulation into a single subcategory to be known as ironmaking, with a single treatment technology basis. EPA proposed these changes because survey responses indicated that facilities with both operations on site tended to commingle their wastewaters before treatment. EPA also judged at that time that because wastewater characteristics of the two subcategories were similar, further subcategorization was unnecessary. The subcategory, however, was divided into ''blast furnace'' and ''sinter'' segments to take into account differences in the production-normalized flow rates used to develop the proposed effluent limitations guidelines and standards. With the exception of cooling towers, which apply to blast furnace operations only, EPA considered the same technologies for both segments. The basis for the proposed ironmaking limits and standards for the sintering segment with wet air pollution control system was: Solids removal with high-rate recycle and metals precipitation, alkaline chlorination, and mixed-media filtration of blowdown wastewater. This was known as Ironmaking BAT1. At the time, EPA determined that the option was technically and economically achievable.

In addition, EPA had proposed to regulate phenol instead of the group parameter phenol (measured at 4AAP). EPA had also proposed to add 2,3,7,8-TCDF to the list of regulated parameters for sintering operations with wet air pollution control systems and for blast furnace segment where the wastewater is co-treated with sintering wastewater. Finally, EPA had proposed that sintering facilities would need to meet the proposed total residual chlorine (TRC) limitation only if they employ chlorination in their wastewater treatment.

EPA revisited its proposal for several reasons. First, commenters noted that, by regulating the compound phenol instead of the bulk parameter phenols (4AAP), facilities would not be able to qualify for the CWA Section 301(g) variances that are currently an important part of their compliance strategy. See Section V.A.4 for further details about this issue. Second, the increased rate of recycle is the principal difference between the proposed BAT1 technology basis and the 1982 technology basis, and commenters raised achievability concerns with the increased recycle rates. For these reasons, EPA has determined that BAT1 as proposed (with the increased rate of high rate recycle) is not the best achievable technology for sintering operations. Nor is it the best available demonstrated technology for these operations. EPA has also concluded that it is unnecessary to combine the two 1982 subcategories into a single subcategory as proposed, because today's rule is not changing the 1982 limits and standards except as noted below. EPA is therefore leaving unchanged all limitations and standards currently in effect for the sintering subcategory.

EPA is creating two new segments for the sintering subcategory. The segment, sintering operations with wet air pollution control, is a recodification of what were formerly subcategory-wide limitations. The second segment, sintering operations with dry air pollution control, is new. It applies to sinter operations that do not generate process wastewater. However, as proposed, EPA is promulgating a new limitation for 2,3,7,8-TCDF for sintering operations with wet air pollution control systems segment in the sintering subcategory. The technology basis for this segment reflects the 1982 technology basis of the existing limitations with the addition of mixed-media filtration. 2,3,7,8-TCDF is one of a number of extremely toxic congeners of the dioxin/furan family of compounds. During four EPA sampling episodes, several of these congeners were found in both the raw and treated wastewater from sinter plants operating wet air pollution control technologies. EPA chose to use 2,3,7,8-TCDF as an indicator parameter for the whole family of dioxin/furan congeners for several reasons. First, 2,3,7,8-TCDF is the most toxic of the congeners found in treated sintering wastewater. Second, 2,3,7,8-TCDF was the most prevalent of the dioxin/furan congeners in these wastewaters. Finally, 2,3,7,8-TCDF is chemically similar to the other dioxin/furan congeners and its removal will similarly indicate removal of the other congeners.

The TCDF limit is expressed as ''<ML,'' which means less than the minimum level. The ''ML'' is an abbreviation for the minimum level identified in § 420.21(c) of today's rule for the analytical methods that EPA used to determine the level of pollution reduction achievable through the use of BAT, NSPS, PSES, and PSNS model technologies for 2,3,7,8-TCDF.

EPA intends for facilities subject to the ML limitation to have 2,3,7,8-TCDF discharges with concentration less than the minimum level of the analytical method specified today in 40 CFR 420.21(c). Method 1613 provides precise definitions of the ML for 2,3,7,8-TCDF. EPA expects that future analytical method will be more sensitive than today's methods, and the minimum level will have a value that is less than identified today in § 420.21(c). However, the analytical method (and the minimum level) specified in § 420.21(c) was used to chemically analyze the wastewaters from facilities in subpart B. EPA used the data from the chemical analysis to determine that today's ML limitation was technically and economically achievable. EPA is unable to determine, based on the data from the chemical analysis, whether more stringent limitation (that is, limitation with value or associated with minimum level less than the minimum level published today in § 420.21) would be technically and economically achievable. To determine whether the technologies are capable of achieving more stringent limitations, EPA would need to evaluate data from chemical analysis using these future more sensitive methods. Those data obviously are not available today. Until further revision of today's limitations and

standards for subpart B, the limitation for 2,3,7,8-TCDF will continue to be associated with the minimum level specified today in Section § 420.21(c).

1. Best Practicable Control Technology (BPT)/Best Conventional Pollutant Control Technology (BCT)

a. Sintering operations with wet air pollution control.

EPA is leaving unchanged BPT limitations currently in effect for the sintering subcategory, now codified in the new segment for sintering operations with wet air pollution control systems.

b. Sintering operations with dry air pollution control.

EPA is establishing BPT/BCT limitations for the sintering operations with dry air pollution control segment of the sintering subcategory. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.2 of the TDD for more information about what constitutes process wastewater for this segment. Because sintering operations with dry air pollution control do not generate any process wastewater, the Agency concludes that sintering operation with dry air pollution control itself represents the best practicable technology currently available and that no discharge of process wastewater pollutants is a reasonable BPT/BCT limitation. For the same reason, the Agency concludes that there are no costs associated with achieving this limitation, and expects that no additional pollutant removals attributable to this segment will occur.

2. Best Available Technology Economically Achievable (BAT)

a. Sintering operations with wet air pollution control.

The technology basis for the 2,3,7,8-TCDF limitation is mixed-media filtration in addition to the 1982 technology basis. Although none of the sampled facilities has this technology in place (at or prior to the compliance monitoring point), EPA concludes that this technology will result in the removal of this congener, and thus all the dioxin/furan congeners, below the method detection limit, because dioxins and furans are hydrophobic compounds, meaning they tend to adhere to solids present in a solution. Thus removal of the solids, which is accomplished by mixed-media filtration, will result in removal of the dioxins/furans adhering to them as well. Furthermore, EPA has data from two sampling episodes at sinter plants demonstrating that filtration of wastewater samples containing dioxins and furans at treatable levels will reduce their concentrations to non-detectable levels. This is true even for raw wastewater that has undergone no other treatment.

EPA has determined that the costs of implementing mixed-media filtration, including the costs of compliance monitoring, are economically achievable because EPA predicts no adverse economic impacts. See Section X. Therefore, EPA has determined that mixed-media filtration in addition to the 1982 technology basis is the best available technology economically achievable for the removal of 2,3,7,8-TCDF.

Survey responses indicate that it is common practice for facilities to combine their sintering wastewater with other iron and steel wastewaters prior to discharge to the receiving waterbodies. This combination results in dilution of dioxin and furan concentrations to levels below the detection limit specified in the analytical method. Because EPA wants to ensure that dioxin and furan congeners have been removed from the wastewater and not simply diluted (to ensure that the limitations reflect the actual reductions that can be achieved using the BAT technology), EPA is requiring all facilities to monitor for 2,3,7,8-TCDF at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

EPA analyzed requiring facilities to monitor for 2,3,7,8-TCDF prior to combination with any other waste streams including blast furnace wastewater. Three of the five sintering wastewater treatment systems have blast furnace wastewater recycle systems that are joined with them. EPA determined that facilities would more likely shut down their sintering operations rather than incur the cost of separating the two systems. EPA determined that this economic impact is not reasonable in light of the fact that removal efficiencies are not significantly improved by separating the two wastewater streams, and thus is specifying that facilities with combined blast furnace and sintering wastewater recycling systems may monitor for 2,3,7,8-TCDF after these two waste streams are combined, but before co-mingling with any non-sintering or non blast-furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

EPA is also promulgating, as proposed, a provision that sintering facilities need not meet the current total residual chlorine (TRC) limitations if they do not employ chlorination in the wastewater treatment technology.

b. Sintering operations with dry air pollution control.

EPA is adopting BAT limitations for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.2 of the TDD for more information about what constitutes process wastewater for this segment. EPA identified no technologies that can achieve greater removals of toxic and non-conventional pollutants than those that are the basis for BPT (*i.e.,* the sintering operations with dry air pollution control resulting in no discharge.) EPA has also determined that this basis is economically achievable, because no facilities currently discharge process wastewater pollutants. Therefore, EPA is promulgating BAT limitations equal to BPT.

3. New Source Performance Standards (NSPS)

a. Sintering operations with wet air pollution control.

For sintering operation with wet air pollution control system in the sintering subcategory, EPA is promulgating a new source performance standard for 2,3,7,8-TCDF based on: clarification, high-rate recycle, metals precipitation, alkaline chlorination (if treated with blast furnace wastewaters) and mixed-media filtration. This technology basis is the same that exists for the 1982 regulation, with the addition of mixed-media filtration. EPA is leaving unchanged all other NSPS for the sintering subcategory. The mixed-media filtration technology used to control 2,3,7,8-TCDF at existing facilities is fully applicable to new facilities. Furthermore, EPA did not identify any technically feasible options that provide greater environmental protection. In addition, EPA determines the technology basis does not constitute a barrier to entry because the technology basis was economically achievable for existing sources, and new sources would face lower costs due to absence of retrofit costs. See Chapter 10 for the discussion in the TDD. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected

NSPS. Therefore, EPA is promulgating NSPS for TCDF for the sintering subcategory that is identical to the TCDF limitation being promulgated as BAT. In addition, for the reasons set forth in Section VIII.B.2.a, EPA is requiring facilities to monitor for compliance with the TCDF standard at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

b. Sintering operations with dry air pollution control.

EPA is promulgating NSPS limitations for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for BPT for this segment. These limitations are: no discharge of process wastewater pollutants. See Chapter 7.1.2 of the TDD for more information about what constitutes process wastewater for this segment. Because sintering operations with dry air pollution control do not generate any process wastewater, EPA has determined that the technology basis for today's NSPS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

4. Pretreatment Standards for Existing Sources (PSES)

a. Sintering operations with wet air pollution control.

Based on EPA's evaluation of pass-through potential, 2,3,7,8-TCDF will pass through, and thus EPA is a promulgating PSES standard for 2,3,7,8-TCDF equal to the BAT effluent limitation for the sintering operation with wet air pollution control system in the sintering subcategory. Similar to direct dischargers, EPA concludes that indirect discharging sintering operations must monitor at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD. To EPA's knowledge, there are no existing indirect dischargers of sintering wastewater.

In today's action, EPA is also establishing a mechanism by which sintering facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Sintering operations with dry air pollution control.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with sintering operations with dry air pollution control, EPA is today promulgating PSES limitations for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for BPT for this segment. These standards are: no discharge of process wastewater pollutants. There are no incremental costs associated with compliance, and therefore, no economic impacts. Consequently, EPA has determined the technologies are economically achievable.

5. Pretreatment Standards for New Sources (PSNS)

a. Sintering operations with wet air pollution control.

Based on EPA's evaluation of pass-through potential, 2,3,7,8-TCDF will pass through, and thus EPA is promulgating a PSNS standard for 2,3,7,8-TCDF equal to PSES for the sintering subcategory. EPA considered the cost of the PSES technology for new facilities in this segment. In addition, EPA determines the technology basis does not constitute a barrier to entry because the technology basis was economically achievable for existing sources, and new sources would face lower costs due to absence of retrofit costs. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standard than the selected PSNS. In addition, for the reasons set forth, EPA is requiring facilities to monitor for compliance with the TCDF standard at a point prior to co-mingling with any non-sintering or non-blast furnace operations. See 40 CFR 420.29. The only exception to this rule is that facilities may co-mingle ancillary non-blast furnace wastewater (comprising 5% of total flow or less) with their sintering wastewater. See Chapter 16.8.3 of the TDD.

In today's action, EPA is also establishing a mechanism by which sintering facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

b. Sintering operations with dry air pollution control.

Based on EPA's evaluation of pass-through and EPA's recognition that no process wastewater is generated in connection with sintering operations with dry air pollution control, EPA is today promulgating PSNS for the sintering operations with dry air pollution control segment of the sintering subcategory based on the same technologies selected as the basis for PSES for this segment. These standards are: no discharge of process wastewater pollutants. Because sintering operations with dry air pollution control do not generate any process wastewater, EPA has determined that the technology basis for today's PSNS does not present a barrier to entry, and that there will be no additional energy requirements or non-water quality environmental impacts.

C. Ironmaking Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory, except to delete the limitations for the obsolete ferromanganese blast furnaces and to establish a mechanism by which ironmaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. EPA had proposed revised effluent limitations guidelines and standards for this subcategory, which included both sintering and blast furnace ironmaking operations, under BAT, NSPS, PSES, and PSNS. The proposed technology basis for the BAT and NSPS limits was solids removal, high-rate recycle, metals precipitation, alkaline chlorination, and mixed-media filtration of blowdown wastewater. This was known as Ironmaking option BAT1. The proposed technology basis for the PSES and PSNS standards was the same as BAT1, but without alkaline chlorination and mixed-media filtration. This was known as Ironmaking option PSES1.

EPA revisited these decisions for two reasons. First, commenters noted that, by regulating the compound phenol instead of the bulk parameter phenols (4AAP), facilities would not be able to qualify for the CWA Section 301(g) variances that are currently an important part of their compliance strategy, and that EPA had not taken this into account when performing its cost analysis. Accordingly, EPA has decided to continue to regulate the bulk parameter phenols (4AAP). See Section V.A.4 for further details about this issue.

Second, increased performance of high-rate recycle system is the major difference between the proposed BAT1 technology basis and the 1982 technology basis. Commenters using pulverized coal injection in their blast furnaces pointed out that they had learned through experience that recycle of ironmaking wastewater at the high rate described in the proposal leads to a buildup of chlorides in the recycle system and the wet scrubber, which can cause extensive corrosion damage in the piping, premature equipment failure, and lengthy production interruptions. Other commenters not using pulverized coal injection also provided information on operational problems associated with elevated dissolved solids levels in the recycle system at recycle rates higher than described in the proposal. Therefore, EPA has determined that BAT1 and PSES1 are not the best available technologies for existing blast furnace ironmaking operations or the best available demonstrated technologies for new blast furnace ironmaking operations. EPA has also concluded that, because the proposed limits and standards for the ironmaking subcategory are not being promulgated, it is not necessary to combine the two 1982 subcategories (sintering and ironmaking) into a single subcategory as proposed.

EPA had proposed limits and standards for 2,3,7,8-TCDF for the ironmaking subcategory, but it was to apply only to facilities that combined their blast furnace and sintering wastewater. 2,3,7,8-TCDF was not found in the blast furnace wastewater. By preserving the 1982 subcategorization scheme and promulgating limits and standards for the compound in the sintering subcategory, EPA has addressed this issue, and is therefore not promulgating limits and standards for 2,3,7,8-TCDF for the ironmaking subcategory.

In today's action, EPA is also establishing a mechanism by which ironmaking facilities discharging to POTWs with nitrification capability would not be subject to the pretreatment standard for ammonia-N. This is because EPA has determined that ammonia-N does not pass through such POTWs. See Section V.A.8 for more details.

D. Steelmaking Subcategory

EPA proposed a revised subcategorization scheme (see Section III.C) which recognized the differences between integrated and non-integrated steelmaking facilities. Under the proposed scheme, wastewaters from basic oxygen furnace operations were included with wastewaters from vacuum degassing operations and continuous casting operations to make up the ''Integrated Steelmaking'' subcategory. Hot forming operations that took place either at integrated mills or were not associated directly with steelmaking operations were to be covered by the ''Integrated and Stand Alone Hot Forming'' subcategory. Wastewaters from electric arc furnaces were included with wastewaters from vacuum degassing operations, continuous casting operations and hot forming operations to make up the ''Non-integrated and Stand Alone Hot Forming'' subcategory. The purpose of this revised subcategorization scheme was to recognize typical wastewater combination and treatment practices at existing steel mills.

The proposed revised subcategorization scheme also distinguished between those facilities making primarily carbon and alloy steels from those making primarily stainless steels. This differentiation was proposed for ''Non-integrated and Stand Alone Hot Forming,'' ''Integrated and Stand Alone Hot Forming,'' and ''Finishing'' subcategories.

For reasons discussed below, however, EPA is not promulgating new effluent limitations guidelines and standards for any of the proposed revised subcategories. Therefore, EPA is not adopting the proposed subcategorization scheme. Changing the subcategorization scheme only made sense when EPA believed it would promulgate new limits and standards for the new subcategories.

The proposed effluent limitations guidelines and standards for the ''Integrated Steelmaking'' subcategory had as its technology basis: Solids removal, cooling tower, high-rate recycle, and metals precipitation. This technology option applied to all new and existing direct and indirect discharging facilities (BAT/NSPS/PSES/PSNS) and was known as integrated steelmaking Option BAT1. EPA is not promulgating effluent limitations and standards based on this technology because it determined that it was not economically achievable. The proposed option when considered together with options for other subcategories resulted in a significant economic impact that EPA determined is unreasonable. See Section X.E for more details.

The proposed effluent limitations guidelines and standards for the ''Non-integrated Steelmaking and Hot Forming'' subcategory had as its technology basis: Solids removal, sludge dewatering, cooling tower, high-rate recycle, and mixed-media filtration. This technology option would have applied to all existing direct and indirect discharging facilities (BAT/PSES) and was known as non-integrated steelmaking and hot forming Option BAT1. After considering comments objecting to EPA's methodology at proposal of estimating costs and loadings, EPA performed a new costing and loadings analyses. See TDD Chapters 10 and 11. Judging from the installation costs and the pollutant reductions associated with these treatment technologies, EPA concluded that the technology simply was not the best available to achieve pollutant removals (EPA estimated that the technology could remove approximately 230 pound-equivalents per year at an estimated cost of $2,069 per lb-eq for direct discharging stainless segment, and 3,891 pound-equivalents per year at an estimated cost of $941 per lb-eq in the direct discharging carbon and alloy segment, and 78 pound-equivalents per year at an estimated cost of $1,970 per lb-eq for the indirect discharging stainless segment).

The proposed effluent limitations guidelines and standards for new sources in the ''Non-integrated Steelmaking and Hot Forming'' subcategory (NSPS/PSNS) were: No discharge of process wastewater pollutants. EPA has not adopted these limits and standards because, after further reviewing the rulemaking record, EPA determined that these guidelines and standards were not appropriate because it is not always possible, or even desirable, for non-integrated steelmaking facilities to design and operate their manufacturing processes to achieve zero discharge. The Agency has identified technical barriers to achieving zero discharge via evaporative uses such as electrode spray cooling and slag quenching, particularly for hot forming wastewater.

EPA is promulgating revised BPT, BAT, BCT, and PSES limitations and standards for one segment of the steelmaking subcategory—basic oxygen furnaces with semi-wet air pollution control, and is establishing NSPS, PSES, and PSNS limitations and standards for another segment of the steelmaking subcategory—electric arc furnaces with semi-wet air pollution control. This is consistent with what was appeared in the proposal (65 FR 81980) and the February 14, 2001 document (66 FR 10253–10254), although rather than establishing a specific limitation, EPA has allowed the permit authority or pretreatment control authority to determine limitations based on best professional judgment, when safety considerations warrant. The Agency

believes best professional judgment will allow the permit authority or pretreatment control authority to reflect the site-specific nature of the discharge. EPA is doing this because, although the 1982 regulation requires basic oxygen furnace semi-wet air pollution control to achieve zero discharge of process wastewater pollutants, currently not all of the sites are able to achieve this discharge status because of safety and operational considerations. The Agency recognizes the benefit of using excess water in basic oxygen furnaces with semi-wet air pollution control systems in cases where safety considerations are present. The Agency justifies the increased allowance in this case because of the employee safety and manufacturing considerations (reduced production equipment damage and lost production). EPA estimates that the industry will incur no costs due to this change. EPA could identify no potential adverse environmental impacts associated with the potential discharge.

In the case of electric arc furnaces with semi-wet air pollution control, the Agency is promulgating NSPS, PSES, and PSNS limitations and standards of zero discharge of process wastewater pollutants. The 1982 regulation previously established BPT, BCT, and BAT limitations of zero discharge of process wastewater pollutants for electric arc furnaces with semi-wet air pollution control. (EPA is modifying the BPT, BAT, and BCT portions of this segment only to eliminate references in the title to basic oxygen furnace steelmaking-semiwet). EPA identified no discharges from electric arc furnaces with semi-wet air pollution control and received no comments regarding the establishment of zero discharge of process wastewater pollutants for this segment. EPA estimates that the industry will incur no costs due to this change since all known facilities are currently achieving compliance with zero discharge of process wastewater pollutants.

E. Vacuum Degassing Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. See discussion in Section VII.D.

F. Continuous Casting Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. See discussion in Section VIII.D.

G. Hot Forming Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. The proposed effluent limitations guidelines and standards for the ''Integrated and Stand Alone Hot Forming'' subcategory had as its technical basis: Scale pit with oil skimming, roughing clarifier, cooling tower with high-rate recycle, and mixed-media filtration of blowdown. This applied to all new and existing direct discharging facilities (BAT/NSPS) and was known as integrated and stand alone hot forming Option BAT1A.

EPA has not adopted limits and standards based on this technology because it determined that it was not economically achievable, based on the results presented in Section X.E. EPA has determined that the impact is unacceptable in view of the precarious financial situation of the proposed subcategory as a whole. Moreover, many facilities are already at or below discharge levels of the proposed effluent limitations guidelines and standards, and EPA has no reason to believe that facilities will reverse this trend and increase pollutant discharges above the 1997 levels in EPA's record database.

EPA had proposed a second BAT option, known as BAT1B, for the Integrated and Stand Alone Hot Forming subcategory in order to attempt to ameliorate the predicted economic impacts of BAT1A. Under this option, the proposed BAT limits would not apply until 2007. EPA explained at the time of proposal that EPA would select this option only if it concluded that five years would be sufficient time to allow the subcategory as a whole to raise the capital necessary to implement the model BAT in a way to ensure its economic achievability. However, EPA cannot reach that conclusion on this record, especially in view of the current financial condition of the industry. Therefore, EPA has not selected option BAT1B.

EPA did not propose standards for indirect discharging facilities because EPA's analysis of the effect of the technology option projected pollutant removals per facility that were too small to justify the projected costs.

H. Salt Bath Descaling Subcategory

EPA is leaving unchanged all limitations currently in effect for this subcategory. EPA proposed a revised subcategorization scheme in which salt bath descaling, acid pickling, cold forming, alkaline cleaning, and hot coating operations would be combined into a new subcategory called ''Finishing.'' The purpose of this proposed subcategorization scheme was to recognize the tendency of facilities to combine and co-treat wastewaters from these operations. As mentioned in Section VIII.D, another feature of the proposed subcategorization scheme was to consider separately finishing facilities making primarily carbon and alloy steels and those making primarily stainless steels. For reasons discussed below, however, EPA is not promulgating new effluent limitations guidelines and standards for any of the proposed revised subcategories. Therefore EPA is not adopting the proposed subcategorization scheme. Changing the subcategorization scheme only made sense when EPA believed it would promulgate new limits and standards for the new subcategories.

The proposed effluent limitations guidelines and standards for the carbon and alloy segment of the finishing subcategory had the following technology basis: Recycle of fume scrubber water, diversion tank, oil removal, equalization, hexavalent chromium reduction (where applicable), metals precipitation, sedimentation, sludge dewatering, and counter-current rinses. This technology option applied to all new and existing direct discharging facilities, as well as new indirect discharging facilities (BAT/NSPS/PSNS) and was known as carbon & alloy finishing Option BAT–1. EPA did not propose standards for existing indirect discharging facilities because the projected pollutant removals per facility associated with the technology option were too small to justify the projected costs.

EPA is not revising effluent limitations guidelines and standards for the finishing subcategory because the flow reductions that were an integral part of the technology interfered with product quality, thus indicating that the technology was not the best technology available for these finishing operations. Moreover, after considering comments objecting to EPA's methodology at proposal of estimating costs, EPA performed a new cost analysis. See TDD Chapter 10. Judging from the retrofit costs and the costs associated with necessary production shutdown during installation of new treatment technologies, EPA concluded that the technology simply was not the best available to achieve pollutant removals.

The proposed effluent limitations guidelines and standards for the stainless segment of the finishing subcategory had the following technology basis: Counter-current rinses, recycle of fume scrubber water, acid purification units, diversion tank, oil removal, equalization, hexavalent chromium reduction (where applicable), multiple-stage pH control for metals precipitation, sedimentation, and sludge dewatering. This technology option would have applied to all new and

existing direct discharging facilities, as well as new indirect discharging facilities (BAT/NSPS/PSNS) and was known as stainless finishing Option BAT–1. EPA did not propose standards for existing stainless indirect discharging facilities because projected pollutant removals per facility associated with the technology option were simply too small per facility. See 65 FR 82025. EPA did not promulgate limitations for the stainless finishing subcategory for the same reasons listed for the carbon and alloy finishing segment, with one addition. Commenters with experience operating acid purification units stated that they experienced neither the level of pollutant removal nor the cost savings EPA had envisioned in the analysis supporting the proposal. The recognition of this fact had an adverse impact both on the effluent reduction benefit and the projected cost of this technology option. For further discussion, see Section V.A.9 and Chapter 10 of the TDD.

I. Acid Pickling Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

J. Cold Forming Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

K. Alkaline Cleaning Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

L. Hot Coating Subcategory

EPA is leaving unchanged all limitations and standards currently in effect for this subcategory. See discussion under Section VIII.H.

M. Other Operations Subcategory

The other operations subcategory is comprised of three segments: Direct reduced ironmaking (DRI), forging, and briquetting. The options described in this section for the direct reduced ironmaking and briquetting segments are exactly as they appeared in the October 2000 proposal. In the case of the forging segment, the technology basis at proposal was incorrectly described as high rate recycle and oil/water separation. The technology basis should have been described as high rate recycle, oil/water separation, and mixed-media filtration. EPA received no significant comments on its regulatory approach for this subcategory.

For the briquetting segment, EPA is establishing BPT, BCT, BAT, PSES, PSNS, and NSPS. These limitations and standards are: no discharge of process wastewater pollutants. EPA established these limitations because briquetting operations do not generate any process wastewater. For this reason, the Agency concludes that there are no costs associated with these limitations and standards. Furthermore, EPA projects no additional pollutant removals attributable to this segment.

1. Best Practicable Control Technology (BPT)

a. DRI segment.

EPA is promulgating BPT limitations for TSS and pH for the DRI segment of the Other Operations subcategory. The technology basis for this limitation is: solids removal, clarifier, high-rate recycle, and filtration of blowdown wastewater. This technology option was known as DRI Option BPT1 in the proposal. The Agency has determined that this treatment system represents the best practicable technology currently available and should be the basis for the BPT limitations for the following reasons. First, this technology option is one that is readily applicable to all facilities in this segment. Second, the adoption of this level of control would represent a significant reduction in pollutants discharged into the environment by facilities in this subcategory. (EPA is not able to disclose the estimated amount of pollutant reduction because data aggregation and other masking techniques are insufficient to protect information claimed as confidential business information.) Third, the Agency assessed the total cost of water pollution controls likely to be incurred for this option in relation to the effluent reduction benefits and has determined these costs were reasonable.

b. Forging segment.

EPA is promulgating BPT limitations for oil & grease, TSS, and pH for the forging segment of the other operations subcategory. The technology basis for these limitations are: high-rate recycling, oil/water separation, and mixed-media filtration. The Agency has concluded that this treatment system represents the best practicable technology currently available and should be the basis for the BPT limitation for the following reasons. First, this technology option is one that is readily applicable to all facilities in this segment. Second, the Agency assessed the total cost of water pollution controls likely to be incurred for this option in relation to the effluent reduction benefits (pollutant removals of approximately 400 lbs.) and determined these costs were reasonable.

2. Best Conventional Pollutant Control Technology (BCT)

DRI and Forging segments.

EPA is adopting BCT limitations for TSS for the DRI segment and oil and grease and TSS for forging segment of the other operations subcategory based on the same technologies selected as the basis for BPT for these segments. EPA identified no technologies that can achieve greater removals of conventional pollutants than those that are the basis for BPT that are also cost-reasonable under the BCT Cost Test. Accordingly, EPA is adopting BCT effluent limitations equal to BPT for the DRI and forging segments of the other operations subcategory.

3. Best Available Technology Economically Achievable (BAT)

DRI and Forging segments.

EPA did not identify significant levels of priority or non-conventional pollutants in wastewater from DRI or forging operations. Therefore, EPA is not promulgating BAT for these segments.

4. New Source Performance Standards (NSPS)

DRI and Forging segments.

The technology basis for NSPS for the DRI segment is: solids removal, clarifier, high-rate recycle, and filtration of blowdown wastewater, and the technology basis for NSPS for the forging segment is high-rate recycle, oil/water separation and mixed-media filtration. In both cases, these are the same as the BPT technology basis. EPA did not identify any technically feasible options that provide greater environmental protection. In addition, EPA concluded these technology options do not present a barrier to entry because all facilities currently employ the technologies (although minor adjustment of flow control may be necessary for some DRI operations). The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected NSPS. Therefore, EPA is adopting NSPS limitations for the DRI and forging segments of the Other Operations subcategory based on the same technologies selected as the basis for BPT for these segments.

5. Pretreatment Standards for Existing and New Sources (PSES/PSNS)

DRI and Forging segments.

EPA identified only conventional pollutants in DRI and forging wastewaters at treatable levels. These pollutants do not pass through when discharged to POTWs from facilities within this subcategory. Therefore, EPA is not promulgating pretreatment standards for these segments.

IX. Pollutant Reduction and Compliance Cost Estimates

A. Pollutant Reductions

Presented below for the Cokemaking, Sintering, and Other Operations subcategories are the pollutant reductions obtainable through the application of the model technologies that form the basis of the effluent limitations guidelines and standards promulgated today. This section summarizes these estimated reductions. Chapter 11 of the TDD includes the estimated pollutant reductions for options considered but not promulgated, and discusses the methodology in detail.

1. Conventional Pollutant Reductions

The Agency estimates that this regulation will reduce discharges of BOD5, TSS and oil and grease by approximately 351,000 pounds per year.

2. Priority and Non-conventional Pollutant Reductions

a. Direct Discharge Facilities (BPT/BAT).

The estimated reductions in priority and non-conventional pollutants directly discharged in treated final effluent resulting from implementation of the model BPT/BCT/BAT technologies are listed in Table IX.A.1. The Agency estimates that today's BPT/BCT/BAT standards will reduce direct discharges of priority and non-conventional pollutants by approximately 754,000 pounds per year. The Agency only estimated the reduction in 2,3,7,8-TCDF discharge in the Sintering subcategory, thus the removal when measured in pounds per year is negligible.

TABLE IX.A.1.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BAT REGULATIONS PROMULGATED TODAY

Subcategory	Priority metal and organics compounds lbs/year	Non-priority metal and organic compounds lbs/year	Total metal and organic compounds lbs/year
Cokemaking	30,164	718,136	748,300
Sintering	0	0	0
Other Operations	0	5,684	5,684
Total Removals for all Subcategories	30,164	723,820	753,984

b. PSES Effluent Discharges from POTWs.

Table IX.A.2 lists, by subcategory, the estimated reductions in priority and non-conventional pollutants discharged from POTWs following implementation of the model PSES technologies. The Agency estimates that today's PSES regulations will reduce indirect facility discharge to POTWs by 264,000 pounds per year. These figures are adjusted for pollutant removals expected from POTWs, and thus reflect reductions in discharges to the receiving waters. Estimated reductions in pollutants discharged indirectly to surface waters are provided on a subcategory basis in Chapter 11 of the Technical Development Document. The Agency did not identify any priority or non-conventional pollutants at treatable concentrations is the wastewater of the Other Operations subcategory.

TABLE IX.A.2.—REDUCTION IN DISCHARGES FROM POTWS OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF PSES REGULATIONS PROMULGATED TODAY

Subcategory	Priority metal and organics compounds lbs/year	Non-priority metal and organic compounds lbs/year	Total metal and organic compounds lbs/year
Cokemaking	4,388	259,776	264,164
Sintering	0	0	0
Other Operations	0	0	0
Total Removals for All Subcategories	4,388	259,776	264,164

B. Regulatory Costs

The Agency estimated the cost for iron and steel facilities to achieve each of the effluent limitations guidelines and standards promulgated today, as well as the costs for facilities to achieve the effluent limitations guidelines and standards considered but not promulgated. Chapter 10 of the Final TDD provides detailed information on the methodologies, including cost curves and basis, used to estimate these costs. In addition, the TDD contains cost estimates for each option, segment and subcategory considered for today's final rule, including those which EPA has decided not to promulgate. All cost estimates in this section are expressed in terms of 1997 dollars, which corresponds with the base year of the engineering analysis. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, land costs associated with equipment, and additional costs for discharge monitoring. The capital costs, pre-tax total annualized costs, and post-

tax total annualized costs for these subcategories are presented in Section X in terms of 2001 dollars.

1. Cokemaking Subcategory

a. By-products Recovery Segment.

Table IX.B.1 shows the costs EPA estimated for existing direct and indirect discharging by-products recovery cokemaking facilities to comply with the BAT limitations or PSES standards promulgated today.

TABLE IX.B.1.—ESTIMATED COSTS FOR BY-PRODUCT RECOVERY COKEMAKING FACILITIES

Discharge status	Number of facilities	Total capital and land costs	Annual O&M costs
Direct	12	$26,039,400	$4,593,800
Indirect	8	6,138,600	1,462,600
Total	20	32,178,000	6,056,400

b. Non-recovery Segment.

EPA is promulgating limitations and standards for this segment expressed as no discharge of process wastewater pollutants. The Agency has determined that implementation of BPT, BCT, BAT, or PSES limitations and standards by facilities in this segment will not result in any incremental compliance costs because all facilities are currently achieving them.

2. Sintering Subcategory

Table IX.B.2 shows the costs EPA estimated for direct discharging sintering facilities to comply with the BAT limitation for 2,3,7,8-TCDF promulgated today. Note that even though EPA has promulgated PSES for this subcategory EPA is not aware of any sintering facilities currently discharging to a POTW and has therefore not included any compliance costs.

TABLE IX.B.2.—ESTIMATED COSTS FOR SINTERING FACILITIES

Discharge status	Number of facilities	Total capital and land costs	Annual O&M costs
Direct	5	$11,046,100	$1,304,300

3. Steelmaking Subcategory

EPA has determined that the industry will incur no costs due to the alternate limitations and standards based on best professional judgment applicable to basic oxygen furnaces with semi-wet air pollution control. Likewise, EPA has determined that there will not be any compliance costs incurred by facilities with electric arc furnaces with semi-wet air pollution control to comply with today's rule.

4. Other Operations Subcategory

Table IX.B.3 shows the costs estimated for direct discharging forging facilities to comply with the BPT limitations promulgated today. The estimated costs for direct discharging DRI facilities are not presented because there are only two direct dischargers in this segment and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information. Also, because EPA is not promulgating PSES or PSNS limits for the DRI and forging segments, indirect dischargers in this subcategory will not incur costs as a result of this regulation. For the briquetting segment, because all facilities in this segment are currently meeting the promulgated limitations and standards for BPT, BCT, BAT, PSES, PSNS, and NSPS of no discharge of process wastewater pollutants, there are no incremental compliance costs associated with this limit.

TABLE IX.B.3.—EPA ESTIMATED COSTS FOR FORGING FACILITIES

Segment	Number of facilities	Total capital and land costs	Annual O&M costs
Forging	8	$120,200	$20,400

X. Economic Analysis

A. Introduction and Overview

This section describes the estimated capital investment and annualized costs of compliance with the final effluent limitations guidelines and standards promulgated today for the iron and steel industry and the potential impacts of these compliance costs on the industry. This section also presents the estimated costs and projected impacts for technology options EPA considered but rejected for all of the subcategories. EPA's economic assessment is presented in detail in the report titled ''Economic Analysis of Final Effluent Limitations and Standards for the Iron and Steel Manufacturing Point Source Category'' (hereafter, ''EA'') and in the rulemaking record. The EA estimates the economic effect of compliance costs on subcategory operations at a site where feasible, the combined cost for all subcategory operations at a site for selected cost combinations, aggregate costs for all sites owned by each company, impacts on employment and output, domestic and international markets, and environmental justice issues. EPA conducted a small business analysis, which estimates effects on small entities, and a cost-effectiveness analysis of all evaluated options.

B. Economic Description of the Iron and Steel Industry

The United States is the third largest steel producer in the world with 12 percent of the market, an annual output of between 100 and 115 million tons per year, and around 150,000 employees.

Major markets for steel are service centers and the automotive and construction industries. Together these three markets account for 61 percent of steel shipments. The remaining 40 percent is dispersed over a wide range of products and activities, such as agricultural, industrial and electrical machinery, oil and gas, containers, and appliances.

The iron and steel rulemaking includes sites within the North American Industry Classification System (NAICS) codes 324199 (coke ovens, part of ''all other petroleum and coal product manufacturing''), 331111 (iron and steel mills), 331210 (steel pipes and tubes), and 331221 (cold finishing of steel shapes). The iron and steel and proposed metal products and machinery effluent guideline rulemakings both may have sites in the last two NAICS codes.

The iron and steel effluent guideline as proposed would have applied to approximately 254 iron and steel sites. Of these sites, EPA was able to analyze approximately 211 for post-regulatory compliance impacts at the site level. For the remaining 43 sites, thirteen did not report data at the site level, fourteen could not be analyzed because they were jointly owned sites, foreign owned sites, or newly constructed sites, and sixteen were in poor financial condition prior to the regulation and are treated as closures under the prevailing baseline conditions. Of the 254 iron and steel sites, approximately 60 sites are owned by small business entities.

The 254 sites are owned by 115 companies, as estimated by the EPA survey. The global nature of the industry is illustrated by the fact that eighteen companies have foreign ownership. Twelve other companies are joint entities with at least one U.S. company partner. Excluding joint entities and foreign ownership, the database contains 85 U.S. companies, more than half of which are privately owned. Responses to the EPA survey are the only sources of financial information for these privately-held firms.

The EPA survey collected financial data for the 1995–1997 time period (the most recent data available at the time of the survey). This three-year time frame marked a high point in the business cycle. The high point in the business cycle allowed companies to replenish retained earnings, retire debt and take other steps to reflect this prosperity in their financial statements. Even so, an initial analysis of the pre-regulatory condition of the 115 companies in the EPA survey indicated that 27 of them would be considered ''financially distressed'' either because they are start-up companies and joint ventures or because they are established firms which still showed losses. For discussion of the changes in industry financial conditions in the period between 1997 and 2001, see Section IV.

C. Economic Impact Methodology

1. Introduction

This section (and, in more detail, the EA and the accompanying administrative record) evaluates several measures of economic impacts that result from the estimated compliance costs associated with each technically feasible BAT and PSES option. The analysis in the EA consists of eight major components: (1) An assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annualized aggregate costs for these facilities to comply with the rule using site-level capital, one-time non-capital, and annual operating and maintenance (O&M) costs; (3 and 4) two separate site-level closure analyses to evaluate the impact of compliance costs for operations in individual subcategories (where possible) at the site and for the combined cost of the options for all subcategories at the site; (5) an evaluation of the corporate financial distress that the companies in the industry would be likely to incur as a result of combined compliance costs for all sites owned by the company; (6) an evaluation of secondary impacts such as those on employment and economic output; (7) an analysis of the effects of compliance costs on small entities; and (8) a cost-benefit analysis pursuant to Executive Order 12866.

All costs are reported in this section of the preamble in 2001 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. The primary sources of data for the economic analysis are the Collection of 1997 Iron and Steel Industry Data (Section 308 Survey) and data provided by industry during the public comment period. Other sources include government data from the Bureau of Census and industry trade journals.

2. Methodology Overview

The starting point for the economic analysis is the cost annualization model, which uses site-specific cost data and other inputs to determine the annualized capital, one-time non-capital, and O&M costs of improved pollution control. This model uses these costs along with the company-specific real cost of capital (discount rate) and the corporate tax rate over a 16-year analytical time frame to generate the annual cost of compliance for each option EPA considered. EPA based the 16-year time frame for analysis on the depreciable life for equipment of this type—15 years according to Internal Revenue (IRS) rules, with an estimated actual life of 25 years—plus a mid-year convention for putting the new equipment in operation (for example, six months between purchase, installation, and operation). The model generates the present value and annualized post-tax cost for each option for each site in the survey, which are then used in the subcategory, site, and company analyses, described below. The Agency adopts an assumption of zero ''cost pass-through'' of compliance costs for this industry, which is consistent with the facts of significant import competition and declining product prices.

In the subcategory analysis, EPA models the economic impacts of regulatory costs from individual subcategories on a site. The site analysis evaluates the combined costs on the profitability of the site. In both, the model compares the present value of forecasted cash flow over 16 years with the present value of the regulatory option over the same 16-year period. If the present value of regulatory costs exceeds that of the projected cash flow, it does not make financial sense to upgrade the site. That is, if the present value of projected cash flow is positive before, but negative after, the incurrence of regulatory costs, the site is presumed to close.

EPA developed five forecasting models for the iron and steel industry. None of these methods assumes any growth in real terms and all are calculated in terms of constant 1997 dollars. This conservative assumption precludes sites from growing their way out of financial difficulties imposed by the regulation. Site-specific data are only available for 1995–1997. The period from 1998 to 2001 is the rulemaking period and when the forecasting methods begin. Because promulgation occurs in 2002, this is taken as the first year of implementation and the beginning of the 16-year period over which to consider the regulatory impact on projected earnings. The first two methods explicitly address the sharp downturn in the industry after 1997 but differ in predicting the strength and duration of recovery and subsequent downturns. That is, both address the cyclicality seen in the iron and steel industry, but reflect differing magnitudes and timing. The third forecasting method is a three-year average (1995 to 1997) to provide an

upper-bound analysis. The fourth forecasting method is a six year average covering 1995 to 2000, with the years 1998 through 2000 scaled by industry level performance. The fifth forecasting method uses only the year 2000 as a lower-bound analysis. The fourth and fifth forecasting methods were added after proposal to reflect to the maximum extent possible the effect of the industry downturn.

EPA calculates the post-regulatory status of a site as the present value of forecasted earnings minus the after-tax present value of regulatory costs. With five forecasting methods, there are five ways to evaluate each site. If a site's post-regulatory status is negative (after-tax present value of regulatory costs exceed present value of forecasted earnings), EPA assigned a score of ''1'' for that forecasting method. EPA then tallied, for each site, the score it received for each forecasting method. A site, then, may have a score ranging from zero to five (with five indicating after-tax present value of regulatory costs exceed present value of forecasted earnings under all five forecasts). In an effort to reflect the significant industry downturn, the Agency has chosen to reflect any incremental change in the score from the baseline condition to the post-regulatory condition due to regulatory compliance costs as a closure.

EPA could not perform an economic analysis of a number of sites at the subcategory and site levels, even though annualized costs were calculated: where the site is a cost center; where it is a captive site that exists primarily to produce products transferred to other sites under the same corporate ownership; where components for the analysis are not recorded on the site's books, only those of the company; or where the site's cash flow is negative and therefore sufficient by itself to project a negative present value for earnings. For these sites, the analysis defaults to the company level. Consistent with OMB guidance, EPA estimated post-compliance closures due solely to the effect of the rule. Direct impacts, such as loss in employment, revenues, production and (possibly) exports are calculated from projected closures.

EPA evaluated many methods to estimate corporate financial distress reported in the economic literature of the last ten years and chose the ''Altman's Z''' model. This well-known and well-tested model was developed to analyze the financial health of both private and public manufacturing firms. It is based on empirical data and creates a weighted average of financial ratios, thus avoiding the difficulty of interpreting multiple ratios with differing implications for financial health. The single index, Z', is compared against ranges developed by Altman to indicate ''good,'' ''indeterminate,'' and ''distressed'' financial conditions. EPA examined 1997 financial data (the most recent collected in the survey) to estimate the pre-regulatory conditions. EPA then aggregated costs for all sites belonging to that company. EPA recalculated Z' after incorporating the effects of the pollution control compliance costs into the income statement and balance sheet for the company. EPA classified as impacted all companies whose ''Altman's Z' '' score changes such that the company goes from a ''good'' or ''indeterminate'' baseline category to a ''distressed'' post-compliance category. Such companies may have significant difficulties raising the capital needed to comply with the options under consideration, which can indicate the likelihood of bankruptcy, loss of financial independence, or shedding of assets.

EPA uses input-output analyses to determine the effects of the regulation using national-level employment and output multipliers. Input-output multipliers allow EPA to estimate the effect of a loss in output in the iron and steel industry on the U.S. economy as a whole. Every projected closure has direct impacts in lost employment and output. These direct losses also have repercussions throughout the rest of the economy. The input-output multipliers allow EPA to calculate the national losses in output and employment based on the direct impacts.

EPA also determines the impacts on regional-level employment. The increase in metropolitan statistical area (MSA) unemployment level, or county, if non-metropolitan, is calculated for each MSA or county in which there is at least one projected closure.

D. Economic Costs and Impacts of Technology Options by Subcategory

In this section, EPA presents the capital costs and post-tax total annualized costs for each technically achievable option EPA considered in each subcategory. As discussed in Section X.C.2, the cost annualization model derives total post-tax annualized costs from site-specific capital costs, one-time non-capital costs, and operating and maintenance costs; however, only capital costs are reported here to simplify the presentation. For a detailed presentation of all costing information, see Chapter 10 of the TDD. As noted in Section X.B, sixteen facilities are projected to close under baseline conditions and are not included further in the economic analysis. For this reason, the costs and removals presented in Section X will differ from the results reported in the engineering analysis in Chapter 10 of the TDD.

The Agency evaluates the first stage of the impact analysis by projecting the impacts associated with the regulatory costs for a single subcategory (or segment) at a site. For example, a site may have cokemaking, sintering, and other operations, but the post-compliance cash flow analysis only reflects the regulatory costs associated with a single subcategory. This stage of the analysis serves as a screening mechanism for potentially significant impacts for facilities which may be impacted by options in multiple subcategories. Alternatively, for any facility with operations only in a single subcategory such as a stand alone coke plant, this stage represents the complete facility level analysis. Unfortunately, for a number of subcategories related to integrated steelmaking operations, the first stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and standalone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and standalone hot forming will not be presented below, but rather will be presented on an aggregated basis in the facility analysis in Section X.E. In the case of steel finishing, a large number of facilities, in addition to the integrated steel facilities discussed previously, are in the scope of the subcategory and the subcategory impact results are presented, but the results do understate the potential economic impact to the integrated steel facilities.

1. Cokemaking

a. By-product Cokemaking

i. BAT

The regulatory compliance costs associated with BAT 1 are not projected to result in any postcompliance closures, while the regulatory compliance costs associated with BAT 3 are projected to result in two postcompliance closures, with potential job losses of 500 FTEs. Because there are

a total of only twelve directly discharging by-product cokemaking facilities, the projected closures represent seventeen percent of the potentially regulated population. Given the significant additional pollutant removals attainable through application of BAT1 and the general economic state of the industry, EPA does not believe that it is reasonable to impose the economic impacts associated with BAT 3. For this reason, the Agency has determined that option BAT 3 is not economically achievable for existing sources, but that option BAT 1 is economically achievable.

TABLE X.D.1.—BAT COSTS AND IMPACTS FOR BY-PRODUCT COKEMAKING

Option	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT 1	26.3	6.6	0/0
BAT 3	59.2	10.5	2/500

ii. PSES

The regulatory compliance costs associated with PSES option 1 are not projected to result in any postcompliance closures. The regulatory compliance costs associated with PSES option 3 are projected to result in two postcompliance closures, with potential job losses of between 500 and 750 FTEs. Because there are a total of only eight indirectly discharging by-product cokemaking facilities, the projected closures represent 25 percent of the potentially regulated population. In view of the fact that these facilities are presently subject to pretreatment standards in Part 420, the significant additional pollutant removals attainable through application of PSES1, and the general state of the industry, EPA does not believe that it is reasonable to impose the economic impacts associated with PSES3. For these reasons, the Agency has determined that option PSES3 is not economically achievable for existing sources, but that option PSES1 is economically achievable.

TABLE X.D.2.—PSES OPTIONS, COSTS, AND IMPACTS FOR BY-PRODUCT COKEMAKING

Option	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
PSES 1	6.7	2.0	0/0
PSES 3	25.5	6.6	2/ 500–750

iii. NSPS and PSNS

The technology options EPA considered for NSPS are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projects the compliance costs for new sources are less than existing sources and because limited or no impacts are projected for existing sources, then no impacts are expected for new sources and no barrier to entry is anticipated.

The technology option EPA considered for PSNS is equivalent to PSES 3, which is more stringent rather the promulgated option PSES 1. PSES 3 was rejected for existing sources as not economically achievable due to projected facility closures. However, engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities, so EPA projects the compliance costs for new sources are less than existing sources and no impacts are projected and no barrier to entry can result.

b. Non-recovery Cokemaking

i. BPT, BAT and PSES

The technology option for BPT, BAT and PSES is no discharge of process wastewater pollutants. No incremental compliance costs are associated with these options as all existing sources are currently meeting the no discharge requirement. Because there are no incremental compliance costs, there are no impacts resulting from the BPT, BAT and PSES options.

ii. NSPS and PSNS

The technology option EPA considered for new sources are identical to those it considered for existing dischargers. No incremental compliance costs are associated with the no discharge option, just as in the case of existing sources, because the non-recovery method of producing coke generates no process wastewater. As no compliance costs are expected, no barrier to entry can result.

2. Sintering

a. Sintering Operations with Wet Air Pollution Control

i. BAT and PSES

The regulatory compliance costs associated with the regulation of 2,3,7,8-TCDF under the BAT option and the PSES option are not projected to result in any postcompliance closures. To the Agency's knowledge, there are no current indirect dischargers of sintering wastewater.

TABLE X.D.3.—BAT COSTS AND IMPACTS FOR SINTERING SUBCATEGORY

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT	12.0	1.9	0/0

ii. NSPS and PSNS

The technology options EPA considered for new sources are identical to those it considered for existing dischargers. Engineering analysis indicates that the cost of installing pollution control systems during new construction is less than the cost of retrofitting existing facilities. Because EPA projected the costs for new sources are less than existing sources and because limited or no impacts are projected for existing sources, then no impacts are expected for new sources and no barrier to entry can result.

b. Sintering Operations With Dry Air Pollution Control

i. BPT, BAT and PSES

The technology option for BPT, BAT and PSES is no discharge of process wastewater pollutants. No incremental compliance costs are associated with these options as all existing sources are currently meeting the no discharge requirement. Because there are no incremental compliance costs, there are no impacts resulting from the BPT, BAT and PSES options.

ii. NSPS and PSNS

The technology option EPA considered for new sources are identical to those it considered for existing dischargers. No incremental compliance costs are associated with the no discharge option, just as in the case of existing sources, because the non-recovery method of producing coke generates no process wastewater. As no compliance costs are expected, no barrier to entry can result.

3. Ironmaking

a. BAT and PSES

The regulatory compliance costs associated with the proposed BAT option and the PSES option are presented below. The Agency does not present costs for indirect dischargers separately, because there is only one indirect discharger in this subcategory and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

Unfortunately, for a number of subcategories related to integrated steelmaking operations, this stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and stand alone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and stand alone hot forming will not be presented, but rather will be presented on an aggregated basis in the facility analysis in Section X.E.

TABLE X.D.4.—BAT AND PSES COST FOR IRONMAKING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)
BAT AND PSES	54.4	10.5

4. Integrated Steelmaking

a. BAT and PSES

The regulatory compliance costs associated with the BAT option and the PSES option are presented below. The Agency does not present costs for indirect dischargers, because there is only one indirect discharger in this subcategory and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

Unfortunately, for a number of subcategories related to integrated steelmaking operations, this stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and stand alone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and stand alone hot forming will not be presented, but rather will be presented on an aggregated basis in the facility analysis in Section X.E.

TABLE X.D.5.—BAT AND PSES COST FOR INTEGRATED STEELMAKING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)
BAT	46.8	10.4
PSES	.....	.....

5. Integrated and Stand Alone Hot Forming

a. Carbon and Alloy

i. BAT

The regulatory compliance costs associated with the BAT option are presented below. Unfortunately, for a number of subcategories related to integrated steelmaking operations, this stage of the analysis could not be constructed due to interdependent cost estimates. For integrated steel facilities with operations in ironmaking, integrated steelmaking, integrated and stand alone hot forming, and steel finishing, particularly those which make extensive use of co-treatment of compatible wastewaters and central treatment, the cost estimates for one subcategory depend upon the selected technology option for related subcategories. As a result, the subcategory impact results for ironmaking, integrated steelmaking, and integrated and stand alone hot forming will not be presented, but rather will be presented on an aggregated basis in the facility analysis in Section X.E.

TABLE X.D.6.—BAT COSTS FOR INTEGRATED AND STAND ALONE HOT FORMING, CARBON AND ALLOY

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)
BAT	149.4	27.5

6. Non-Integrated Steelmaking and Hot Forming

a. Carbon and Alloy

i. BAT

The regulatory compliance costs associated with the BAT option are not projected to result in any postcompliance closures.

TABLE X.D.7.—BAT COSTS AND IMPACTS FOR NON-INTEGRATED STEELMAKING AND HOT FORMING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT	30.6	5.1	0/0

ii. NSPS

EPA proposed new source limitations of no discharge of process wastewater pollutants, but has determined that technological barriers prevent promulgation of the proposed limitations. See Section VIII.D.

7. Steel Finishing

a. Carbon and Alloy

i. BAT

The regulatory compliance costs associated with the BAT option are not projected to result in any postcompliance closures.

TABLE X.D.8.—BAT COSTS AND IMPACTS FOR STEEL FINISHING

	Capital Cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BAT	23.1	8.6	0/0

8. Other Operations

a. Direct Reduced Iron

i. BPT

The regulatory compliance costs associated with the BPT option are not projected to result in any postcompliance closures. The Agency does not present costs for direct dischargers, because there are only two direct dischargers in this segment and data aggregation or other masking techniques are insufficient to avoid disclosure of information claimed as confidential business information.

TABLE X.D.9.—BPT COSTS AND IMPACTS DIRECTED REDUCED IRON

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BPT	.....	.....	0/0

b. Forging

i. BPT

The regulatory compliance costs associated with the BPT option are not projected to result in any postcompliance closures.

TABLE X.D.10.—BPT COSTS AND IMPACTS FORGING

	Capital cost ($2001M)	Post-tax total annualized cost ($2001M)	Impacts Closures/Job Losses
BPT	0.13	0.04	0/0

c. Briquetting

i. BPT/BCT/BAT/PSES

For the briquetting segment, EPA is establishing BPT of no discharge of process wastewater pollutants. EPA established these limitations because briquetting operations do not generate any process wastewater. For this reason, the Agency concludes that there are no costs associated with these limitations.

E. Facility Level Economic Impacts of the Regulatory Options

In this section, EPA presents the impacts of capital costs and post-tax total annualized costs for combinations of technology options across all subcategories. The Agency evaluates the second stage of the impact analysis by projecting the impacts associated with the regulatory costs for all subcategories affected at a facility or site (the terms are used interchangeably). For example, a fully integrated facility may have cokemaking, ironmaking, integrated steelmaking, hot forming and finishing operations, and the postcompliance cash flow analysis reflects the regulatory costs associated with all affected operations at the site. This stage of the analysis evaluates the aggregate regulatory costs and impacts upon each facility which may be affected in multiple subcategories. The analysis in this section reflects both those integrated facilities for which subcategory cost estimates are interdependent (as discussed in Section X.D) and other facilities which may incur costs in multiple subcategories, but whose cost estimates are not interdependent.

The incorporation of the aggregate regulatory costs based upon the technology options in the proposed rule (except for By-product Cokemaking where BAT 1 is evaluated rather than BAT 3; see Section XIII.A.3) across all subcategories into the postcompliance cash flow analysis generates a total of either 2 or 4 facility closures, depending on whether the By-Product Cokemaking PSES 1 or 3 options are used (see Section X.D.1 and the EA). The facility closures have potential job losses of 3750 to 4000 FTEs. The aggregated effect of those impacts is not economically achievable. Therefore, EPA is not promulgating revised effluent limitations guidelines and standards for each subcategory as proposed. Rather, EPA is revising effluent limitations guidelines and standards where the limits are technically and economically achievable.

For this purpose, the Agency has also analyzed a reduced set of regulatory options consisting of By-Product Cokemaking BAT 1 and PSES 1 and Sintering BAT (see description in Section VIII.B), in addition to BPT for Direct Reduced Iron and Forging. Additional limitations and standards for basic oxygen furnaces with semi-wet air pollution control, electric arc furnaces with semi-wet air pollution control, sintering with dry air pollution control, non-recovery cokemaking, and briquetting are projected to incur no compliance costs. No facilities are projected to close as a result of the compliance costs of the reduced set of regulatory options. The Agency determines that the chosen set of model technologies are economically achievable for the affected subcategories.

F. Firm Level Impacts

In this section, the Agency evaluates the economic impacts of the regulatory options to the firms that own the affected facilities. EPA evaluates the third stage of the impact analysis by incorporating the regulatory costs borne by each facility into the financial status of the firm that owns the facility or multiple facilities. For example, if a company owns an integrated facility, a stand alone coke facility, and a stand alone finishing facility, the aggregate regulatory costs are added to the baseline or precompliance financial conditions of the firm as reflected by the firm income statement and balance sheet. The Agency then calculates the postcompliance Altman Z'-score and checks for changes in financial status from good or indeterminate to distressed, with any such changes considered to be impacts.

The Agency evaluated the set of options identified in Section X.E (By-Product Cokemaking BAT 1 and PSES 1 and Sintering BAT (see description in Section VIII.B), in addition to BPT for Direct Reduced Iron and Forging) and found them to be economically achievable at the facility level. Additional limitations and standards for basic oxygen furnaces with semi-wet air pollution control, electric arc furnaces with semi-wet air pollution control, sintering with dry air pollution control, non-recovery cokemaking, and briquetting are projected to incur no compliance costs. This set of options does not cause any firm level impacts as measured by the postcompliance Altman Z' score. Accordingly, the Agency determines that each selected model technology in itself and when considered collectively with the technologies across the relevant subcategories is economically achievable.

G. Community Impacts

The Agency evaluates community impacts by examining the potential increase in county unemployment. The Agency assumes all employees of the affected facilities reside in the county (if the county is not part of a larger metropolitan area) or metropolitan area in which the facilities are located. As no facility closures are projected as a result of the estimated compliance costs, no measurable impacts on county unemployment are expected.

H. Foreign Trade Impacts

The Agency evaluates the potential for foreign trade impacts by application of the market model. The aggregate regulatory compliance costs are incorporated to estimate the postcompliance impacts on foreign trade. The analysis indicates less than 0.1 percent increase in imports and less than 0.1 percent decrease in exports.

I. Small Business Analysis

Based upon information provided in the Collection of 1997 Iron and Steel Industry Data (Section 308 Survey), the Agency was able to reasonably determine the appropriate NAICS classification for each firm. EPA applied the relevant Small Business Administration (SBA) size standard for each NAICS to determine whether each firm was to be considered a small entity. The NAICS classifications observed were predominantly NAICS 324199

(coke ovens, part of ''all other petroleum and coal product manufacturing'') and NAICS 331111 (iron and steel mills). The relevant size standards varied from 500 to 1500 employees; they also included a few revenue-based standards. EPA identified an estimated 35 small entities that may be affected by the proposed rule among the estimated 115 total companies potentially affected by the proposed set of options. Given the chosen set of final options, EPA identified an estimated five small entities that may be affected by the final rule among the estimated 22 total companies. EPA has fully evaluated the economic achievability of the final rule to affected small entities. The economic achievability analysis was conducted using a discounted cash flow approach for facility analysis and the Altman Z' test for the firm analysis (for a full discussion, see Section X.C.). EPA projects that no small entities will incur an impact such as facility closure/firm failure. Further, for small entities, EPA examined the cost to revenue ratio to identify any other potential impacts of the rule upon small entities. EPA has determined that none of the five small entities will experience an impact of 1% or greater ratio of costs to revenue.

J. Cost-Benefit Analysis

The Agency estimates the total monetized social costs of the final rule to be $12.0 million ($2001) and the total monetized social benefits to range between $1.4 million and $7.3 million ($2001). The total annualized costs for each subcategory ($2001, pre-tax) are presented in Table X.L.1. The final rule as promulgated includes costs for By-Product Cokemaking BAT 1 and PSES 1 and Sintering BAT 1, in addition to BPT for Direct Reduced Iron and Forging. Additional limitations and standards for basic oxygen furnaces with semi-wet air pollution control, electric arc furnaces with semi-wet air pollution control, sintering with dry air pollution control, non-recovery cokemaking, and briquetting are projected to incur no compliance costs. The total monetized benefits are presented in Table XI.F.1

K. Cost-Reasonableness Analysis

The Agency is promulgating BPT limitations for the Non-recovery Cokemaking segment of the Cokemaking Subcategory and the Direct Reduced Iron, Briquetting, and Forging segments of the Other Operations Subcategory. CWA Section 304(b)(1)(B) requires a cost-reasonableness assessment for BPT limitations. In determining BPT limitations, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved by such technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are wholly out of proportion to the costs of achieving such marginal reduction.

The cost-reasonableness ratio is average cost per pound of pollutant removed by a BPT regulatory option. The cost component is measured as pre-tax total annualized costs ($2001). In this case, the pollutants removed are conventional pollutants. The Agency evaluated a technology option for the Non-recovery Cokemaking segment which is based on no discharge of process wastewater pollutants and is estimated to have no associated incremental regulatory compliance costs. For the Direct Reduced Iron segment, the evaluated BPT option 1 has a cost-reasonableness ratio of $3. For the Forging segment, the evaluated BPT option 1 removes approximately 3500 pounds of conventional pollutants with a cost-reasonableness ratio of $9. The Agency evaluated a technology option for the Briquetting Segment which is based on no discharge of process wastewater pollutants and is estimated to have no associated incremental regulatory compliance costs. EPA considers the cost-reasonableness ratio to be acceptable and the selected option to be cost-reasonable in all four segments.

L. Cost-Effectiveness Analysis

This section provides the cost-effectiveness analysis of the BAT and PSES regulatory options by subcategory. The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called ''pound-equivalents.'' The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb.-eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (*e.g.,* oil and grease, biochemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pound-equivalents of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher will be the pollutant's toxic weighting factor; accordingly, the use of pound-equivalents gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyses are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

1. Cost Effectiveness Analysis

The table below presents the pre-tax total annualized costs, removals (in lb-equivalents), and the incremental cost effectiveness for each technically feasible regulatory option. In cases where the technology has been found not to be feasible, the term ''NA'' appears in Table X.L.1 for removals and incremental cost-effectiveness.

TABLE X.L.1.—BAT AND PSES REMOVALS AND COST-EFFECTIVENESS

Subcategory and segment	Option	Pretax total annualized cost ($2001M)	Removals (lb-eq)	Incremental cost effectiveness (1981$/lb-eq)
By-Product Cokemaking	BAT 1	7.1	185,441	$21
By-Product Cokemaking	PSES 1	2.1	26,251	45
By-Product Cokemaking	PSES 3	7.7	77,783	61
Ironmaking	BAT1 and PSES1	13.7	NA	NA
Sintering	BAT 1	2.8	14,515	107
Integrated Steelmaking	BAT 1	14.0	94,494	83
Integrated and Stand Alone Hot Forming, Carbon & Alloy	BAT 1	36.7	247,280	83
Nonintegrated Steelmaking and Hot Forming, Carbon & Alloy	BAT 1	6.6	3,891	941
Nonintegrated Steelmaking and Hot Forming, Stainless	BAT 1	0.9	230	2,069
Nonintegrated Steelmaking and Hot Forming, Stainless	PSES 1	0.3	78	1,970
Steel Finishing, Carbon & Alloy	BAT 1	11.1	NA	NA
Steel Finishing, Stainless	BAT 1	5.4	NA	NA

2. Non-recovery Cokemaking

The Agency has selected a technology option for the Non-recovery Cokemaking Segment which is based on no discharge of process wastewater pollutants for BPT, BAT and PSES and is estimated to have no associated regulatory compliance costs. This is because all existing non-recovery cokemaking facilities achieve the no discharge of process wastewater pollutants limitation. As a result, a cost-effectiveness analysis cannot be constructed for this segment.

3. Other Operations

The Agency evaluated technology options for Direct Reduced Ironmaking and Forging segments only for the control of conventional pollutants at BPT (see Section X.K). The Agency evaluated a technology option for the Briquetting Segment which is based on no discharge of process wastewater pollutants and is estimated to have no associated incremental regulatory compliance costs. As a result, a cost-effectiveness analysis cannot be constructed for these segments.

XI. Water Quality Analysis and Environmental Benefits

EPA evaluated the environmental benefits of controlling the discharges of 50 priority and nonconventional pollutants from iron and steel facilities to surface waters and POTWs in national analyses of direct and indirect discharges. EPA identified more than 50 pollutants of concern in iron and steel effluents at treatable levels, but EPA presently has only published recommended ambient water quality criteria (AWQC) or toxicity profiles for 50 of those pollutants. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and drinking water.

Furthermore, these pollutants may also interfere with POTW operations in terms of inhibition of activated sludge or biological treatment and contamination of sewage sludges, thereby limiting the methods of disposal for sewage sludge and the POTW's costs (though, as noted below, there is no evidence of this for this sector). Most of these pollutants have at least one known toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency did not evaluate the effects of conventional pollutants discharged from iron and steel mills on aquatic life and human health because of a lack of numeric AWQC for those parameters. EPA did not evaluate the effects of conventional pollutants on POTWs because POTWs are designed to treat these pollutants. However, the discharge of a conventional pollutant such as total suspended solids (TSS) or oil & grease can have adverse effects on aquatic life and the environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of suspended particles that alter benthic spawning grounds and feeding habitats.

Oil and grease may have toxic effects on aquatic organisms (i.e., fish, crustacea, larvae and eggs, gastropods, bivalves, invertebrates, and flora). The marine larvae and benthic invertebrates appear to be the most intolerant of oil and grease, particularly the water-soluble compounds, at concentrations ranging from 0.1 ppm to 25 ppm and 1 ppm to 6,100 ppm, respectively. However, because oil and grease is not a definitive chemical category, but instead includes many organic compounds with varying physical, chemical, and toxicological properties, it is difficult for EPA to establish a numerical criterion which would be applicable to all types of oil and grease. For this reason, EPA does not model the effects of oil and grease on the environment.

Of a total of 254 iron and steel facilities potentially affected by the rule, EPA presents here the analysis results for 22 of the facilities affected by this final rule. The facilities modelled are the discharging facilities in the cokemaking and sintering subcategories. In the case of the other operations subcategory, no pollutants other than conventional pollutants were identified as pollutants of concern and the Agency did not undertake environmental modelling. Of the 22 facilities, fifteen are direct wastewater dischargers that discharge up to 50 pollutants to thirteen receiving streams and eight are indirect wastewater dischargers discharging up to 26 pollutants through POTWs to seven receiving streams. One facility discharges both directly and indirectly.

To estimate some of the benefits from the improvements in water quality expected to result from this rule, EPA modeled in-stream concentrations for the pollutants and then compared these concentrations to aquatic life and human health AWQC guidance documents published by EPA or to toxic effect levels. States often consult these water quality criteria guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, for this analysis, EPA used the nationwide criteria guidance as the representative values for the particular pollutants. EPA also modeled the effects of iron and steel discharges on seven POTWs which receive discharges from the eight iron and steel indirect discharging facilities.

Because the affected iron and steel facilities may discharge in multiple waste subcategories, and some waterbody reaches receive discharges from more than one iron and steel facility, EPA chose to perform the environmental assessment analyses on a reach-by-reach basis. The reach-by-reach basis has the advantage over a subcategory-specific basis in that it more accurately predicts the overall effects of the rule on the environment.

In addition, EPA reviewed the CWA Section 303(d) lists of impaired waterbodies developed by States in 1998 and noted that at least 3 waterbodies, identified with industrial point sources as a potential source of impairment, receive direct discharges from iron and steel facilities as well as other sources. Eight additional waterbodies that receive direct discharges are also identified as impaired. However, the States did not identify the potential sources of impairment. EPA also identified 10 waterbodies with fishing advisories that receive direct discharges from iron and steel facilities as well as other sources.

EPA expects a variety of human health, environmental, and economic benefits to result from reductions in effluent loadings (see the Environmental Assessment). In particular, the benefits assessment addresses the following benefit categories: (a) Human health benefits due to reductions in excess cancer cases; (b) human health benefits due to reductions in noncarcinogenic hazard (systemic); (c) ecological and recreational benefits due to improved water quality with respect to toxic pollutants; and (d) benefits to POTWs from reductions in interference, pass through, and biosolid contamination, and elimination of some of the efforts associated with establishing local pretreatment limits.

A. Reduced Human Health Cancer Risk

EPA expects that reduced loadings to surface waters associated with the final rule would reduce excess cancer cases by approximately 0.50 per year with estimated monetized benefits of $1.3 to $6.9 million ($2001). These estimated benefits are attributable to reducing the cancer risks associated with consuming contaminated fish tissue. EPA developed these benefit estimates by applying an existing estimate of the value of a statistical life to the estimated number of excess cancer cases avoided. The estimated range of the value of a statistical life used in this analysis is $2.6 million to $13.7 million ($2001). EPA's Science Advisory Board recently recommended that the values of a statistical life be adjusted downward using a discount factor to account for latency in cases (such as cancer) where there is a lag between exposure and mortality. This was not done in the current analysis because EPA needs more information to estimate latency periods associated with cancers caused by iron and steel pollutants. For example, EPA based the risk assessments for several pollutants on data from animal bioassays; these data are not sufficiently reliable to estimate a latency period for humans.

B. Reduced Noncarcinogenic Human Health Hazard

Exposure to toxic substances poses risk of systemic and other effects to humans, including effects on the circulatory, respiratory or digestive systems and neurological and developmental effects. This final rule is expected to decrease human exposure (through consumption of contaminated fish tissues) to such pollutants. However, EPA does not claim a reduction in noncarcinogenic human health risk since the instream concentrations at both baseline and treatment option are below the threshold of noncarcinogenic human health risk.

C. Improved Ecological Conditions and Recreational Activity

EPA expects this final rule to generate environmental benefits by improving water quality. There is a wide range of benefits associated with the maintenance and improvement of water quality. These benefits include use values (*e.g.,* recreational fishing), ecological values (*e.g.,* preservation of habitat), and passive use (intrinsic) values. For example, water pollution might affect the quality of the fish and wildlife habitat provided by water resources, thus affecting the species using these resources. This in turn might affect the quality and value of recreational experiences of users, such as anglers fishing in the affected streams. EPA considers the value of the recreational fishing benefits and intrinsic benefits resulting from this final rule, but does not evaluate the other types of ecological and environmental benefits (*e.g.,* increased assimilative capacity of the receiving stream, protection of terrestrial wildlife and birds that consume aquatic organisms, and improvements to other recreational activities, such as swimming, boating, water skiing, and wildlife observation) due to data limitations.

Modeled end-of-pipe pollutant loadings of the 22 facilities are estimated to decline by approximately 22 percent. The analysis comparing modeled instream pollutant concentration to AWQC estimates that current discharge loadings result in excursions at fifteen streams receiving the discharge from iron and steel facilities. The final rule would reduce the number of receiving streams with excursions to fourteen.

EPA estimates that the annual monetized recreational benefits to anglers associated with the expected changes in water quality range from $82,000 to $290,000 ($2001). EPA evaluates these recreational benefits by applying a model that considers the increase in value of a ''contaminant-free fishery'' to recreational anglers resulting from the elimination of all pollutant concentrations in excess of AWQC at one of the fifteen receiving streams. EPA estimated the monetized value of impaired recreational fishing opportunity by first calculating the baseline value of the receiving stream using a value per person day of recreational fishing, and the number of person-days fished on the receiving stream. EPA then calculated the value of improving water quality in this fishery, based on the increase in value to anglers of achieving contaminant-free fishing.

In addition, EPA estimates that the annual monetized intrinsic benefits to the general public, as a result of the same improvements in water quality, range from at least $41,000 to $145,000 ($2001). These intrinsic benefits are estimated as half of the recreational benefits and may be under or overestimated.

D. Effect on POTW Operations

EPA considers two potential sources of benefits to POTWs from this final regulation: (1) reductions in the likelihood of interference, pass through, and biosolid contamination problems; and (2) reductions in costs potentially incurred by POTWs in analyzing toxic pollutants and determining whether to, and the appropriate level at which to, set local limits.

EPA has concluded from its analysis that under current conditions, POTW operations (interference) and biosolid quality are not significantly affected by discharges from any of the eight modeled iron and steel mills. EPA, therefore, projects no potential economic benefits from reduced biosolid disposal costs. This will also be true once facilities come into compliance with today's regulation.

E. Other Benefits Not Quantified

The benefit analyses focus mainly on identified compounds with quantifiable toxic or carcinogenic effects. This

potentially leads to an underestimation of benefits, because some pollutant characterizations are not considered. Forexample, the analyses do not include the benefits associated with incidental removal of the particulate load (measured as TSS), or the oxygen demand (measured as BOD_5 and COD) of the effluents. TSS loads can degrade ecological habitat by reducing light penetration and primary productivity, and from accumulation of solid particles that alter benthic spawning grounds and feeding habitats. BOD_5 and COD loads can deplete oxygen levels, which can produce mortality or other adverse effects in fish, as well as reduce biological diversity.

F. Summary of Benefits

EPA estimates that the annual monetized benefits, at the national level, resulting from this final rule range from $1.4 million to $7.3 million ($2001). Table XI.F.1 summarizes these benefits, by category. The range reflects the uncertainty in evaluating the effects of this final rule and in placing a dollar value on these effects. As indicated in Table XI.F.1, these monetized benefits ranges do not reflect some benefit categories, including improved ecological conditions from improvements in water quality, improvements to recreational activities (other than fishing), and reduced discharges of conventional pollutants. Therefore, the reported benefit estimate may understate the total benefits of this final rule.

TABLE XI.F.1—POTENTIAL ECONOMIC BENEFITS (NATIONAL LEVEL)

Benefit category	Millions of 2001 dollars per year
Reduced Cancer Risk	1.3–6.9
Reduced Noncarcinogenic Hazard	Unquantified
Improved Ecological Conditions	Unquantified
Improved Recreational Value	0.08–0.29
Improved Intrinsic Value	0.04–0.15
Total Monetized Benefits	1.4–7.3

XII. Non-Water Quality Environmental Impacts

Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts associated with effluent limitations guidelines and standards. In accordance with these requirements, EPA has considered the potential impact of today's technical options on air emissions, solid waste generation, and energy consumption. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are acceptable in light of the benefits associated with compliance with the final effluent limitations guidelines and standards.

A. Air Pollution

Various subcategories within the iron and steel industry generate process waters that contain significant concentrations of organic and inorganic compounds, some of which are listed as Hazardous Air Pollutants (HAPs) in Title III of the Clean Air Act (CAA) Amendments of 1990. The Agency has developed National Emission Standards for Hazardous Air Pollutants (NESHAPs) under section 112 of the Clean Air Act (CAA) that address air emissions of HAPs for certain manufacturing operations. Subcategories within the iron and steel industry where NESHAPs are applicable include cokemaking (58 FR 57898, October 1993) and steel finishing with chromium electroplating and chromium anodizing (60 FR 4948, January 1995).

For the cokemaking subcategory, maximum achievable control technology (MACT) standards were proposed by EPA on July 3, 2001 (66 FR 35326) for pushing, quenching, and battery stacks at cokemaking plants. These regulations are currently scheduled for promulgation in December 2002. Like effluent guidelines, MACT standards are technology based. The CAA sets maximum control requirements on which MACT can be based for new and existing sources. By-products recovery operations in the cokemaking subcategory remove the majority of HAPs through processes that collect tar, heavy and light oils, ammonium sulfate and elemental sulfur. Ammonia removal by steam stripping could generate a potential air quality issue if uncontrolled; however, ammonia stripping operations at cokemaking facilities capture vapors and convert ammonia to either an inorganic salt or anhydrous ammonia, or destroy the ammonia.

Biological treatment of cokemaking wastewater can potentially emit hazardous air pollutants if significant concentrations of volatile organic compounds (VOCs) are present. To estimate the maximum annual air emissions from biological treatment, EPA multiplied the individual concentrations of all VOCs in cokemaking wastewater entering the biological treatment system by the maximum design flow and the operational period reported in the U.S. EPA Collection of 1997 Iron and Steel Industry Data. EPA determined the concentrations of the individual VOCs entering the biological treatment systems from the sampling episode data. Assuming all the VOCs entering the biological treatment systems are emitted to the atmosphere (no biological degradation), the maximum VOC emission rate would be approximately 1,800 pounds per year for all facilities. EPA believes that this is an overestimate, because VOCs can be degraded through biological treatment. EPA concludes that, even if this likely overestimate of VOC emission rate were accurate, this would be an acceptable rate of emissions that would not have a significant impact on the environment. See TDD, Chapter 15.

For the subcategories for which EPA is not revising effluent limitations guidelines and standards today, EPA does not project any change in air emissions. For the mills without cokemaking operations that are affected by revisions to part 420 (sintering, steelmaking, forging, direct reduced iron (DRI) manufacturing, and briquetting), EPA anticipates that facilities that employ the model technologies will experience no increase in air emissions. As such, no adverse air impacts are expected to occur as a result of the revised regulations.

B. Solid Waste

Solid waste, including hazardous and nonhazardous sludge and waste oil, will be generated from a number of the model treatment technologies used to develop today's effluent limitations guidelines and standards. These solids will need to be disposed of and may be subject to RCRA Land Disposal Restrictions if they are characteristically hazardous. Solid wastes include sludge from biological treatment systems, clarification systems, gravity separation, mixed-media filtration, and oil/water separation systems. EPA accounted for the associated costs related to on-site recovery and off-site treatment and disposal of the solid wastes generated due to the implementation of the various technology options. These costs were included in the economic evaluation for the part 420 regulation.

Biological nitrification included in the technology basis for cokemaking by-product segment will produce a biological treatment sludge that facilities would need to dispose. EPA estimates that approximately 190 tons (dry wt.) per year of additional biological treatment sludge will be generated by the cokemaking subcategory as a result of today's rule. These non-hazardous biological treatment sludge can be disposed in a Subtitle D landfill, recycled to the coke ovens for incineration, or land applied.

Additional solids captured by roughing clarifiers and sand or mixed-media filters for sintering and forging operations will account for less than an additional 0.08 percent of the solids currently being collected.

Data provided in the industry surveys indicate the total annual sludge and scale production from all iron and steel facilities to be 3,522,500 tons/year (dry weight). Solids removal equipment associated with the promulgated options for this rule is expected to generate less than 277 tons per year of additional dry wastewater treatment sludge. Consequently, EPA has concluded no adverse solid waste impacts are expected to occur as a result of today's regulation.

C. Energy Requirements

EPA estimates that compliance with this regulation will result in a net increase in energy consumption at iron and steel facilities. The maximum estimated increased energy use by listed subcategories is presented in Table XII.1. The costs associated with these energy requirements are included in EPA's estimated operating costs for compliance with today's rule. The projected increase in energy consumption is primarily due to the incorporation of components such as pumps, mixers, blowers, and fans.

TABLE XII.1—ADDITIONAL ENERGY REQUIREMENTS BY SUBCATEGORY

Subcategory	Energy required (million kilowatt hours/year)
Cokemaking [1]	17
Sintering [2]	4
Other Operations [3]	0.01
Total	21.01

[1] BAT–1 and PSES–1
[2] BAT–1 and PSES–1
[3] Other operations include DRI, briquetting, and forging

Approximately 3,100,000 million kilowatt hours of electric power were generated in the United States in 1997 (Energy Information Administration, Electric Power Annual 1998 Volume 1, Table A1). Total additional energy needs for all cokemaking, sintering, DRI, briquetting, and forging facilities to comply with this rule correspond to less than 0.001 percent of the national energy demand. The increase in energy demand due to the implementation of this rule will in turn cause an air emission impact from the electric power generation facilities. The increase in air emissions is expected to be proportional to the increase in energy requirements. Consequently, EPA has concluded no adverse energy impacts are expected to occur as a result of today's regulation.

XIII. Regulatory Implementation

A. Implementation of the Limitations and Standards

1. Introduction

Effluent limitations and pretreatment standards act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations and standards are applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Act and through local pretreatment programs under Section 307 of the Act.

In specific cases, the NPDES permitting authority or local POTW may elect to establish technology-based permit limits or local limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits or standards on covered pollutants to achieve compliance), the permitting authority must apply those limitations or standards. See CWA Section 301(b)(1)(C).

2. Compliance Dates

New and reissued Federal and State NPDES permits to direct dischargers must include the effluent limitations promulgated today. The permits must require immediate compliance with such limitations. If the permitting authority wishes to provide a compliance schedule, it must do so through an enforcement mechanism. Existing indirect dischargers must comply with today's pretreatment standards no later than October 17, 2005. New direct and indirect discharging sources must comply with applicable limitations and standards on the date the new sources begin operations. New direct and indirect sources are those that began construction of iron and steel operations affected by today's rule after November 18, 2002. See 65 FR at 82027.

3. Applicability

In Section VI, EPA provided detailed information on the applicability of this rule to various operations. Permit writers and pretreatment authorities should closely examine all iron and steel operations to determine if they are subject to the provisions of this rule. Also see 40 CFR 420.01.

4. Production Basis for Calculation of Permit Limitations

The NPDES permit regulations at § 122.45(f) require that NPDES permit effluent limitations be specified as mass effluent limitations (e.g., lbs/day or kg/day), except under certain enumerated circumstances that do not apply here. In order to convert the final effluent limitations expressed as pounds/thousand pounds to a monthly average or daily maximum permit limit, the permitting authority would use a production rate with units of thousand pounds/day. The current part 420 and § 122.45(b)(2) NPDES permit regulations require that pretreatment requirements and NPDES permit limits, respectively, be based on a ''* * * reasonable measure of actual production.''

The 1982 iron and steel regulation at 40 CFR 420.04 sets out the basis for calculating mass-based pretreatment requirements and requires that they be based on a reasonable measure of actual production. That regulation provides the following examples of what may constitute a reasonable measure of actual production: the monthly average for the highest of the previous five years, or the high month of the previous year. Similar provisions exist in the

national pretreatment regulations at 40 CFR 403.6(c)(3) for deriving mass-based pretreatment requirements. Specifically, 40 CFR 403.6(c)(3) states that the same production of flow figure shall be used in calculating limitations based on pretreatment standards. These values are converted to a daily basis (e.g., tons/day) for purposes of calculating mass-based pretreatment requirements. EPA is making no revision to 420.04.

5. Water Bubble

The ''water bubble'' is a regulatory flexibility mechanism described in the current regulation at 40 CFR 420.03 to allow for trading of identical pollutants at any single steel facility with multiple compliance points. The bubble has been used at some facilities to realize cost savings and/or to facilitate compliance. The restrictions on use of the water bubble are described in the proposal preamble. See 65 FR at 82031–32.

While at present NPDES permits for only nine facilities have alternative effluent limitations derived from the water bubble, there may be increased interest in the water bubble with the promulgation of today's rule. EPA proposed some changes to the water bubble, but invited comment on all aspects of the provision. These changes EPA proposed and EPA's rationale are discussed at 65 FR at 82031–32. EPA received some comments opposing some of the proposed revisions (generally industry commenters were supportive of expansions of the water bubble and environmental group commenters were supportive of restrictions on the water bubble). EPA also received comments urging the elimination of the provision codified in the 1984 amendment to part 420 that required a minimum net reduction of the amount of the pollutant otherwise authorized by the regulation. Under this provision, the amount of the pollutant discharges authorized by the bubble must be 10% to 15% less than the discharges otherwise authorized by the rule without the bubble. These comments argued that the water bubble should be used, first and foremost, as a tool to achieve the pollutant reductions required by the guideline at the least cost.

After considering the public comments, EPA makes the following changes to the water bubble:

—Allow trades for cokemaking operations but only if the cokemaking alternative limitations are more stringent than the limitations in Subpart A. See 40 CFR 420.03(f)(1).
—Allow trades for new Subpart M operations. See 40 CFR 420.03(a) and (e).
—Allow trades involving cold rolling operations. See 40 CFR 420.03(a).
—Allow trades for new, as well as existing, sources. See 40 CFR 420.03(a).
—Eliminate the minimum net reduction provision (formerly codified at 40 CFR 420.03(b)).
—Prohibit trades of oil and grease. See 40 CFR 420.03(c).
—Prohibit trades of 2,3,7,8–TCDF in sintering operations. See 40 CFR 420.03(f)(2).

The first change reflects EPA's concern about co-occurring contaminants in cokemaking wastewater (*e.g.*, benzo(a)anthracene, chrysene, fluoranthene for cokemaking). Allowing a relaxation of the limits for cokemaking wastewater could allow undetected increases in discharges of these co-occurring contaminants that would not necessarily be offset by tighter limits on the regulated pollutants in another waste stream. As was the case in the 1982 regulation, EPA is promulgating effluent limitations for certain ''indicator'' pollutants, including phenols (4AAP), naphthalene, and benzo(a)pyrene for cokemaking. The data available to EPA generally show that control of the selected ''indicator'' pollutants will result in comparable control of other toxic pollutants found in cokemaking wastewaters but not specifically limited. A trade of phenols (4AAP) enacted between cokemaking and ironmaking wastewaters would not be environmentally protective if the increased limitation for phenols (4AAP) occurred in the cokemaking wastewater, due to the co-occuring contaminants. EPA also notes that trades involving cokemaking operations were previously precluded, so this change is an expansion in the water bubble.

EPA is allowing trades involving cold rolling operations which were previously precluded. In the 1982 rulemaking, tetrachloroethlylene was a pollutant of concern in cold rolling wastewaters, thus leading to the preclusion of trades. However, this is not the case today, based on information in the Agency's rulemaking record and Chapter 7 of the TDD. EPA likewise is allowing trades involving Subcategory M operations, since no toxic pollutants were identified as pollutants of concern.

EPA is eliminating the requirement that all alternative effluent limitations based on the water bubble must achieve a minimum net reduction (depending on the pollutant) of at least 10–15% of the discharges that would otherwise have been allowable under the regulation. EPA is eliminating the requirement in order to allow the water bubble provision to be used as a tool to achieve the pollutant reductions required by Part 420 at the least cost. This new flexibility is especially important in view of the economic condition of the industry at this time. EPA notes that nothing in the regulation prevents the permitting authority from imposing minimum net reductions on a case-by-case basis when appropriate. EPA also notes that the water bubble still retains the provision that a discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would cause or contribute to an exceedance of any applicable water quality standards.

EPA is prohibiting trades involving oil and grease because of differences in the types of oil and grease used among the I&S operations. Finishing operations tend to use and discharge synthetic and animal fats and oils used to lubricate metal materials, the hot-end operations tend to discharge petroleum-based oil and grease used to lubricate machinery, and cokemaking operations tend to discharge oil and grease containing polynuclear aromatics generated by the combustion of coal. EPA is similarly prohibiting trades involving 2,3,7,8–TCDF due to the internal monitoring requirements and the associated ML limitation.

EPA concludes that these changes will give added compliance flexibility to facilities that choose to take advantage of the water bubble provision, while still providing for a high level of environmental protection.

6. Compliance With Limitations and Standards

The same basic procedures apply to the calculation of all effluent limitations guidelines and standards for this industry, regardless of whether the technology is BPT, BCT, BAT, PSES, PSNS, or NSPS. For simplicity, the following discussion refers only to effluent limitations guidelines; however, the discussion also applies to pretreatment and new source standards.

a. Definitions

The limitations for pollutants for each option, as presented in today's notice, are provided as maximum daily discharge limitations and maximum monthly average discharge limitations. Definitions provided in 40 CFR 122.2 state that the ''maximum daily discharge limitation'' is the ''highest allowable ''daily discharge'' '' and the '' maximum average for monthly discharge limitation'' is the ''highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum

of all ''daily discharges'' measured during a calendar month divided by the number of ''daily discharges'' measured during that month.'' Daily discharge is defined as the ''discharge of a pollutant'' measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling.''

b. Percentile Basis for Limits, Not Compliance

EPA promulgates limitations that facilities are capable of complying with at all times by properly operating and maintaining their processes and treatment technologies. EPA established these limitations on the basis of percentiles estimated using data from facilities with well-operated and controlled processes and treatment systems. However, because EPA uses a percentile basis, the issue of exceedances (i.e., values that exceed the limitations) or excursions is often raised in public comments on limitations. For example, comments often suggest that EPA include a provision that allows a facility to be considered in compliance with permit limitations if its discharge exceeds the specified monthly average limitations one month out of 20 and the daily average limitations one day out of 100. As explained in Section 14.6 of the TDD, these limitations were never intended to have the rigid probabilistic interpretation implied by such comments. The following discussion provides a brief overview of EPA's position on this issue.

EPA expects that all facilities subject to the limitations will design and operate their treatment systems to achieve the long-term average performance level on a consistent basis because facilities with well-designed and operated model technologies have demonstrated that this can be done. Facilities that are designed and operated to achieve the long-term average effluent levels used in developing the limitations should be capable of compliance with the limitations at all times, because the limitations incorporate an allowance for variability in effluent levels about the long-term average. The allowance for variability is based on control of treatment variability demonstrated in normal operations.

EPA recognizes that, as a result of modifications to 40 CFR part 420, some dischargers may need to improve treatment systems, process controls, and/or treatment system operations in order to consistently meet effluent limitations based on revised effluent limitations guidelines and standards. EPA believes that this consequence is consistent with the Clean Water Act statutory framework, which requires that discharge limitations reflect the best available technology.

c. Requirements of Laboratory Analysis

The permittee is responsible for communicating the requirements of the analysis to the laboratory, including the sensitivity required to meet the regulatory limits associated with each analyte of interest. In turn, the laboratory is responsible for employing the appropriate set of method options and a calibration range in which the concentration of the lowest non-zero standard represents a sample concentration lower than the regulatory limit for each analyte. For example, EPA Methods 420.1 and 420.2 provide several options for sample preparation and analysis, including a preliminary distillation designed to remove interferences and a chloroform extraction procedure (Method 420.1) designed to improve the sensitivity of the method. Both methods also provide information on the concentrations of the calibration standards that may be prepared for a given set of procedural options. Each of these methods contains at least one set of options that will provide sufficient sensitivity to meet the effluent guideline limitations for phenols (4AAP). Thus, it is the responsibility of the permittee to convey to the laboratory the required sensitivity to comply with the limitations. (See Sierra Club v. Union Oil, 813 F.2d 1480, page 1492 (9th Cir. 1987).) For organic compounds, such as 2,3,7,8-TCDF, naphthalene, and benzo(a)pyrene, it may be necessary for laboratories to overcome interferences using procedures such as those suggested in Guidance on the Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring (EPA 821–B–93–001).

7. Internal Monitoring Requirements and Compliance With ML Limitations for Sintering Subcategory

Working in conjunction with the effluent guidelines and pretreatment standards are the monitoring conditions set out in the NPDES or POTW discharge permit. An integral part of monitoring conditions is the point at which a facility must demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. In some cases, EPA determines that internal monitoring points are necessary to afford the environmental protection projected from a rule, and to reflect the reductions achievable by application of the best available technology. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii), 122.45(h), and 40 CFR 403.6(e)(2) and (4). Permit writers or local pretreatment control authorities may establish additional internal monitoring points to the extent consistent with EPA's regulations.

As explained in Section VIII.B, iron and steel dischargers subject to the sintering subcategory must demonstrate compliance with the effluent limitations and standards for 2,3,7,8-TCDF at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with process wastewaters from processes other than sintering and ironmaking, non-process wastewaters and non-contact cooling water in an amount greater than 5 percent by volume of the sintering process wastewaters. See 40 CFR 420.29.

In today's rulemaking for the sintering subcategory, EPA is establishing limitation and standard for 2,3,7,8-TCDF that is expressed as less than the Minimum Level (''<ML''). See 40 CFR 420.23, 420.24, 420.25, 420.26. Henceforth, this discussion refers to the ''ML'' limitation. The ''ML'' is an abbreviation for the Minimum Level identified today in § 420.21(c) for the analytical method that EPA used to determine the level of pollution reduction achievable for 2,3,7,8-TCDF through the use of BAT, NSPS, PSES, and PSNS technologies for subpart B. EPA intends for mills subject to ML limitations to have pollutant discharges with concentrations less than the Minimum Level of the analytical method specified today in § 420.21(c).

Often, laboratories report values less than minimum levels to be ''not detected'' or ''<ML.'' In some cases, however, the laboratories report these values as if the values were quantified. For example, a laboratory might report a measurement that is 4 parts per quadrillion (ppq). Such reported values might occur in two situations. In the first situation, the laboratory could have used EPA Method 1613B (which is the method specified in § 420.21(c)), but referred to the measurement as ''detected'' although it was less than the Minimum Level. The second situation could occur in the future as the analytical methods become more sensitive than the method specified in § 420.21(c). Using such future methods could conceivably allow laboratories to reliably measure values less than today's minimum level of 10 ppq. Such measurements resulting from either situation would be considered to demonstrate compliance with the ML limitations, because these

measurements are less than the method ML of 10 ppq specified in § 420.21(c).

When monitoring for compliance with this final rule, a sample-specific Minimum Level greater than the method Minimum Level of 10 ppq will not demonstrate compliance with the ML limitation for 2,3,7,8-TCDF. Such sample-specific Minimum Levels may result from sample volume shortages, breakage or other problems in the laboratory, or from failure to properly remove analytical interferences from the sample. EPA believes that all of these situations can be avoided by careful adherence to sample collection and laboratory analysis procedures.

Table XIII.A.1 provides some examples demonstrating compliance with the ML limitation for 2,3,7,8-TCDF.

TABLE XIII.A.1.—EXAMPLES DEMONSTRATING COMPLIANCE

Is concentration reported as ''detected'' or ''non-detected'' in the sample?	2,3,7,8-TCDF value reported by laboratory (ML is 10 ppq)	Does the sample demonstrate compliance?	Explanation for compliance determination:
Detected	4 ppq	Yes	4 ppq is less than the ML of 10 ppq specified in § 420.21(c).
Detected	10 ppq	No	Compliance is demonstrated only with measurements less than the ML of 10 ppq specified in § 420.21(c).
Non-detected	<5 ppq	Yes	<5 ppq is less than the ML of 10 ppq specified in § 420.21(c).
Non-detected	<10 ppq	Yes	Compliance is demonstrated for all values less than the ML specified in § 420.21(c).
Non-detected	<11 ppq	No	The sample-specific ML must be less than the ML of 10 ppq specified in § 420.21(c).

EPA did not establish monthly average limitations and standards for 2,3,7,8-TCDF because the daily maximum limitations and standards for these pollutants are expressed as less than the Minimum Level (<ML). The purpose of a monthly average limitations is to require continuous dischargers to provide better control, on a monthly basis, than required by the daily maximum limitation. However, for these pollutants, today's analytical methods cannot measure below the minimum level of 10 ppq associated with the daily maximum limitation. Thus, even if a permitting or pretreatment authority requires more frequent monitoring for these pollutants than once a month, monthly average limitations would still be expressed as <ML.

8. Implementation for Iron and Steel Facilities Subject to Multiple Effluent Limitations Guidelines or Pretreatment Standards

For determination of permit limits where multiple categories apply, the effluent guidelines are applied using a flow-weighted combination of the appropriate limitation for each category (i.e., ''the building block approach''). Where a facility treats an iron and steel wastestream together with process wastewater from other non-iron and steel industrial operations, the effluent guidelines would be applied by using a flow-weighted combination of the BPT/BAT limitations for the iron and steel facility and the other non-iron and steel industrial operation to derive the appropriate limitations. Similarly, for indirect dischargers, under these circumstances, the pretreatment standards would be applied using the ''combined wastestream formula'' as defined in 40 CFR 403.6(e).

9. Revisions Affecting Certain Steelmaking Operations

Until today's rule, the BPT, BCT, and BAT limitations for the ''basic oxygen furnace steelmaking '' semi-wet'' segment of the steelmaking subcategory (Subpart D) specified no discharge of process wastewater pollutants to navigable waters. For reasons discussed in Section VIII.D, EPA is revising those limitations to provide an alternate limitation to the ''no discharge'' requirement, based on best professional judgment of the permitting authority or the pretreatment control authority. The new limitations are less stringent than the limitations they replace.

EPA's NPDES permitting regulations at 40 CFR 122.44(l) require that, when an NPDES permit is renewed or reissued, the new limitations must be at least as stringent as the limitations in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR 122.62. The regulations at 40 CFR 122.62 authorize the permitting authority to modify an NPDES permit during its term when (a) the permit condition requested to be modified is based on a promulgated effluent limitation guideline; (b) EPA has revised the effluent limitation guideline upon which the permit condition was based; and (c) the permittee requests the modification in accordance with 40 CFR 124.5 within 90 days after the **Federal Register** notice of the action on which the modification request is based. See 40 CFR 122.62(a)(3).

In today's rule, EPA is revising effluent limitations guidelines that provide the legal basis for certain limitations in permits issued to facilities in the steelmaking subcategory. These revisions would constitute cause for modification of the corresponding permit conditions under 40 CFR 122.62(a)(3). Therefore, direct dischargers to which these revisions apply are not subject to the requirement in 40 CFR 122.44(l) that limitations in reissued permit for those parameters or operations be as stringent as the limitations in the previous permit. This means that when an NPDES permit is reissued for an operation affected by the revisions discussed above, the permitting authority may impose new limitations that reflect the new less stringent requirements of today's rule.

EPA is also eliminating limitations and standards for benzene for the by-product cokemaking segment of the cokemaking subcategory. That change is not subject to the provisions of 40 CFR 122.44(l) because the revision is based on EPA's judgment that limitations on other parameters should ensure removal of benzene at levels specified by the original benzene limitations. See Section VIII.A.3.a.

10. Non-Process Wastewater and Storm Water in the Immediate Process Area

EPA has provided a definition of non-process wastewaters at § 420.02(r). When developing NPDES and pretreatment limitations, permit writers and pretreatment control authorities are

authorized to use their best professional judgment to include increased mass discharge allowances to account for certain non-process wastewaters when they are appropriately cotreated with process wastewaters using best professional judgement. Non-process wastewaters may include utility wastewaters (for example, water treatment residuals, boiler blowdown, and air pollution control wastewaters from heat recovery equipment); treated or untreated wastewaters from groundwater remediation systems; dewatering water for building foundations; and other wastewater streams not associated with a production process. When considering such non-process wastewaters, permit writers and pretreatment control authorities should determine whether they contain process wastewater pollutants, or whether they would simply be dilution flows. For example, wastewater from coke plant groundwater remediation systems would be expected to contain coke plant wastewater pollutants, whereas building foundation dewatering water would be expected to be relatively clean. In the former case, the permit writer or pretreatment control authority may include additional mass discharges based on the average groundwater remediation flow and the concentrations used by EPA to develop the effluent limitations guidelines and standards in developing the mass limits. In the latter case, no increase in mass discharges may be appropriate.

EPA has provided a definition of storm water in the immediate process area at § 420.02(t). EPA has included provisions in the regulation for permit writers and pretreatment control authorities to provide for additional mass discharge allowances for process area storm water, when they deem appropriate. With advances in storm water pollution prevention and spill prevention and control, collecting and treating limited amounts of process area storm water with process wastewaters is the most practicable and effective means of limiting discharges of contaminated storm water. This is particularly the case for by-product recovery coke plants, where contaminated storm water is typically collected from the following operations: tar decanters, ammonia liquor storage, crude tar storage, crude light oil recovery (benzol plant), crude light oil storage, ammonia recovery, ammonium sulfate recovery, and others. Storm water collected from these areas often contains oil & grease and some of the nonconventional and toxic pollutants associated with the by-product recovery processes (e.g., ammonia, cyanide, phenolic compounds, and polynuclear aromatic hydrocarbons). As a result, many coke plants commonly collect storm water from these areas and pump it to the process wastewater equalization tank for treatment with process wastewaters. Because the levels of contaminants and dissolved salts in the collected storm water are relatively low compared to those found in process wastewaters, facilities can also temporarily use storm water in lieu of uncontaminated water to optimize of biological treatment systems. EPA has provided guidance on process area storm water at by-product recovery coke plants in Section 17 of the Final TDD and will provide additional guidance in a separate guidance document.

For other iron and steel processes, EPA believes it is prudent to collect storm water from the area within outdoor wastewater treatment facilities, particularly where wastewater treatment sludges are dewatered and handled at blast furnaces, sinter plants, steelmaking operations, hot forming mills (scale and oil removal as well as wastewater treatment), and steel finishing wastewater treatment plants.

EPA does not advocate unrestricted collection and treatment of process area storm water with process waters, either at by-product recovery coke plants or at facilities in other subcategories. For example, by-product recovery and non-recovery coke plants should use conventional storm water control measures to handle coal and coke pile runoff, storm water from the battery areas, and storm water collected away from the by-products recovery areas. Other examples of storm water that would be either impracticable or uneconomic to treat in process wastewater treatment facilities include building roof storm drainage from hot forming and steel finishing mills and storm drainage from raw material storage areas and plant roadways.

B. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets for direct dischargers are set forth at 40 CFR 122.41(m) and (n) and for indirect dischargers at 40 CFR 403.16 and 403.17.

C. Variances and Modifications

Upon the promulgation of these regulations, all new and reissued Federal and State NPDES permits issued to direct dischargers in the iron and steel industry must include the effluent limitations. In addition, the indirect dischargers must comply with pretreatment standards for existing sources codified today by November 18, 2002.

1. Fundamentally Different Factors (FDF) Variances

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional, and non-conventional pollutants.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitations or standards applicable to the individual facility. Such a modification is known as a ''fundamentally different factors'' (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants, and BCT limitations for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court (*Chemical Manufacturers Ass'n* v. *NRDC,* 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or national effluent pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards.

Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different, or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference, and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR part 125 subpart D, authorizing the EPA Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (for example, volume of process wastewater, age, and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (for example, infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS.

2. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain non-conventional pollutants due to localized environmental factors so long as the discharge does not violate any water quality-based effluent limitations. These pollutants include ammonia, chlorine, color, iron, and phenols (4AAP). Dischargers subject to new or revised BAT limitations promulgated today for those pollutants may be eligible for a section 301(g) variance. Please note that section 301(g)(4)(c) requires the filing of section 301(g) variance applications pertaining to the new or revised limits not later than July 14, 2003. Existing section 301(g) variances for limitations not being revised today are not affected by today's action.

3. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modification that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

XIV. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

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

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business based on full time employees (FTEs) or annual revenues established by SBA; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. No small governments are regulated by this action. EPA identified an estimated five small companies (owning five facilities) out of the 22 companies that may be affected by the final rule. For small entities, EPA examined the cost to revenue ratio to identify the impacts of the today's rule on small entities. EPA has determined that none of the five small entities will experience an impact of 1% or greater ratio of costs to revenue. Further, EPA has fully evaluated the economic impact of the final rule to affected small entities. The economic achievability analysis was conducted using a discounted cash flow approach for facility analysis and the Altman Z' test for the firm analysis (for a full discussion, see Section X.C.). EPA projects that no small entities will incur a significant impact such as facility closure or firm failure.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. 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 of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the final rule as $12.0 million ($2001). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. No small governments are subject to this rule. The final rule, at most, imposes only minimal administrative requirements on small local governments that are administering approved pretreatment programs. The final rule does not uniquely affect small governments because small and large governments are affected in the same way. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

D. Paperwork Reduction Act

This action does not impose any new information collection burden. There are no new information collection reporting requirements for facilities that comply with the limits in any of the subcategories. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements and burden contained in the regulation under ''National Pollutant Discharge Elimination System (NPDES)/ Compliance Assessment/Certification Information'' ICR (EPA ICR No.1427.05; OMB Control No. 2040–0110) and in the ''National Pretreatment Program (40 CFR part 403)'' ICR (EPA ICR No. 0002.081; OMB Control No. 2040–0009) under the provisions of the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 *et seq.*

Copies of the ICR documents may be obtained from Sandy Farmer, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, or by email at *farmer.sandy@epa.gov*. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

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 current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

E. National Technology Transfer and Advancement Act

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

Today's rule does not establish any technical standards. Thus, NTTAA does not apply to this rule. It should be noted, however, that dischargers complying with this rule may need to use previously approved technical standards to analyze for some or all of the following pollutants: benzo(a)pyrene, naphthalene, phenols (4AAP), TSS, Oil and Grease (HEM), total cyanide, ammonia as Nitrogen, 2,3,7,8-TCDF, and pH. Consensus

standards have already been promulgated in tables at 40 CFR 136.3 for measurement of all of the analytes.

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

The Executive Order ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is neither ''economically significant'' as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA determined no facilities in the scope of the final rule are owned by Indian tribes nor are any facilities located in tribal lands. Thus, Executive Order 13175 does not apply to this rule.

H. 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. This rule only directly affects the private sector. It establishes effluent limitations for iron and steel facilities. The rule does not apply directly to States and localities and will only affect State and local governments when they are administering CWA permitting programs. The rule, at most, imposes minimal administrative costs on States that have an authorized NPDES program. (These States must incorporate the new limitations and standards in new and reissued NPDES permits.) Thus, Executive Order 13132 does not apply to this rule.

I. Executive Order 13211: Energy Effects

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The maximum estimated additional energy needs associated with today's rule represents less than 0.001 percent of national energy demand, which is not considered significant.

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.

EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 18, 2002.

List of Subjects in 40 CFR Part 420

Environmental protection, Iron, Steel, Waste treatment and disposal, Water pollution control.

Dated: April 30, 2002.

Christine Todd Whitman,

Administrator.

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

PART 420—IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 420 continues to read as follows:

Authority: Secs. 301; 304(b), (c), (e), and (g); 306(b) and (c); 307; 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972., as amended by the Clean Water Act of 1977) (the ''Act''); 33 U.S.C. 1311; 1314(b), (c), (e), and (g); 1316(b) and (c); 1317; 1318, 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567; Pub. L. 95–217.

General Provisions

2. Section 420.02 is amended by adding paragraphs (r), (s), (t) and (u) to read as follows:

§ 420.02 General definitions.

* * * * *

(r) The term *Non-process wastewaters* means utility wastewaters (for example, water treatment residuals, boiler blowdown, and air pollution control wastewaters from heat recovery equipment); treated or untreated wastewaters from groundwater remediation systems; dewatering water for building foundations; and other wastewater streams not associated with a production process.

(s) The term *Nitrification* means oxidation of ammonium salts to nitrites (via Nitrosomas bacteria) and the further oxidation of nitrite to nitrate via Nitrobacter bacteria. Nitrification can be accomplished in either:

(1) A single or two-stage activated sludge wastewater treatment system; or

(2) Wetlands specifically developed with a marsh/pond configuration and maintained for the express purpose of removing ammonia-N.

Indicators of nitrification capability are:

(1) Biological monitoring for ammonia oxidizing bacteria (AOB) and nitrite oxidizing bacteria (NOB) to determine if the nitrification is occurring; and

(2) Analysis of the nitrogen balance to determine if nitrifying bacteria reduce the amount of ammonia and increase the amount of nitrite and nitrate.

(t) The term *storm water from the immediate process area* means storm water that comes into contact with process equipment located outdoors, storm water collected in process area and bulk storage tank secondary containment structures, and storm water from wastewater treatment systems located outdoors, provided that it has the potential to become contaminated with process wastewater pollutants for the particular subcategory. Storm water from building roofs, plant roadways, and other storm waters that do not have the potential to become contaminated with process wastewater pollutants are not storm water from the immediate process area.

(u) The term *2,3,7,8–TCDF* means 2,3,7,8-tetrachlorodibenzofuran.

3. Revise § 420.03 to read as follows:

§ 420.03 Alternative effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available, best available technology economically achievable, best available demonstrated control technology, and best conventional pollutant control technology (the ''water bubble'').

(a) Except as provided in paragraphs (c) through (f) of this section, any existing or new direct discharging point source subject to this part may qualify for alternative effluent limitations to those specified in subparts A through M of this part, representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT), best available technology economically achievable (BAT), best conventional pollutant control technology (BCT), and best available demonstrated control technology (NSPS). The alternative effluent limitations for each pollutant are determined for a combination of outfalls by totaling the mass limitations allowed under subparts A through M of this part for each pollutant.

(b) The water bubble may be used to calculate alternative effluent limitations only for identical pollutants (*e.g.*, lead for lead, not lead for zinc).

(c) Use of the water bubble to develop alternate effluent limitations for oil & grease is prohibited.

(d) A discharger cannot qualify for alternative effluent limitations if the application of such alternative effluent limitations would cause or contribute to an exceedance of any applicable water quality standards.

(e) Each outfall from which process wastewaters are discharged must have specific, fixed effluent limitations for each pollutant limited by the applicable subparts A through M of this part.

(f) Subcategory-Specific Restrictions:

(1) There shall be no alternate effluent limitations for cokemaking process wastewater unless the alternative limitations are more stringent than the limitations in Subpart A of this part; and

(2) There shall be no alternate effluent limitations for 2,3,7,8–TCDF in sintering process wastewater.

4. Add § 420.07 to General Provision to read as follows:

§ 420.07 Effluent limitations guidelines and standards for pH.

(a) The pH level in process wastewaters subject to a subpart within this part shall be within the range of 6.0 to 9.0.

(b) The pH level shall be monitored at the point of discharge to the receiving water or at the point at which the wastewater leaves the wastewater treatment facility operated to treat effluent subject to that subpart.

5. Add § 420.08 to General Provisions to read as follows:

§ 420.08 Non-process wastewater and storm water.

Permit and pretreatment control authorities may provide for increased loadings for non-process wastewaters defined at § 420.02 and for storm water from the immediate process area in NPDES permits and pretreatment control mechanisms using best professional judgment, but only to the extent such non-process wastewaters result in an increased flow.

Subpart A—Cokemaking Subcategory

6. Section 420.10 is revised to read as follows:

§ 420.10 Applicability.

The provisions of this subpart are applicable to discharges and the introduction of pollutants into publicly owned treatment works resulting from by-product and other cokemaking operations.

7. Section 420.11 is revised to read as follows:

§ 420.11 Specialized definitions.

(a) For the cokemaking subcategory, the term *product* means the production of coke plus coke breeze.

(b) The term *by-product cokemaking* means operations in which coal is heated in the absence of air to produce metallurgical coke (furnace coke and foundry coke), and the recovery of by-products derived from the gases and liquids that are driven from the coal during cokemaking.

(c) The term *cokemaking—non-recovery* means cokemaking operations for production of metallurgical coke (furnace coke and foundry coke) without recovery of by-products. Does not include co-generation facilities located at non-recovery coke facilities.

(d) The term *coke* means a processed form of coal that serves as the basic fuel for the smelting of iron ore.

(1) The term *foundry coke* means coke produced for foundry operations.

(2) The term *furnace coke* means coke produced for blast furnace operations

(e) The term *merchant coke plant* means by-product cokemaking operations that provide more than fifty percent of the coke produced to operations, industries, or processes other than ironmaking blast furnaces associated with steel production.

(f) The term *iron and steel coke plant* means by-product cokemaking operations other than those at merchant coke plants.

(g) The term *coke oven gas wet desulfurization system* means those systems that remove sulfur and sulfur compounds from coke oven gas and generate process wastewater.

(h) The term *coke breeze* means fine coke particles.

(i) The term *indirect ammonia recovery system* means those systems that recover ammonium hydroxide as a by-product from coke oven gases and waste ammonia liquors.

(j) The term *iron and steel* means those by-product cokemaking operations other than merchant cokemaking operations.

(k) The term *merchant* means those by-product cokemaking operations that provide more than fifty percent of the coke produced to operations, industries, or processes other than ironmaking blast furnaces associated with steel production.

(l) The term *O&G (as HEM)* means total recoverable oil and grease measured as n-hexane extractable material.

(m) The term *wet desulfurization system* means those systems that remove sulfur compounds from coke oven gases and produce a contaminated process wastewater.

8. Section 420.12 is amended by revising paragraph (c) to read as follows:

§ 420.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available (BPT).

* * * * *

(c) *Cokemaking—non-recovery.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this segment must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to waters of the U.S.

9. Section 420.13 is revised to read as follows:

§ 420.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *By-product cokemaking.*

SUBPART A.—EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N	0.00293	0.00202
Benzo(a)pyrene	0.0000110	0.00000612
Cyanide	0.00297	0.00208
Naphthalene	0.0000111	0.00000616
Phenols (4AAP)	0.0000381	0.0000238

[1] Pounds per thousand lb of product.

(1) Increased loadings, not to exceed 13.3 per cent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(3) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

10. Section 420.14 is revised to read as follows:

§ 420.14 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) *By-product cokemaking.*

(1) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012, and before November 18, 2002, must continue to achieve the standards specified in § 420.14 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, except as provided below. For toxic and nonconventional pollutants, those standards shall apply until the expiration of the applicable time period specified in 40 CFR 122.29(d)(1); thereafter, the source must achieve the effluent limitations specified in § 420.13(a).

(2) The following standards apply with respect to each new source that commences construction after November 18, 2002:

SUBPART A.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N	0.00293	0.00202
Benzo(a)pyrene	0.0000110	0.00000612
Cyanide	0.00297	0.00208
Naphthalene	0.0000111	0.00000616
O&G (as HEM)	0.00676	0.0037
pH [2]	([2])	([2])
Phenols (4AAP)	0.0000381	0.0000238
TSS	0.0343	0.0140

[1] Pounds per thousand lb of product.
[2] Within the range of 6.0 to 9.0.

(A) Increased loadings, not to exceed 13.3 per cent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(B) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and

coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(C) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

11. Section 420.15 is revised to read as follows:

§ 420.15 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) *By-product cokemaking.*

SUBPART A.—PRETREATMENT STANDARDS FOR EXISTING SOURCES (PSES)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N [2]	0.0333	0.0200
Cyanide	0.00724	0.00506
Naphthalene	0.0000472	0.0000392

[1] Pounds per thousand lb of product.
[2] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(1) Increased loadings, not to exceed 13.3 per cent of the above limitations, shall be provided for process wastewaters from wet coke oven gas desulfurization systems, but only to the extent such systems generate process wastewaters.

(2) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(3) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* There shall be no discharge of process wastewater pollutants to POTWs.

12. Section 420.16 is revised to read as follows:

§ 420.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) *By-product cokemaking.*

(1) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012 and before November 18, 2002 must continue to achieve the standards specified in § 420.16 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, (except for the standards for phenols 4AAP) for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must achieve the standards specified in § 420.15(a).

(2) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after November 18, 2002:

SUBPART A.—PRETREATMENT STANDARDS FOR NEW SOURCES (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N[2]	0.00293	0.00202
Benzo(a)pyrene	0.0000110	0.00000612
Cyanide	0.00297	0.00208
Naphthalene	0.0000111	0.00000616

[1] Pounds per thousand lb of product.
[2] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(A) Increased loadings, not to exceed 13.3 percent of the above limitations, shall be provided for process wastewaters from coke oven gas wet desulfurization systems, but only to the extent such systems generate process wastewaters.

(B) Increased loadings shall be provided for process wastewaters from other wet air pollution control systems (except those from coal charging and coke pushing emission controls), coal tar processing operations and coke plant groundwater remediation systems, but only to the extent such systems generate process wastewaters and those wastewaters are co-treated with process wastewaters from by-product cokemaking wastewaters.

(C) Increased loadings, not to exceed 44.2 percent of the above limitations, shall be provided for water used for the optimization of coke plant biological treatment systems.

(b) *Cokemaking—non-recovery.* Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after November 18, 2002:

There shall be no discharge of process wastewater pollutants to POTWs.

13. Section 420.17 is amended by revising paragraph (c) to read as follows:

§ 420.17 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

(c) *Cokemaking—non-recovery.* Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this segment must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT): There shall be no discharge of process wastewater pollutants to waters of the U.S.

14. Section 420.18 is added to Subpart A to read as follows:

§ 420.18 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for existing sources set forth in § 420.15 of this subpart is required not later than October 17, 2005 whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance. Until that date, the pretreatment standards for existing sources set forth in Subpart A of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, shall continue to apply.

Subpart B—Sintering Subcategory

15. Section 420.21 is added to read as follows:

§ 420.21 Specialized definitions.

As used in this subpart:

(a) For the sintering subcategory, the term *product* means sinter agglomerated from iron-bearing materials.

(b) The term *dry air pollution control system* means an emission control system that utilizes filters to remove iron-bearing particles (fines) from blast furnace or sintering off-gases.

(c) The term *minimum level (ML)* means the level at which the analytical system gives recognizable signals and an acceptable calibration point. For 2,3,7,8-tetrachlorodibenzofuran, the minimum level is 10 pg/L per EPA Method 1613B for water and wastewater samples.

(d) The *term pg/L* means picograms per liter (ppt = 1.0×10–12 gm/L).

(e) The term *sintering* means a process for agglomerating iron-bearing materials into small pellets (sinter) that can be charged to a blast furnace.

(f) The term *wet air pollution control system* means an emission control system that utilizes water to clean process or furnace off-gases.

16. Section 420.22 is revised to read as follows:

§ 420.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) *Sintering operations with wet air pollution control system.* The following table presents BPT limitations for sintering operations with wet air pollution control systems:

SUBPART B.—EFFLUENT LIMITATIONS (BPT)

Pollutants or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (pounds per 1000 lb) of product	
TSS	0.0751	0.0250
O&G	0.0150	0.00501
pH	([1])	([1])

[1] Within the range of 6.0 to 9.0.

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

17. Section 420.23 is revised to read as follows:

§ 420.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

(a) *Sintering operations with wet air pollution control system.* The following table presents BAT limitations for sintering operations with wet air pollution control systems:

SUBPART B.—EFFLUENT LIMITATIONS (BAT)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia-N[2]	0.0150	0.00501
Cyanide[2]	0.00300	0.00150
Lead	0.000451	0.000150
Phenols (4AAP)[2]	0.000100	0.0000501
2,3,7,8–TCDF	<ML	
TRC[3]	0.000250	

SUBPART B.—EFFLUENT LIMITATIONS (BAT)—Continued

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Zinc	0.000676	0.000225

[1] Pounds per thousand lb of product.
[2] Limits for these parameters apply only when sintering waste water is co-treated with ironmaking wastewater.
[3] Applicable only when sintering process wastewater is chlorinated.

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

18. Section 420.24 is revised to read as follows:

§ 420.24 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012 and before November 18, 2002 must continue to achieve the applicable standards specified in § 420.24 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, except that after the expiration of the applicable time period specified in 40 CFR 122.29(d)(1), the source must also achieve the effluent limitations specified in § 420.23 for 2,3,7,8-TCDF.

(b) The following standards apply with respect to each new source that commences construction after November 18, 2002.

(1) *Sintering operations with wet air pollution control system.* The following table presents NSPS for sintering operations with wet air pollution control systems:

SUBPART B.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
TSS	0.0200	0.00751
O&G	0.00501	
Ammonia-N[2]	0.0150	0.00501
Cyanide[2]	0.00100	0.000501
Phenols (4AAP)[2]	0.000100	0.0000501
TRC[3]	0.000250	
Lead	0.000451	0.000150
Zinc	0.000676	0.000225
pH	([4])	([4])
2,3,7,8–TCDF	<ML	

[1] Pounds per thousand lb of product.
[2] Limits for these parameters apply only when sintering wastewater is co-treated with ironmaking wastewater.
[3] Applicable only when sintering process wastewater is chlorinated.
[4] Within the range of 6.0 to 9.0.

(2) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

19. Section 420.25 is revised to read as follows:

§ 420.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) Sintering operations with wet air pollution control system. The following table presents PSES for sintering operations with wet air pollution control systems:

SUBPART B.—PRETREATMENT STANDARDS FOR EXISTING SOURCES (PSES)

Regulated parameter	Maximum daily[1]	Maximum monthly avg.[1]
Ammonia-N[2,3]	0.0150	0.00501
Cyanide[2]	0.00300	0.00150
Phenols (4AAP)[2]	0.000100	0.0000501
Lead	0.000451	0.000150
Zinc	0.000676	0.000225
2,3,7,8-TCDF	<ML	

[1] Pounds per thousand lb of product.
[2] The pretreatment standards for these parameters apply only when sintering wastewater is co-treated with ironmaking wastewater.
[3] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to POTWs.

20. Section 420.26 is revised to read as follows:

§ 420.26 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS), as applicable.

(a) Sintering operations with wet air pollution control system.

(1) Any new source subject to the provisions of this section that commenced discharging after November 19, 2012 and before November 18, 2002 must continue to achieve the standards specified in § 420.26 of title 40 of the Code of Federal Regulations, revised as of July 1, 2001, for ten years beginning on the date the source commenced discharge or during the period of depreciation or amortization of the facility, whichever comes first, after which the source must also achieve the pretreatment standard for 2,3,7,8–TCDF specified in § 420.25.

(2) Except as provided in 40 CFR 403.7, the following standards apply with respect to each new source that commences construction after November 18, 2002: The following table presents PSNS for sintering operations with wet air pollution control systems:

SUBPART B.—PRETREATMENT STANDARDS FOR NEW SOURCES (PSNS)

Regulated parameter	Maximum daily [1]	Maximum monthly avg.[1]
Ammonia-N [2,3]	0.0150	0.00501
Cyanide [2]	0.00100	0.000501
Phenols (4AAP) [2]	0.000100	0.0000501
Lead	0.000451	0.000150
Zinc	0.000676	0.000225
2,3,7,8-TCDF	<ML	

[1] Pounds per thousand pound of product.
[2] The pretreatment standards for these parameters apply only when sintering wastewater is co-treated with ironmaking wastewater.
[3] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02(s)).

(b) *Sintering operations with dry air pollution control system.* There shall be no discharge of process wastewater pollutants to POTWs.

21. Section 420.28 is added to Subpart B to read as follows:

§ 420.28 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for 2,3,7,8–TCDF for existing sources set forth in § 420.25(a) is required not later than October 17, 2005 whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance.

22. Section 420.29 is added to Subpart B to read as follows:

§ 420.29 Point of compliance monitoring.

(a) *Sintering Direct Dischargers.* Pursuant to 40 CFR 122.44(i) and 122.45(h), a direct discharger must demonstrate compliance with the effluent limitations and standards for 2,3,7,8–TCDF at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with process wastewaters from processes other than sintering and ironmaking, non-process wastewaters or non-contact cooling water, if such water(s) are in an amount greater than 5 percent by volume of the sintering process wastewaters.

(b) *Sintering Indirect Dischargers.* An indirect discharger must demonstrate compliance with the pretreatment standards for 2,3,7,8-TCDF by monitoring at the point after treatment of sinter plant wastewater separately or in combination with blast furnace wastewater, but prior to mixing with process wastewaters from processes other than sintering and ironmaking, non-process wastewaters and non-contact cooling water in an amount greater than 5 percent by volume of the sintering process wastewaters.

Subpart C—Ironmaking Subcategory

23. Section 420.31 is revised to read as follows:

§ 420.31 Specialized definitions.

(a) For ironmaking blast furnaces, the term *product* means the amount of molten iron produced.

(b) The term *molten iron* means iron produced in a blast furnace as measured at the blast furnace, and may include relatively minor amounts of blast furnace slag that may be skimmed from the molten iron at the steelmaking shop or other location remote from the blast furnace.

(c) The term *iron blast furnace* means all blast furnaces except ferromanganese blast furnaces.

(d) The term *existing indirect dischargers* means only those two iron blast furnace operations with discharges to publicly owned treatment works prior to May 27, 1982.

§ 420.32 [Amended]

24. Section 420.32 is amended by removing and reserving paragraph (b).

§ 420.33 [Amended]

25. Section 420.33 is amended by removing and reserving paragraph (b).

§ 420.34 [Amended]

26. Section 420.34 is amended by removing and reserving paragraph (b).

27. Section 420.35 is amended by adding a footnote in the table to paragraph (a) for the entry Ammonia-N and by removing and reserving paragraph (b) to read as follows:

§ 420.35 Pretreatment standards for existing sources (PSES).

* * * * *

(a) *Iron blast furnace.*

SUBPART C.—PRETREATMENT STANDARDS FOR EXISTING SOURCES

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (pounds per 1000 lb) of product	
Ammonia-N[1]	0.00876	0.00292
* * * * * * *		

[1] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at 420.02(s)).

* * * * *

28. Section 420.36 is amended by adding a footnote in the table to paragraph (a) for the entry Ammonia-N and by removing and reserving paragraph (b) to read as follows:

§ 420.36 Pretreatment standards for new sources (PSNS).

* * * * *

(a) *Iron blast furnace.*

SUBPART C.—PRETREATMENT STANDARDS FOR NEW SOURCES

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Kg/kkg (pounds per 1000 lb) of product	
Ammonia-N[1]	0.00876	0.00292
* * * * * * *		

[1] The pretreatment standards for ammonia are not applicable to sources that discharge to a POTW with nitrification capability (defined at § 420.02 (s)).

Subpart D—Steelmaking Subcategory

29. Section 420.40 is revised to read as follows.

§ 420.40 Applicability; description of the steelmaking subcategory.

The provisions of this subpart are applicable to discharges and to the introduction of pollutants into publicly owned treatment works resulting from steelmaking operations conducted in basic oxygen and electric arc furnaces.

§ 420.41 [Amended]

30. Section 420.41 is amended by removing and reserving paragraph (b).

31. Section 420.42 is amended by revising paragraph (a), the heading of paragraph (c) (the table is unchanged), and adding paragraph (d) to read as follows.

§ 420.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the permitting authority that safety considerations prevent attainment of these limitations, the permitting authority may establish alternative limitations on a best professional judgment basis.

32. Section 420.43 is amended by revising paragraph (a), the heading of paragraph (c) (the table is unchanged), and adding paragraph (d) to read as follows.

§ 420.43 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

* * * * *

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the permitting authority that safety considerations prevent attainment of these limitations, the permitting authority may establish alternative limitations on a best professional judgment basis.

33. Section 420.44 is amended by revising paragraph (a) and removing paragraph (d) to read as follows.

§ 420.44 New source performance standards (NSPS).

* * * * *

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

34. Section 420.45 is amended by revising paragraph (a), the heading to paragraph (c) (the table is unchanged), and adding paragraph (d) to read as follows.

§ 420.45 Pretreatment standards for existing sources (PSES).

* * * * *

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(c) *Basic oxygen furnace steelmaking—wet open combustion; and electric arc furnace steelmaking—wet.*

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the pretreatment control authority that safety considerations prevent attainment of these limitations, the pretreatment control authority may establish alternative limitations on a best professional judgment basis.

35. Section 420.46 is amended by revising paragraph (a) and removing paragraph (d) to read as follows.

§ 420.46 Pretreatment standards for new sources (PSNS).

* * * * *

(a) *Basic oxygen furnace steelmaking—semi-wet; and electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

36. Section 420.47 is amended by revising the section heading, paragraph (a), and adding paragraph (d) to read as follows.

§ 420.47 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) *Electric arc furnace steelmaking—semi-wet.* No discharge of process wastewater pollutants to navigable waters.

* * * * *

(d) *Basic oxygen furnace steelmaking—semi-wet.*

(1) No discharge of process wastewater pollutants to navigable waters.

(2) If the permittee demonstrates to the satisfaction of the permitting authority that safety considerations prevent attainment of these limitations, the permitting authority may establish alternative limitations on a best professional judgment basis.

37. Section 420.48 is added to Subpart D to read as follows:

§ 420.48 Pretreatment standards compliance dates.

Compliance with the pretreatment standards for existing sources set forth in § 420.45(d) of this subpart is required not later than October 17, 2005 whether or not the pretreatment authority issues or amends a pretreatment permit requiring such compliance.

38. Subpart M is added to read as follows:

Subpart M—Other Operations Subcategory

Sec.
420.130 Applicability.
420.131 Subcategory definitions.
420.132 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
420.133 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
420.134 New source performance standards (NSPS).
420.135 Pretreatment standards for existing sources (PSES).
420.136 Pretreatment standards for new sources (PSNS).
420.137 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutant (BCT).

Subpart M—Other Operations Subcategory

§ 420.130 Applicability.

The provisions of this subpart are applicable to discharges to waters of the U.S. and the introduction of pollutants into publicly owned treatment works resulting from production of direct-reduced iron and from briquetting and forging operations.

§ 420.131 Specialized definitions.

As used in this subpart:

(a) The term *briquetting operations* means a hot or cold process that agglomerates (presses together) iron-bearing materials into small lumps without melting or fusion. Used as a concentrated iron ore substitute for scrap in electric furnaces.

(b) The term *direct-reduced iron (DRI)* means iron produced by reduction of iron ore (pellets or briquettes) using gaseous (carbon monoxide-carbon dioxide, hydrogen) or solid reactants.

(c) The term *forging* means the hot-working of heated steel shapes (e.g., ingots, blooms, billets, slabs) by hammering or hydraulic presses, performed at iron and steel mills.

(d) For briquetting operations, the term product means the amount in tons of briquettes manufactured by hot or cold agglomeration processes.

(e) For direct reduced iron (DRI), the term product means the amount of direct reduced iron and any fines that are produced and sold commercially (as opposed to fines that may be reprocessed on site).

(f) For forging, the term product means the tons of finished steel forgings produced by hot working steel shapes.

(g) The term *O&G (as HEM)* means total recoverable oil & grease measured as n-hexane extractable materials.

§ 420.132 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve, for each applicable segment, the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Direct-reduced iron.*

SUBPART M.—EFFLUENT LIMITATIONS (BPT)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
TSS	0.00998	0.00465
pH	([2])	([2])

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(b) *Forging operations.*

SUBPART M.—EFFLUENT LIMITATIONS (BPT)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
O&G (as HEM)	0.00746	0.00446
TSS	0.0123	0.00508
pH	([2])	([2])

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.133 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT):

(a) *Direct-reduced iron.* [Reserved]
(b) *Forging operations.* [Reserved]
(c) *Briquetting.* There shall be no discharge of process wastewater pollutants.

§ 420.134 New source performance standards (NSPS).

New sources subject to this subpart must achieve the following new source performance standards (NSPS), as applicable.

(a) *Direct-reduced iron.*

SUBPART M.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Pollutant	Maximum daily [1]	Maximum monthly avg.[1]
TSS	0.00998	0.00465
pH	([2])	([2])

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(b) *Forging operations.*

SUBPART M.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
O&G (as HEM)	0.00746	0.00446
TSS	0.0123	0.00508

SUBPART M.—NEW SOURCE PERFORMANCE STANDARDS (NSPS)—Continued

Pollutant	Maximum daily[1]	Maximum monthly avg.[1]
pH	([2])	([2])

[1] Pounds per thousand pound of product.
[2] Within the range of 6.0 to 9.0.

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to waters of the U.S.

§ 420.135 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for existing sources (PSES):

(a) *Direct-reduced iron.* [Reserved]
(b) *Forging operations.* [Reserved]
(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.136 Pretreatment Standards for New Sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and must achieve the following pretreatment standards for new sources (PSNS):

(a) *Direct-reduced iron.* [Reserved]

(b) *Forging operations.* [Reserved]

(c) *Briquetting.* There shall be no discharge of process wastewater pollutants to POTWs.

§ 420.137 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best control technology for conventional pollutants (BCT): The limitations shall be the same as those specified for conventional pollutants (which are defined in 40 CFR 401.16) in § 420.132 for the best practicable control technology currently available (BPT).

[FR Doc. 02–11295 Filed 10–16–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
October 17, 2002

Part IV

Department of Labor

Office of the Secretary

Delegation of Authority and Assignment of Responsibility to the Administrative Review Board; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 1–2002]

Delegation of Authority and Assignment of Responsibility to the Administrative Review Board

1. Purpose

To delegate authority and assign responsibility to the Administrative Review Board, define its composition, and describe its functions.

2. Background

The Secretary of Labor (hereinafter referred to as the ''Secretary'') has been given by statute and regulation the authority and responsibility to decide certain appeals from administrative decisions. The Secretary created the Administrative Review Board (''Board'' or ''ARB'') in Secretary's Order 02–96, which delegated authority and assigned responsibilities to the Board. Canceling Secretary's Order 02–96, this Secretary's Order delegates authority and assigns responsibility to the ARB with certain modifications to the earlier Order. Specifically, this Order: (1) Increases the total membership of the Board from a maximum of four (three Members and one Alternate Member) to a maximum of five Members; and (2) clarifies ARB procedural authority and further delineates the authority and responsibilities of the Secretary. In addition, the Order codifies the location of the ARB in the Department's organizational structure.

3. Directives Affected

Secretary's Order 02–96, delegating authority and assigning responsibilities to the Board, is hereby canceled.

4. Delegation of Authority and Assignment of Responsibilities

The Board is hereby delegated authority and assigned responsibility to act for the Secretary of Labor in review or on appeal of the matters listed below, including, but not limited to, the issuance of final agency decisions. The Board shall report to the Secretary of Labor through the Deputy Secretary of Labor.

a. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and final decisions of Administrative Law Judges (''ALJs''), under the following:

(1) The Davis-Bacon Act, as amended (40 U.S.C. 276a *et seq.*); any laws now existing or which may be subsequently enacted, providing for prevailing wages determined by the Secretary of Labor in accordance with or pursuant to the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) (except matters pertaining to safety); the Copeland Act (40 U.S.C. 276c); Reorganization Plan No. 14 of 1950; and 29 CFR parts 1, 3, 5, 6, subpart C and D.

b. Final decisions of the Administrator of the Wage and Hour Division or an authorized representative of the Administrator, and from decisions of ALJ, arising under the McNamara-O'Hara Service Contract Act, as amended (41 U.S.C. 351); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) (except matters pertaining to safety) where the contract is also subject to the McNamara-O'Hara Service Contract Act; and 29 CFR parts 4, 5, 6, subparts B, D, E.

c. Decisions and recommended decisions by ALJs as provided for or pursuant to the following laws and implementing regulations:

(1) Age Discrimination Act of 1975, 42 U.S.C. 6103;

(2) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–l; 29 CFR part 31;

(3) Clean Air Act, 42 U.S.C. 7622; 29 CFR part 24;

(4) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610; 29 CFR part 24;

(5) Title IX of the Education Amendments of 1972, 20 U.S.C. 1682; 29 CFR part 36;

(6) Employee Polygraph Protection Act of 1988, 29 U.S.C. 2005(a); 29 CFR part 801, subpart E;

(7) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; 29 CFR part 24;

(8) Equal Access to Justice Act, 5 U.S.C. 504; 29 CFR part 16;

(9) Executive Order No. 11246, as amended, 3 CFR 339 (1964–1965 Comp.); reprinted in 42 U.S.C. 2000e app.; 41 CFR parts 60–1 and 60–30;

(10) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(m); 29 CFR part 531, sections 531.4, 531.5;

(11) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 211(d); 29 CFR part 530, subpart E;

(12) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 214(c) 29 CFR part 525, sections 525.22;

(13) Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 216(e); 29 CFR part 580;

(14) Federal Unemployment Tax Act, 26 U.S.C. 3303(b)(3), 3304(c);

(15) Federal Unemployment Tax Act (addressing agreements under the Trade Act of 1974, as amended), 26 U.S.C. 3302(c)(3); 20 CFR part 617;

(16) Federal Water Pollution Control Act, 33 U.S.C. 1367; 29 CFR part 24;

(17) Immigration and Nationality Act, as amended, 8 U.S.C. 1188(g)(2); 29 CFR part 501, subpart C;

(18) Immigration and Nationality Act, as amended, 8 U.S.C. 1182(n); 20 CFR part 655, subpart I;

(19) Immigration and Nationality Act as amended, 8 U.S.C. 1182(m) (1989); 20 CFR part 655, subpart E;

(20) Immigration and Nationality Act as amended, 8 U.S.C. 1182(m); 20 CFR part 655, subpart M;

(21) Immigration and Nationality Act, as amended, 8 U.S.C. 1288(c) and (d); 20 CFR part 655, subpart G;

(22) Job Training Partnership Act, 29 U.S.C. 1576; 20 CFR part 627; 20 CFR part 636; 29 CFR part 34;

(23) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 907(j)(2); 20 CFR part 702;

(24) Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1813, 1853; 29 CFR part 500, subpart F;

(25) National Apprenticeship Act, 29 U.S.C. 50; 29 CFR parts 29 and 30;

(26) Older Americans Senior Community Service Employment Program, 42 U.S.C. 3056, 20 CFR 641.415(c)(5);

(27) Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3803; 29 CFR part 22;

(28) Reports of alleged unlawful discharge or discrimination under Section 428 of the Black Lung Benefits Act, 30 U.S.C. 938;

(29) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; 41 CFR part 60–741, subpart B;

(30) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 29 CFR part 32;

(31) Safe Drinking Water Act, 42 U.S.C. 300j-9(i); 29 CFR part 24;

(32) Single Audit Act of 1984, 31 U.S.C. 7505; OMB Circular Nos. A–128 and A–110; 29 CFR part 96;

(33) Social Security Act, 42 U.S.C. 503; 20 CFR part 601;

(34) Solid Waste Disposal Act, 42 U.S.C. 6971; 29 CFR part 24;

(35) Surface Transportation Assistance Act, 49 U.S.C. 31105; 29 CFR part 1978;

(36) Toxic Substances Control Act, 15 U.S.C. 2622; 29 CFR part 24;

(37) Vietnam Era Veterans Readjustment Assistance Act, as amended, 38 U.S.C. 4211, 4212; 41 CFR part 60–250, subpart B;

(38) Wagner-Peyser Act, as amended, 29 U.S.C. 49; 20 CFR part 658;

(39) Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 38; 41 CFR part 50–203;

(40) Welfare to Work Act, 20 CFR 645.800(c);

(41) Wendell H. Ford Aviation Investment and Reform Act of the 21st Century, 49 U.S.C. 42121; 29 CFR part 1979;

(42) Workforce Investment Act, 29 U.S.C. 2936(b), 20 CFR 667.830; 29 CFR part 37 (*see* 37.110–112);

(43) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A; and

(44) Any laws or regulation subsequently enacted or promulgated that provide for final decisions by the Secretary of Labor upon appeal or review of decisions, or recommended decisions, issued by ALJs.

The Board shall not have jurisdiction to pass on the validity of any portion of the Code of Federal Regulations that has been duly promulgated by the Department of Labor and shall observe the provisions thereof, where pertinent, in its decisions. The Board also shall not have jurisdiction to review decisions to deny or grant exemptions, variations, and tolerances and does not have the authority independently to take such actions. In issuing its decisions, the Board shall adhere to the rules of decision and precedent applicable under each of the laws enumerated in Sections 4(a), 4(b), and 4(c) of this Order, until and unless the Board or other authority explicitly reverses such rules of decision or precedent. The Board's authority includes the discretionary authority to review interlocutory rulings in exceptional circumstances, provided such review is not prohibited by statute.

5. Composition and Panel Configuration

a. The Board shall consist of a maximum of five Members, one of whom shall be designated Chair. The Members of the Board shall be appointed by the Secretary of Labor, and shall be selected upon the basis of their qualifications and competence in matters within the authority of the Board.

b. Except as provided in Section 5(c), the Board shall sit, hear cases, render decisions, and perform all other related functions in panels of two or three Members, as may be assigned by the Chair, unless the Chair specifically directs that an appeal or review will be decided by the full Board.

c. Except as otherwise provided by law or duly promulgated regulation (*see, e.g.*, 29 CFR Parts 7 and 8), if the petitioner(s) and the respondent(s) (or the appellant(s) and the appellees(s) consent to disposition by a single Member, the Chair may determine that the decision shall be by a single Member. Upon an affirmative determination, the Chair of the Board shall, in his or her discretion, designate himself, herself, or any other Member of the Board to decide such an appeal under Section 7.

6. Terms of the Members

a. Members of the Board shall be appointed for a term of two years or less.

b. Appointment of a Member of the Board to a term not to exceed a specified time period shall not affect the authority of the Secretary to remove, in his or her sole discretion, any Member at any time.

c. Vacancies in the membership of the Board shall not impair the authority of the remaining Member(s) to exercise all the powers and duties of the Board.

7. Voting

A petition for review may be granted upon the affirmative vote of one Member, except where otherwise provided by law or regulation. A decision in any matter, including the issuance of any procedural rules, shall be by a majority vote, except as provided in Section 5(c).

8. Location of Board Proceedings

The Board shall hold its proceedings in Washington, DC, unless for good cause the Board orders that proceedings in a particular matter be held in another location.

9. Rules of Practice and Procedure

The Board shall prescribe such rules of practice and procedure, as it deems necessary or appropriate, for the conduct of its proceedings. The rules (1) which are prescribed as of the date of this Order in 29 CFR part 7 and part 8 with respect to Sections 4(a) and 4(b), respectively, of this Order and (2) which apply as of the date of this Order to appeals and review described in Section 4(c) of this Order shall, until changed, govern the respective proceedings of the Board when it is deciding appeals described in Section 4 of this Order.

10. Departmental Counsel

The Solicitor of Labor shall have the responsibility for representing the Secretary, the Deputy Secretary, and other officials of the Department and/or the Board in any administrative or judicial proceedings involving agency decisions issued pursuant to this Order, including representing officials of the Department before the Board. In addition, the Solicitor of Labor shall have the responsibility for providing legal advice to the Secretary, the Deputy Secretary, and other officials of the Department with respect to decisions covered by this Order, as well as the implementation and administration of this Order. The Solicitor of Labor may also provide legal advice and assistance to the Chair of the Board, as appropriate.

11. Effective Date

This delegation of authority and assignment of responsibility is effective immediately.

Dated: September 24, 2002.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 02–26346 Filed 10–16–02; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Thursday,
October 17, 2002

Part V

Department of the Treasury

Fiscal Service

31 CFR Parts 351 et al.

Regulations Governing Treasury Securities; New Treasury Direct System; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 351, 357, 359, 360, and 363

Regulations Governing Treasury Securities; New Treasury Direct System

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: We are implementing a new book-entry, online system for purchasing, holding and conducting transactions in Treasury securities. The system is known as New Treasury Direct.

The only Treasury security that may be held in New Treasury Direct at its initial implementation is the book-entry Series I savings bond. We plan to make the system available for other Treasury securities in the future as we expand the system.

We are adding a new part to provide the governing regulations specific to the New Treasury Direct system, and the governing regulations for the book-entry Series I savings bond. The new part will, in the future, provide governing regulations for other eligible Treasury securities as we expand the system. Although most of the functionalities for the New Treasury Direct system will be available at the initial public implementation, a few functionalities will be delayed for a period of time. The delayed functionalities are those affecting the accounts of minors, the granting of viewing and transaction rights for secondary owners, and the granting of viewing rights for beneficiaries and others. Therefore, the regulations will have dual effective dates. The sections of part 363 that will be available at initial implementation will be effective upon publication in the **Federal Register**. The sections, or parts of sections, of part 363 that will not be implemented initially will have a delayed effective date. We will announce the effective date of the affected sections by a Final Rule in the **Federal Register**.

We revised the offering of United States savings bond of Series I to provide for the book-entry Series I savings bonds. We also rewrote the regulations in plain language.

We revised the regulations governing United States savings bonds of Series I to make it clear that the regulations only refer to definitive Series I savings bonds.

We revised the regulations governing book-entry Treasury bonds, notes and bills, to make clear the differences between *TreasuryDirect,* an existing book-entry system for purchasing and holding marketable Treasury securities, and the New Treasury Direct.

We revised the offering of United States savings bonds of Series I, and the offering of United States savings bonds of Series EE, to permit the mailing of savings bonds to foreign addresses under certain circumstances.

DATES: Effective October 17, 2002. However, sections 363.24(e), (f), (g), (h), (m), 363.27, 363.28, 363.29, 363.30, 363.31, 363.32, and 363.69(d), (e), (f), (g), are stayed indefinitely; the Fiscal Service will announce the effective date(s) when they will take effect.

ADDRESSES: You can download this final rule at the following Internet address: *http://www.publicdebt.treas.gov.*

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Public Debt has developed a new account-based, online, book-entry system for purchasing, holding, and conducting transactions in Treasury securities via the Internet. The new system is known as New Treasury Direct. We are adding a new part to the Code of Federal Regulations to provide the governing regulations for the new system and for securities held within the new system.

Upon initial implementation of the system, only book-entry Series I savings bonds will be offered through New Treasury Direct. We plan to offer other Treasury securities in future enhancements to the system.

The new system is not replacing the current *TreasuryDirect* system for holding book-entry marketable Treasury securities; at least for some period of time the two systems will coexist even after marketable securities are offered through New Treasury Direct.

We will continue to offer definitive Series I savings bonds at least for some period of time.

The New Treasury Direct system will benefit the investor by enabling the investor to purchase eligible Treasury securities, conduct transactions, and self-manage his or her New Treasury Direct account using the Internet. The system will provide greater flexibility and convenience for the investor by eliminating the paperwork burden inherent in the current *TreasuryDirect* system.

The New Treasury Direct system and the book-entry Series I savings bonds will benefit the government by providing a cost-effective and efficient processing environment, thereby reducing processing costs to Treasury.

New Treasury Direct

This final rule provides the governing regulations for the New Treasury Direct system. The system is substantively different from the current *TreasuryDirect* system.

New Treasury Direct permits only one individual (the purchaser) to hold an account in his or her own right. The New Treasury Direct account will hold securities over which the account owner has control, in various forms of registration. New Treasury Direct is accessed through the Internet.

At the initial implementation, New Treasury Direct will be available to the general public for individual purchasers with a valid social security number, an account at a United States depository financial institution that accepts debits and credits using the Automated Clearing House (ACH) method of payment, and a United States address. We plan to expand the system in future enhancements to include trusts and business entities.

The system will initially offer only book-entry Series I savings bonds. We plan to offer marketable Treasury securities and exchanges of selected definitive savings bonds in future enhancements to the system.

We will authenticate the identity of an applicant for a New Treasury Direct account using an online authentication service. Once the applicant's identity has been authenticated, he or she will create a password to access the account. The account owner may then purchase securities and conduct transactions online through his or her account using the password. At our option, we may require a written application containing the applicant's certified signature. All payments for purchases and redemptions will be made by debits and credits using the ACH method.

The online transactions that an account owner may conduct include: Purchasing eligible Treasury securities; redeeming savings bonds held in the account; changing or removing a beneficiary or secondary owner; transferring securities; granting or revoking secondary owner rights; delivering securities purchased as gifts to the recipient's New Treasury Direct account; making changes to account information; changing ACH information; viewing histories of transactions and pending transactions; changing or deleting pending transactions; changing a password; changing account security information; and viewing or redeeming securities by a secondary owner when he or she has been granted those rights.

When the New Treasury Direct system is expanded to marketable securities, other transactions may be available online as well.

A parent may open an account for a minor through the account of the parent. The parent will create the password for the minor's account and will certify online that he or she is acting on behalf of the minor. The parent may redeem securities through the minor's account but may not purchase securities through the account. The parent may not transfer securities from the minor's account. A person who purchases a security as a gift for the minor may deliver the gift security to the minor's account. The parent may then redeem the security on the minor's behalf using the minor's account. We have set the age of majority for purposes of the regulations at 18 years. When the minor reaches the age of 18 years, the parent is required to give the minor control of the minor's account. If the parent or legal guardian fails to give the minor control of the minor's account, we will provide offline procedures for the minor to gain control of the account.

Book-Entry Series I Savings Bonds

We will be offering a book-entry Series I savings bond. The offering circular for Series I savings bonds is being amended to provide for the offering of the book-entry I bond, and has also been rewritten in plain language.

Both definitive and book-entry Series I savings bonds earn interest according to a formula indexed to inflation. However, the terms and conditions of the two securities, including registration options, differ in many respects.

The forms of registration for book-entry Series I savings bonds are single owner, primary owner with secondary owner, and owner with beneficiary. In addition, several special forms of registration are offered for securities belonging to the estates of deceased owners and legally incompetent persons.

The primary owner with secondary owner form of registration replaces the coowner form used for other savings bonds. In the coowner form of registration, both coowners have an equal right to the bond. In the primary owner with secondary owner form, the purchaser of the bond, the primary owner, has control of the bond. The primary owner may give the secondary owner the right to view or the right to make transactions in the bond, and may at any time revoke any rights given. The primary owner may remove the secondary owner without the consent of the secondary owner.

The single owner and owner with beneficiary forms of registration are similar to the registrations offered currently in definitive Series I savings bonds.

Special forms of registration are offered for bonds belonging to the estates of deceased owners and legally incompetent individuals. At this time, special forms of registration will not be offered for initial purchases. Bonds may be registered in the name of the legal guardian or legal representative, and may be held in the personal New Treasury Direct account of the legal guardian or legal representative. The legal guardian or legal representative is not permitted to make new purchases on behalf of the estate of the decedent or incompetent person.

The book-entry Series I savings bonds may be transferred from one New Treasury Direct account to another in order to give a gift (or in response to a final judgment, court order, divorce decree, or a property settlement agreement). The owner of the bond must certify online that the transfer is for the purpose of a gift or for one of the specified exceptions.

A Series I savings bonds may also be purchased as an irrevocable gift. The purchaser may deliver a gift bond to the account of the intended recipient immediately upon issue, or the purchaser may hold the bond until the purchaser chooses to deliver the bond to the intended recipient.

When the gift bond is transferred or delivered to the recipient, it will be transferred or delivered in the single owner form of registration to the owner named on the gift bond.

The limitation on purchases for a book-entry Series I savings bond is $30,000 per account per year for bonds purchased by the account owner in his or her own right. Bonds purchased as gifts are included in the amount limitation of the recipient when delivered. The book-entry Series I savings bond may be purchased in a minimum amount of $25, with one-cent increments above that amount per transaction. The book-entry bond may be redeemed or transferred as a gift (or transferred pursuant to other permitted transfers) in an amount of $25 or greater redemption value.

The provisions relating to judicial proceedings are consistent with those governing definitive Series I savings bonds. However, the primary owner with secondary owner form of registration for book-entry Series I savings bonds mandates that some issues are treated differently. In the primary owner with secondary owner form of registration, the secondary owner has no right to redeem unless the primary owner gives him or her that right, and the right is revocable at any time. Thus, for purposes of judicial proceedings, a secondary owner is treated the same as a beneficiary.

The regulations that provide for the offering of Series EE and I savings bonds are being amended to remove the prohibition against mailing bonds to foreign addresses.

We are amending the regulations governing book-entry Treasury bonds, notes and bills. This part covers the existing *TreasuryDirect* system, which has been in place since 1986. The amendment will differentiate the two systems and reference the New Treasury Direct regulations.

Procedural Requirements

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

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements and delayed effective date requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects

31 CFR Part 351

Bonds, Federal Reserve system, Government securities.

31 CFR Part 357

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

31 CFR Part 359

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 360

Bonds, Federal Reserve system, Government securities, Securities.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 351.6 to read as follows:

§ 351.6 Delivery of bonds.

Issuing agents are authorized to arrange for the delivery of Series EE bonds. Deliveries are made by mail to the address given by the purchaser. If the purchaser's address is within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, bonds will be delivered at the risk of the United States. Bonds delivered elsewhere will be delivered at the risk of the purchaser; however, at the discretion of the United States, delivery to an address within the United States may be required, or delivery may be refused to addresses in countries referred to in part 211 of this chapter.

PART 357—REGULATIONS GOVERNING BOOK–ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2–86)

3. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

4. Revise § 357.0 to read as follows:

§ 357.0 Book-entry systems.

(a) *Treasury bills, notes and bonds.* Treasury bills, notes and bonds shall be maintained in either of the following two book-entry systems:

(1) *Treasury/Reserve Automated Debt Entry System (TRADES).* A Treasury security is maintained in TRADES if it is credited by a Federal Reserve Bank to a Participant's Securities Account. See subpart B of this part for rules pertaining to TRADES.

(2) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A Treasury security is maintained in TREASURY DIRECT if it is credited to a TREASURY DIRECT account as described in § 357.20. Such accounts may be accessed by investors in accordance with subpart C of this part through a designated Federal Reserve Bank or the Bureau of the Public Debt. See subpart C of this part for rules pertaining to TREASURY DIRECT.

(b) *Transferability between TRADES and TreasuryDirect.* A Treasury security eligible to be maintained in Treasury Direct under the terms of its offering circular or pursuant to notice published by the Secretary may be transferred to or from an account in TRADES from or to an account in TREASURY DIRECT in accordance with § 357.22(a).

(c) *New Treasury Direct System (New Treasury Direct).* New Treasury Direct is an online (Internet-based), book-entry system maintained by Treasury. The *TreasuryDirect* system is a separate book-entry system for marketable Treasury securities only. The regulations governing New Treasury Direct are found at part 363, and are substantially different from the terms and conditions of securities held in *TreasuryDirect.*

5. Revise part 359 to read as follows:

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

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Sec.
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359.2 [Reserved]
359.3 What special terms do I need to know to understand this part?
359.4 In what form are Series I savings bonds issued?
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359.7 If I redeem a Series I savings bonds before five years after the issue date, is there an interest penalty?
359.8 How does interest accrue on Series I savings bonds?
359.9 When are interest rates for Series I savings bonds announced?
359.10 What is the fixed rate of return?
359.11 What is the semiannual inflation rate?
359.12 What happens in deflationary conditions?
359.13 What are composite rates?
359.14 How are composite rates determined?
359.15 When is the composite rate applied to Series I savings bonds?
359.16 When does interest accrue on Series I savings bonds?
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359.18 Is the determination of the Secretary on rates and values final?
359.19 How is interest calculated?
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359.25 What are the denominations and prices of definitive Series I savings bonds?
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359.29 What amount of definitive Series I savings bonds may I purchase per year?
359.30 Are definitive Series I savings bonds purchased in the name of an individual computed separately from bonds purchased in a fiduciary capacity?
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359.33 What happens if I purchase definitive Series I savings bonds in excess of the maximum amount?
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359.46 What are the denominations and prices of book-entry Series I savings bonds?
359.47 How is payment made for purchases of book-entry Series I savings bonds?
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359.52 What happens if any person purchases book-entry Series I savings bonds in excess of the maximum amount?
359.53 Are taxpayer identification numbers (TINs) required for the registration of book-entry Series I savings bonds?
359.54 When is a book-entry Series I savings bonds validly issued?
359.55 How are redemption values calculated for book-entry Series I savings bonds?
359.56 How can I find out what my book-entry Series I savings bonds are worth?
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Subpart D—Miscellaneous Provisions

359.65 How are Series I savings bonds taxed?
359.66 Is the Education Savings Bonds Program available for Series I savings bonds?
359.67 Does Public Debt prohibit the issuance of Series I savings bonds in a chain letter scheme?
359.68 May Public Debt issue Series I savings bonds only in book-entry form?
359.69 Does Public Debt make any reservations as to issue of Series I savings bonds?
359.70 May Public Debt waive any provision in this part?
359.71 What is the role of Federal Reserve Banks and Branches?
359.72 May the United States supplement or amend the offering of Series I savings bonds?
Appendix A to part 359—Redemption Value Calculations
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Appendix C to part 359—Investment Considerations
Appendix D to part 359—Tax Considerations

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

Subpart A—General Information

§ 359.0 What does this part cover?

This part is the offering of United States Savings Bonds of Series I (referred to as Series I bonds or bonds) for sale to the people of the United States by the Secretary of the Treasury (Secretary). This offer was effective September 1, 1998, and will continue until terminated by the Secretary.

§ 359.1 What regulations govern Series I savings bonds?

(a) The regulations in part 360 apply to definitive (paper) Series I savings bonds.

(b) The regulations in part 363 apply to book-entry Series I savings bonds.

(c) We expressly disclaim any representations or warranties regarding Series I savings bonds that in any way conflict with these regulations and other applicable law.

§ 359.2 [Reserved]

§ 359.3 What special terms do I need to know to understand this part?

Accrual date is the first day of any month on which earnings on a Series I bond accrue. The redemption value of a bond does not change between these accrual dates.

Automated Clearing House (ACH) means a funds transfer system governed by the Rules of the National Automated Clearing House Association (NACHA). NACHA provides for the interbank clearing of electronic entries for participating financial institutions.

Bank account means your account at a United States depository financial institution (whether a bank or other financial institution) to which you have directed that ACH debits and payments be made.

Beneficiary refers to the second individual named in the registration of a security held in definitive form registered ''John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe.'' In the New Treasury Direct system, beneficiary refers to the second individual named in the registration of a security registered ''John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe SSN 987–65–4321.'' In these examples, Joseph Doe is the beneficiary.

Book-entry bond means a Series I savings bonds maintained by Treasury solely as a computer record.

Composite annual rate means an annual interest rate that combines an annual fixed rate of return and a semiannual inflation rate.

Coowner means either the first or the second individual named in the registration of a definitive Series I savings bonds registered ''John Doe SSN 123–45–6789 or Joseph Doe.'' In this example, John Doe and Joseph Doe are coowners.

CPI–U, or U.S. City Average All Items Consumer Price Index for All Urban Consumers (non seasonally adjusted) is a monthly index of the prices paid by consumers for consumer goods and services, maintained by the Bureau of Labor Statistics of the U.S. Department of Labor.

Definitive bond means a Series I savings bonds issued in paper form.

Deflation means a decrease in the CPI–U from one month to another.

Face amount refers to the amount inscribed on the front of a definitive Series I savings bonds.

Fiduciary means the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to act for another.

Fixed rate or *fixed rate of return* is a component of the composite annual rate for a Series I savings bonds that is established by the Secretary of the Treasury for the life of the bond.

Individual means a natural person. Individual does not mean an organization, representative, or fiduciary.

Inflation means an increase in the CPI–U from one month to another.

Interest, as used in this part, is the difference between the principal amount and the redemption value of the bond.

Issue date is the first day of the month in which an authorized issuing agent receives payment of the issue price of the bond.

Issuing agent means an organization that has been qualified under part 317.

New Treasury Direct system (New Treasury Direct) is an online account system in which you may hold and conduct transactions in eligible book-entry Treasury securities.

Owner is either a single owner, the first individual named in the registration of a bond held in the owner with beneficiary form of registration, or the primary owner of a book-entry bond held in the primary owner with secondary owner form of registration.

Par means the principal amount of a Series I savings bond; for definitive bonds, par is the same as the face amount.

Paying agent means a financial institution that has been qualified under part 321.

Person means an entity including an individual, trust, estate, corporation, government entity, association, partnership, and any other similar organization. Person does not mean a Federal Reserve Bank.

Primary owner means the first individual named in the registration of a book-entry bond held in New Treasury Direct registered ''John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321.'' In this example, John Doe is the primary owner.

Principal amount means the amount of the original investment. Principal amount does not include any interest earned.

Redemption of a book-entry Series I savings bonds refers to payment of principal and accrued interest on the bond at final maturity, or, at the option of the owner, prior to final maturity. The owner of a book-entry savings bonds held in New Treasury Direct may redeem all principal and interest or a portion of the principal and the proportionate amount of interest.

Redemption of a definitive Series I savings bonds refers to the payment of principal and accrued interest when the owner presents the bond for payment.

Redemption value means principal plus accrued interest of a Series I savings bonds, as of the date of redemption. In the case of book-entry Series I savings bonds, it also refers to a portion of the principal amount plus a proportionate amount of accrued interest of a bond, as of the date of redemption.

Registration of a book-entry Series I savings bonds means that the name and Taxpayer Identification Number (TIN) of all registrants are maintained on our records for a book-entry bond.

Registration of a definitive Series I savings bonds means that the name and TIN of the owner or first-named co-owner are inscribed on the face of the bond.

Secondary owner means the second individual named in the registration of a book-entry bond held in New Treasury Direct registered ''John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321.'' In this example, Joseph Doe is the secondary owner.

Semiannual inflation rate means a component of the composite annual rate that is based on the six-month percentage change in the CPI–U.

Semiannual rate periods are the six-month periods beginning on the date of issue and on each semiannual anniversary of the date of issue to maturity.

Series I savings bond means a savings bonds, whether definitive or book-entry, that is purchased at par and pays interest based on a formula that incorporates both an annual fixed rate and a semiannual inflation rate.

Single owner means the person named in the registration of a savings bonds without a coowner, beneficiary or secondary owner.

Taxpayer identification number (TIN) means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security account number (SSN) or an employer identification number (EIN). A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789. An EIN is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers.

We, us, or *our* refers to the agency, the Bureau of the Public Debt. The term extends to the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also extends to any fiscal or financial agent we designate to act on behalf of the United States.

You or *your* refers to an owner of a Series I savings bonds.

§ 359.4 In what form are Series I savings bonds issued?

Series I savings bonds are issued in either book-entry or definitive form.

§ 359.5 What is the maturity period of a Series I savings bonds?

Series I savings bonds have a total maturity period of 30 years from the issue date, consisting of an original maturity period of 20 years and an extension period of 10 years.

§ 359.6 When may I redeem my Series I bond?

You may redeem your Series I savings bond at any time beginning six months after its issue date.

§ 359.7 If I redeem a Series I savings bonds before five years after the issue date, is there an interest penalty?

If you redeem a bond less than five years after the issue date, we will reduce the overall earning period by three months. For example, if you redeem a bond issued January 1, 2002, nine months later on October 1, 2002, the redemption value will be determined by applying the value calculation procedures and composite rate for that bond as if the redemption date were three months earlier (July 1, 2002). However, we will not reduce the redemption value of a bond subject to the three-month interest penalty below the issue price (par). This penalty does not apply to bonds redeemed five years or more after the issue date.

§ 359.8 How does interest accrue on Series I savings bonds?

A bond accrues interest based on both a fixed rate of return and a semiannual inflation rate. A single, annual rate called the composite rate reflects the combined effects of the fixed rate and the semiannual inflation rate. For more information, see Appendix B of part 359.

§ 359.9 When are interest rates for Series I savings bonds announced?

(a) The Secretary will furnish fixed rates, semiannual inflation rates, and composite rates for Series I savings bonds in announcements published each May 1 and November 1.

(b) If the regularly scheduled date for the announcement is a day when the Treasury is not open for business, then the Secretary will make the announcement on the next business day. However, the effective date of the rates remains the first day of the month of the announcement.

(c) The Secretary may announce rates at any other time.

§ 359.10 What is the fixed rate of return?

The Secretary, or the Secretary's designee determines the fixed rate of return. The fixed rate is established for the life of the bond.[1] The most recently announced fixed rate is only for bonds purchased during the six months following the announcement, or for any other period of time announced by the Secretary.

§ 359.11 What is the semiannual inflation rate?

The index used to determine the semiannual inflation rate is the non-seasonally adjusted CPI–U (the Consumer Price Index for All Urban Consumers for the U.S. City Average for All Items, 1982–84=100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. (For further information on CPI–U considerations, *see* Appendix C to part 359 at section 1.) The semiannual inflation rate reflects the percentage change, if any, in the CPI–U over a six-month period. We announce this rate twice a year, in May and November. The semiannual inflation rate we announced in May 2002 reflects the percentage change between the CPI–U figures from the preceding March 2002 and September 2001. The rate of change over the six-month period, if any, will be expressed as a percentage, rounded to the nearest one-hundredth of one percent. More specifically, the semiannual inflation rate will be determined by the following formula (the resulting rate will be rounded to the nearest one-hundredth of one percent):

$$\text{Semiannual inflation rate} = (\text{CPI–U}_{\text{Current}} - \text{CPI–U}_{\text{Prior}}) \div \text{CPI–U}_{\text{Prior}}$$

§ 359.12 What happens in deflationary conditions?

In certain deflationary situations, the semiannual inflation rate may be negative. Negative semiannual inflation rates will be used in the same way as positive semiannual inflation rates. However, if the semiannual inflation rate is negative to the extent that it completely offsets the fixed rate of return, the redemption value of a Series I bond for any particular month will not be less than the value for the preceding month.

§ 359.13 What are composite rates?

Composite rates are single, annual interest rates that reflect the combined effects of the fixed rate and the semiannual inflation rate.

[1] However, the fixed rate is not a guaranteed minimum rate; the composite rate could possibly be less than the fixed rate in deflationary situations.

§ 359.14 How are composite rates determined?

Composite rates are set according to the following formula (See Appendix A to part 359 for examples of calculations involving composite interest rates.):

Composite rate = {(Fixed rate ÷ 2) + Semiannual inflation rate + [Semiannual inflation rate × (Fixed rate ÷ 2)]} × 2.[2]

§ 359.15 When is the composite rate applied to Series I savings bonds?

The most recently announced composite rate applies to a bond during its next semiannual rate period. A bond's semiannual rate periods are consecutive six-month periods, the first of which begins with the bond's issue date. This means that there can be a delay of several months from the time of a composite rate announcement to the time that rate determines interest earnings for a bond. For example, if you purchased a bond in April, its semiannual rate periods begin every April and October. At the beginning of the semiannual rate period in April, the most recently announced composite rate would have been the rate we announced the previous November. This rate will determine interest earnings for your bond for the next six months, through the end of September. At the beginning of the semiannual rate period in October, the most recently announced composite rate would be the rate announced the previous May. This rate will determine interest earnings for your bond through the end of the following March. However, if you purchased a bond instead in May, its semiannual rate periods begin in May and November. Therefore, the composite rates announced in May and November will apply immediately to this bond. (See Appendix C to part 359 at § 2 for a discussion of rate lag.)

§ 359.16 When does interest accrue on Series I savings bonds?

(a) Interest, if any, accrues on the first day of each month; that is, we add the interest earned on a bond during any given month to its value at the beginning of the following month.

(b) The accrued interest compounds semiannually.

§ 359.17 When is interest payable on Series I savings bonds?

Interest earnings are payable upon redemption.

§ 359.18 Is the determination of the Secretary on rates and values final?

The Secretary's determination of fixed rates of return, semiannual inflation rates, composite rates, and savings bonds redemption values is final and conclusive.

§ 359.19 How is interest calculated?

We base all calculations of interest on a $25 unit. We use the value of this unit to determine the value of bonds in higher denominations. The effect of rounding off the value of the $25 unit increases at higher denominations. This can work to your slight advantage or disadvantage, depending on whether we round the value up or down.[3]

§ 359.20–359.24 [Reserved]

Subpart B—Definitive Series I Savings Bonds

§ 359.25 What are the denominations and prices of definitive Series I savings bonds?

Definitive bonds are issued in denominations of $50, $75, $100, $200, $500, $1,000, $5,000, and $10,000. These bonds are sold at par; that is, the purchase price is the same as the denomination (face value).

§ 359.26 When are definitive Series I savings bonds validly issued?

A definitive bond is validly issued when it is registered as provided in part 360, and when it bears an issue date and the validation indicia of an authorized issuing agent.

§ 359.27 What is the issue date of a definitive Series I savings bonds?

The issue date of a definitive bond is the first day of the month in which an authorized issuing agent receives payment of the issue price.

§ 359.28 Are taxpayer identification numbers (TINs) required for the registration of definitive Series I savings bonds?

The inscription of a definitive bond must include the TIN of the owner or first-named co-owner. If the bond is being purchased as a gift or award and the owner's TIN is not known, the TIN of the purchaser must be included in the inscription on the bond.

§ 359.29 What amount of definitive Series I savings bonds may I purchase per year?

The principal amount of definitive bonds that may be purchased in the name and TIN of any person, in any calendar year, is limited to $30,000.

§ 359.30 Are definitive Series I savings bonds purchased in the name of an individual computed separately from bonds purchased in a fiduciary capacity?

We compute the purchases of bonds in the name of any person in an individual capacity separately from purchases in a fiduciary capacity (for instance, as representative for the estate of an individual).

§ 359.31 What definitive Series I savings bonds are included in the computation?

In computing the purchases for each person, we include the following outstanding definitive bonds purchased in that calendar year:

(a) All bonds registered in the name of and bearing the taxpayer identification number (TIN) of that person alone or as co-owner;

(b) All bonds registered in the name of the representative of the estate of that person and bearing that person's TIN; and

(c) All gift bonds registered in the name of that person but bearing the TIN of the purchaser.

§ 359.32 What definitive Series I savings bonds are excluded from the computation?

In computing the purchases for each person, the following are excluded:

(a) Bonds on which that person is named as beneficiary;

(b) Bonds to which that person has become entitled upon the death of the registered owner;

(c) Bonds to which that person has become entitled by virtue of the termination of a trust or the occurrence of a similar event; and

(d) Bonds that are purchased and redeemed within the same calendar year.

§ 359.33 What happens if I purchase definitive Series I savings bonds in excess of the maximum amount?

If you have bonds issued during any one calendar year in excess of the prescribed maximum amount, we reserve the right to take any action we deem necessary to adjust the excess. You should obtain instructions for adjustment of the excess from the Bureau of the Public Debt, Parkersburg, WV 26106–1328, or e-mail at <savbonds@bpd.treas.gov>.

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[2] Example for I bonds issued May 2002–October 2002:

Fixed rate = 2.00%

Inflation rate = 0.28%

Composite rate = [0.0200 ÷ 2 + 0.0028 + (0.0028 × 0.0200 ÷ 2)] ×2

Composite rate = [0.0100 + 0.0028 + 0.000028] ×2

Composite rate = 0.012828 × 2

Composite rate = 0.025656

Composite rate = 0.0257 (rounded)

Composite rate = 2.57% (rounded)

[3] For example: A composite rate of 2.57% will result in a newly purchased $25 unit increasing in value after six months to $25.32, when rounded to the nearest cent. Thus, a $5,000 bond purchased at the same time as the $25 unit will be worth $5,064 after six months ([$5,000 divided by $25] × $25.32 = $5,064.) In contrast, if it applied directly to a $5,000 bond, the rate would render a value of $5,064.25 after six months, a difference of 25 cents. (This example does not include any discussion of the three-month interest penalty that applies if you redeem a bond less than five years after its issue date.)

§ 359.34 May I purchase definitive Series I savings bonds over-the-counter?

You may purchase definitive bonds over-the-counter through any participating issuing agent.[4] To purchase over-the-counter, you must submit a purchase application, along with payment in the amount of the issue price to an issuing agent. You may use any means of payment acceptable to the issuing agent. You may authorize purchases on a recurring basis in your application. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the payment.

§ 359.35 May I purchase definitive Series I savings bonds through a payroll savings plan?

You may purchase definitive bonds through deductions from your pay if your employer maintains a payroll savings plan. An authorized issuing agent must issue the bonds.

§ 359.36 May I purchase definitive Series I savings bonds through employee thrift, savings, vacation, and similar plans?

You may purchase bonds registered in the names of employee plans in authorized denominations through a designated Federal Reserve Bank, as provided in part 360 of this chapter.

§ 359.37 How are definitive Series I savings bonds delivered?

We deliver definitive bonds by mail to your address. If your address is within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, we will deliver bonds at our risk. Bonds delivered elsewhere will be delivered at your risk; however, at our discretion, we may require delivery to an address within the United States, or refuse delivery to addresses in countries referred to in part 211 of this chapter.

§ 359.38 How is payment made when definitive Series I savings bonds are redeemed?

A financial institution qualified as a paying agent under the provisions of part 321 will pay the current redemption value of a definitive Series I bond presented for payment. The bond must meet the requirements for payment specified in part 360. You must establish your identity and entitlement to redemption to the satisfaction of the agent, in accordance with our instructions and identification guidelines, and must sign and complete the request for payment.

§ 359.39 How are redemption values calculated for definitive Series I savings *bonds?*

We determine the redemption value of a definitive savings bonds for the accrual date (the first day of each month) by first determining the composite rate as defined in § 359.13. If the result of the composite rate calculation is a negative value, zero will be the assumed composite rate in the redemption value calculation. Redemption values are calculated using the following formula (For examples of the calculation, see Appendix A to part 359):

$$FV = PV \times \{[1 + (CR \div 2)]^{(m \div 6)}\}$$

Where:

FV (future value) = redemption value on the accrual date rounded to the nearest cent without consideration of penalty.

PV (present value) = redemption value at the beginning of the semiannual rate period calculated without consideration of penalty. For bonds that are older than five years, PV will equal the redemption value at the start of the semiannual rate period.

CR = composite rate converted to decimal form by dividing by 100.

m = number of full calendar months elapsed during the semiannual rate period.

§ 359.40 How can I find out what my definitive Series I savings bonds are worth?

(a) *Redemption values.* Redemption values are available for definitive bonds in various formats and media.

(1) You may determine the redemption value for definitive bonds on the Internet at <www.savingsbonds.gov>.

(2) You may download savings bonds calculators from the Internet at <www.savingsbonds.gov>.

(3) You may obtain paper tables from the Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328. We reserve the right to cease making paper tables of redemption values available.

(b) *Redemption penalty.* Redemption values published in the tables reflect the three-month interest penalty applied to bonds redeemed prior to five years from the date of issue.

§ 359.41–359.44 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

§ 359.45 How are book-entry Series I savings bonds purchased and held?

Book-entry bonds must be purchased and held online through your New Treasury Direct account. We provide instructions for opening an account online at *http://www.publicdebt.treas.gov.*

§ 359.46 What are the denominations and prices of book-entry Series I savings bonds?

Book-entry bonds are issued in a minimum amount of $25, with additional increments of one cent. Book-entry bonds are sold at par value.

§ 359.47 How is payment made for purchases of book-entry Series I savings bonds?

Purchases of book-entry I bonds are made through your New Treasury Direct account. We will debit your designated account at a United States depository financial institution for payment of the bonds.

§ 359.48 How are redemption payments made for my redeemed book-entry Series I savings bonds?

We will make payments electronically by direct deposit, using the ACH method, to your designated account at a United States depository financial institution.

§ 359.49 What is the issue date of a book-entry Series I savings bonds?

The issue date of a book-entry savings bonds is the first day of the month in which we receive ACH settlement for the bond.

§ 359.50 What amount of book-entry Series I savings bonds may I purchase per year?

The principal amount of book-entry bonds that you may purchase in any calendar year is limited to $30,000 per New Treasury Direct account.

§ 359.51 What book-entry Series I savings bonds are included in the computation of purchases?

(a) In computing the purchases for each New Treasury Direct account owner in any calendar year, we include all bonds purchased by the account owner in that calendar year.

(b) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser.

(c) Bonds transferred or delivered from one New Treasury Direct account to another New Treasury Direct account are included in the computation for the recipient.

[4] However, an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) may sell bonds only through payroll savings plans.

§ 359.52 What happens if any person purchases book-entry Series I savings bonds in excess of the maximum amount?

We reserve the right to take any action we deem necessary to adjust the excess, including the right to remove the excess bonds from your New Treasury Direct account and refund the payment price to your bank account of record using the ACH method of payment.

§ 359.53 Are taxpayer identification numbers (TINs) required for registration of book-entry Series I savings bonds?

The TIN of each person named in the registration is required to purchase a book-entry bond.

§ 359.54 When is a book-entry Series I savings bonds validly issued?

A book-entry bond is validly issued when it is posted to your New Treasury Direct account.

§ 359.55 How are redemption values calculated for book-entry Series I savings bonds?

We base current redemption values (CRV) for book-entry Series I savings bonds on the definitive savings bonds CRV. To calculate the book-entry values, we use the CRV for the $100 denomination Series I savings bonds and calculate a CRV prorated to the book-entry par investment amount for the corresponding issue and redemption dates. Calculated book-entry CRV will be rounded to the nearest one cent.[5] The formula is as follows (Examples of the calculation are given in Appendix A to part 359.):

[Book-entry par investment ÷ 100] × [CRV value for $100 bond].

§ 359.56 How can I find out what my book-entry Series I savings bonds are worth?

(a) *Redemption values.* You may access redemption values for your book-entry bonds through your New Treasury Direct account.

(b) *Redemption penalty.* Redemption values shown in your New Treasury Direct account reflect the three-month interest penalty applied to bonds redeemed prior to five years from the date of issue.

§ 359.57–359.64 [Reserved]

Subpart D—Miscellaneous Provisions

§ 359.65 How are Series I savings bonds taxed?

Interest is subject to all taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are also subject to Federal and State estate, inheritance, gift, or other excise taxes. The bonds are exempt from all other taxation by any State or local taxing authority. (See Appendix D to part 359 for further information.)

§ 359.66 Is the Education Savings Bonds Program available for Series I savings bonds?

You may be able to exclude from income for Federal income tax purposes all or part of the interest received on the redemption of qualified bonds during the year. To qualify for the program, you or the co-owner (in the case of definitive savings bonds) must have paid qualified higher education expenses during the same year. You also must have satisfied certain other conditions. This exclusion is known as the Education Savings Bonds Program. Information about the program can be found in Internal Revenue Service Publications. (For example, see Publication 17, ''Your Federal Income Tax,'' Publication 550, ''Investment Income and Expenses,'' and Publication 970, ''Tax Benefits of Higher Education.'')

§ 359.67 Does Public Debt prohibit the issuance of Series I savings bonds in a chain letter scheme?

We do not permit bonds to be issued in a chain letter or pyramid scheme. We authorize an issuing agent to refuse to issue a bond or accept a purchase order if there is reason to believe that a purchase is connected with a chain letter. The agent's decision is final.

§ 359.68 May Public Debt issue Series I savings bonds only in book-entry form?

We reserve the right to issue bonds only in book-entry form.

§ 359.69 Does Public Debt make any reservations as to issue of Series I savings bonds?

We may reject any application for Series I bonds, in whole or in part. We may refuse to issue, or permit to be issued, any bonds in any case or class of cases, if we deem the action to be in the public interest. Our action in any such respect is final.

§ 359.70 May Public Debt waive any provision in this part?

We may waive or modify any provision of this part in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship:

(a) If such action would not be inconsistent with law or equity;

(b) If it does not impair any material existing rights; and

(c) If we are satisfied that such action would not subject the United States to any substantial expense or liability.

§ 359.71 What is the role of Federal Reserve Banks and Branches?

(a) Federal Reserve Banks and Branches are fiscal agents of the United States. They are authorized to perform such services as we may request of them, in connection with the issue, servicing and redemption of Series I bonds.

(b) We have currently designated the following Federal Reserve Offices to provide savings bonds services:

Servicing site	Reserve district served	Geographic area served
Federal Reserve Bank, Buffalo Branch, 160 Delaware Avenue, Buffalo, NY 14202.	New York, Boston	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey (Northern half), New York, Rhode Island, Vermont, Puerto Rico, Virgin Islands.
Federal Reserve Bank, Pittsburgh Branch, 717 Grant Street, Pittsburgh, PA 15219.	Cleveland, Philadelphia	Delaware, Kentucky (eastern half), New Jersey, (southern half), Ohio, Pennsylvania, West Virginia (northern panhandle).
Federal Reserve Bank of Richmond, 701 East Byrd Street, Richmond, VA 23219.	Richmond, Atlanta	Alabama, District of Columbia, Florida, Georgia, Louisiana (southern half), Maryland, Mississippi (southern half), North Carolina, South Carolina, Tennessee (eastern half), Virginia, West Virginia (except northern panhandle).

[5] Example: Calculated value of $25.044 rounds to $25.04; calculated value of $25.045 rounds to $25.05.

Servicing site	Reserve district served	Geographic area served
Federal Reserve Bank of Minneapolis, 90 Hennepin Avenue, Minneapolis, MN 55401.	Minneapolis, Chicago	Illinois (northern half), Indiana (northern half), Iowa, Michigan, Minnesota, Montana, North Dakota, South Dakota, Wisconsin.
Federal Reserve Bank of Kansas City, 925 Grand Boulevard, Kansas City, MO 64106.	Dallas, San Francisco, Kansas City, St. Louis	Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois (southern half), Indiana (southern half), Kansas, Kentucky (western half), Louisiana (northern half), Mississippi (northern half), Missouri, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee (western half), Texas, Utah, Washington, Wyoming, Guam.

§ 359.72 May the United States supplement or amend the offering of Series I savings bonds?

We may supplement or amend the terms of this offering of Series I bonds at any time.

Appendix A to Part 359—Redemption Value Calculations

1. What are some examples of calculations of redemption values for definitive Series I savings bonds?

(a) *A bond five years or older.* Assume a composite rate of 3.97%, effective May 1, 2003, for a $25 unit, with an issue date of September 1, 1998, and a redemption value of $31.90 as of September 1, 2003. The February 1, 2004, redemption value is calculated as follows: bonds issue-dated in September have semiannual rate periods beginning each March 1 and September 1. The first semiannual rate period to begin on or after the date of the May 1, 2003, rate announcement of the composite rate would be the period beginning September 1, 2003. PV, the present value, $31.90, would be the redemption value of the bond at the beginning of the semiannual rate period (September 1, 2003). The composite rate, 3.97% converted to a decimal, would be 0.0397. The number of months, m, is five, since five full calendar months (September through January) have lapsed since the beginning of the semiannual rate period. FV, the redemption value (rounded to the nearest cent), is then the result of the formula:

$FV = PV \times \{[1 + (CR \div 2)]^{(m \div 6)}\}$

Where $FV = 31.90 \times \{[1 + (0.0397 \div 2)]^{(5 \div 6)}\} = \$32.43$

The redemption value for an actual denomination of a Series I bond can be determined by applying the appropriate multiple, for example:

$32.43 × ($100.00 ÷ $25.00) for a bond with a $100.00 face amount; or

$32.43 × ($1000.00 ÷ $25.00) for a bond with a $1000.00 face amount.

(b) *A bond less than five years old.* Assume a composite rate of 3.97% effective May 1, 2003, for a $25.00 unit, with an issue date of December 1, 2000, a redemption date of February 1, 2004, and a value on June 1, 2003, of $28.45, without consideration of penalty. A three-month penalty is assessed since the redemption date is less than five years after the issue date. The penalty is accounted for by assuming that the redemption date is three months earlier (November 1, 2003). The February 1, 2004, redemption value is then calculated as follows: bonds issue-dated in December have semiannual rate periods that begin each June 1 and December 1. The first semiannual rate period to begin on or after the May 1, 2003, rate announcement of the composite rate would be the period beginning June 1, 2003. PV, the present value, $28.45, is the value of the bond at the beginning of the semiannual rate period (June 1, 2003), without consideration of penalty. The composite rate, 3.97%, converted to a decimal, would be 0.0397. The number of months, m, is five, since five full calendar months (June through October) have elapsed since the beginning of the semiannual rate period and the redemption date (as adjusted for penalty). FV, the redemption value (rounded to the nearest cent), is then the result of the formula:

$FV = PV \times \{[1 + (CR \div 2)]^{(m \div 6)}\}$ where

$FV = \$28.45 \times \{[1 + (0.397 \div 2)]^{(5 \div 6)}\} = \$28.92$

2. What is an example of a book-entry Series I savings bonds redemption value calculation?

Assume a New Treasury Direct par investment amount in a book-entry Series I savings bonds of $34.59, with an issue date of May, 2001, and a redemption date of December, 2001. The published CRV for a definitive $100 Series I savings bonds issued May, 2001 and redeemed December, 2001 = $101.96.

Calculation:

[(Book-entry par investment) ÷ (100)] × CRV value for $100 bond

[(34.59 ÷ 100)] × 101.96

[0.3459] × 101.96

35.267964

= $35.27

Appendix B to Part 359—Composite Semiannual Rate Period Table

1. What months make up the composite semiannual rate period?

You may use the following table to find when a bond's semiannual rate period begins and when we'll announce the rate that applies during each period.

If your Bond has an issue date of—	Then its semiannual rate period begins—	We announce the rate that applies during a rate period in—
January	January 1	November 1 (of the previous year).
	July 1	May 1.
February	February 1	November 1 (of the previous year).
	August 1	May 1.
March	March 1	November 1 (of the previous year).
	September 1	May 1.
April	April 1	November 1 (of the previous year).
	October 1	May 1.
May	May 1	May 1.
	November 1	November 1.
June	June 1	May 1.
	December 1	November 1.
July	July 1	May 1.
	January 1	November 1 (of the previous year).
August	August 1	May 1.
	February 1	November 1 (of the previous year).
September	September 1	May 1
	March 1	November 1 (of the previous year).

If your Bond has an issue date of—	Then its semiannual rate period begins—	We announce the rate that applies during a rate period in—
October	October 1	May 1.
	April 1	November 1 (of the previous year).
November	November 1	November 1.
	May 1	May 1.
December	December 1	November 1.
	June 1	May 1.

Appendix C to Part 359—Investment Considerations

1. What are some index contingencies?

(a) If a previously reported CPI–U is revised, we will continue to use the previously reported CPI–U in calculating redemption values.

(b) If the CPI–U is rebased to a different year, we will continue to use the CPI–U based on the base reference period in effect when the security was first issued, as long as that CPI–U continues to be published.

(c) If, while an inflation-indexed savings bonds is outstanding, the applicable CPI–U is discontinued or, in the judgment of the Secretary, fundamentally altered in a manner materially adverse to the interests of an investor in the security, or, in the judgment of the Secretary, altered by legislation or Executive Order in a manner materially adverse to the interests of an investor in the security, Treasury, after consulting with the Bureau of Labor Statistics or any successor agency, will substitute an appropriate alternative index. Treasury will then notify the public of the substitute index and how it will be applied. The Secretary's determinations in this regard will be final.

(d) If the CPI–U for a particular month is not reported by the last day of the following month, we will announce an index number based on the last 12-month change in the CPI–U available. Any calculations of our payment obligations on the inflation-indexed savings bonds that rely on that month's CPI–U will be based on the index number that we have announced.

2. How will inflation lag affect my Series I savings bonds?

The inflation rate component of investor earnings will be determined twice each year. This rate will be the percentage change in the CPI–U for the six months ending each March and September. The rate will be included in the composite rate that is announced each May and November. For Series I bonds offered from September 1, 1998, through October 31, 1998, the inflation rate component of investor earnings will be the percentage change in the CPI–U for the six months ending March 31, 1998. This rate will be included in the composite rate that is announced for Series I bonds offered effective from September 1, 1998, through October 31, 1998. In the event the Secretary, or the Secretary's designee, announces a composite rate at an effective date other than May 1 or November 1, the announcement will specify the period to be used to calculate the semiannual inflation rate. Each composite rate will be effective for the entirety of the applicable rate period that begins while the rate is in effect. Thus, an inflation rate may affect interest accruals from 3 to 13 months from the date that the CPI–U is measured.

Example 1. The inflation rate determined from the CPI-U for the six-month period from October, 2003, through March, 2004, will be included in the composite rate announced in May, 2004. For a bond purchased in May 1999, this rate would go into effect immediately, since a new semiannual rate period for this bond will begin in May, 2004. Series I bonds issued in May begin new semiannual rate periods in the months of May and November. In this example, the inflation rate will have its earliest impact in June 2004, when interest from May accrues, three months after the end of the six-month CPI–U period that ends in March, 2004.

Example 2. The May 1, 2004, rate will apply similarly to a bond purchased in October 1999. Series I bonds issued in October begin new semiannual rate periods in the months of April and October. Thus, for this bond, the May 1, 2004, composite rate (which includes the inflation rate) will not go into effect until a new semiannual rate period begins on October 1, 2004. This rate, therefore, will determine the inflation-indexed portion of each interest accrual from November, 2004, through April, 2005. In this example, the inflation rate will have its latest impact in April 2005, 13 months following the six-month CPI–U period that ended March 31, 2004.

Appendix D to Part 359—Tax Considerations

1. What are some general tax considerations?

General. Interest is subject to all taxes imposed under the Internal Revenue Code of 1986, as amended. The bonds are also subject to Federal and State estate, inheritance, gift, or other excise taxes. The bonds are exempt from all other taxation by any State or local taxing authority.

2. What reporting methods are available for savings bonds?

(a) *Reporting methods.* You may use either of the following two methods for reporting the increase in the redemption value of the bond for Federal income tax purposes:

(1) *Cash basis method.* You may defer reporting the increase to the year of final maturity, redemption, or other disposition, whichever is earliest; or

(2) *Accrual basis method.* You may elect to report the increase each year, in which case the election applies to all Series I bonds that you then own, those subsequently acquired, and to any other obligations purchased on a discount basis, such as savings bonds of Series E or EE.

(b) *Changing methods.* If you use the cash basis method, you may change to the accrual basis method without obtaining permission from the Internal Revenue Service. However, once you elect to use the accrual basis method in paragraph (a)(2), you may change the method of reporting the increase only by following the specific procedures prescribed by the Internal Revenue Service for making an automatic method change. For further information, you may contact the Internal Revenue Service director for your area, or the Internal Revenue Service, Washington, DC 20224.

3. What transactions have potential tax consequences?

The following types of transactions, among others, may have potential tax consequences:

(a) A reissue that affects the rights of any of the persons named on a definitive Series I savings bonds may have tax consequences for the owner.

(b) The transfer of a book-entry Series I savings bonds from one owner to another may have tax consequences for the purchaser.

(c) The redemption of a book-entry Series I savings bonds by the secondary owner may have tax consequences for the primary owner.

(d) The purchase of a Series I savings bonds as a gift may have gift tax consequences for the purchaser.

PART 360—REGULATIONS GOVERNING DEFINITIVE UNITED STATES SAVINGS BONDS, SERIES I

6. The authority citation for part 360 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3105 and 3125.

7. Revise the heading of part 360 to read as set forth above.

8. Revise § 360.0 to read as follows:

§ 360.0 Applicability

The regulations in this part govern transactions in definitive United States Savings Bonds of Series I bearing issue dates of September 1, 1998, or later.

9. Revise paragraph (a) of § 360.2 to read as follows:

§ 360.2 Definitions.

(a) *Bond,* or *Series I savings bonds,* as used in this part, means a definitive United States Savings Bonds of Series I.

* * * * *

10. Add part 363 to read as follows:

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN THE NEW TREASURY DIRECT SYSTEM

Subpart A—General

Sec.

363.0 What is the New Treasury Direct system?
363.1 What Treasury securities are covered by these regulations?
363.2 What agency administers New Treasury Direct?
363.3 What Treasury securities may be held in New Treasury Direct?
363.4 How is New Treasury Direct different from the Treasury Direct system?
363.5 How do I contact Public Debt?
363.6 What special terms do I need to know to understand this part?
363.7–363.14 [Reserved]

Subpart B—New Treasury Direct System

363.15 What is a New Treasury Direct account?
363.16 Who is eligible to open a New Treasury Direct account?
363.17 How can I open a New Treasury Direct account?
363.18 How will you authenticate my identity?
363.19 What is the procedure for offline authentication?
363.20 How do I access my account?
363.21 Who is liable if someone else accesses my New Treasury Direct account using my password?
363.22 Is Public Debt liable if the electronic transmission of my data is intercepted?
363.23 What should I do if I become aware that my password has become compromised?
363.24 What transactions can I perform online through my New Treasury Direct account?
363.25 How do I conduct transactions in my account or in Treasury securities held in my account?
363.26 What is a transfer?
363.27 May a New Treasury Direct account be opened in the name of a minor?
363.28 What is the procedure for opening a New Treasury Direct account for a minor?
363.29 How are transactions conducted in the minor's account?
363.30 What transactions are permitted in securities held in the New Treasury Direct account of a minor?
363.31 How can a minor gain control of his or her account when he or she reaches the age of 18 years?
363.32 Does Public Debt assume any liability for any transactions conducted by a parent or legal guardian in the minor's account?
363.33 Can an attorney-in-fact conduct transactions in my New Treasury Direct account?
363.34 What happens if an owner becomes incompetent after opening a New Treasury Direct account?
363.35 When is a transaction effective?
363.36 What securities can I purchase and hold in my New Treasury Direct account?
363.37 How do I purchase eligible Treasury securities to be held in my New Treasury Direct account?
363.38 What happens if the ACH debit for purchase of a book-entry Series I savings bonds is returned by my financial institution?
363.39 Will I receive a confirmation of my request to purchase a Treasury security?
363.40 How are payments of principal and interest made?
363.41 What happens if an ACH payment of principal or interest to my account at a financial institution is returned to Public Debt?
363.42 How will my interest income be reported for tax purposes?
363.43 What are the procedures for certifying my signature on an offline application for a New Treasury Direct account, or on an offline transaction form?
363.44–363.49 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

General

363.50 What Treasury securities does this subpart cover?
363.51 Who may purchase and hold a book-entry Series I savings bonds?
363.52 What amount of book-entry Series I savings bonds may I purchase in one year?
363.53 What is the minimum amount of book-entry Series I savings bonds that I may purchase in any transaction?
363.54 What is the minimum amount of a book-entry Series I savings bonds that I must hold in my account?
363.55 May I transfer my book-entry savings bonds to another person?
363.56 What is the minimum amount of book-entry Series I savings bonds that I may transfer in any one transaction?
363.57 What is the minimum amount of book-entry Series I savings bonds that I may redeem in any one transaction?
363.58 May book-entry Series I savings bonds be pledged or used as collateral?
363.59–363.64 [Reserved]

Registration

363.65 What do I need to know about the registration of book-entry Series I savings bonds?
363.66 What forms of registration are available for book-entry Series I savings bonds?
363.67 What do I need to know about the single owner form of registration?
363.68 What do I need to know about the owner with beneficiary form of registration?
363.69 What do I need to know about the primary owner with secondary owner form of registration?
363.70 What are special forms of registration?
363.71 What special forms of registration are permitted?
363.72–363.79 [Reserved]

Minors

363.80 May a minor purchase book-entry Series I savings bonds?
363.81 May book-entry Series I savings bonds be purchased for a minor as a gift?
363.82 May an account owner deliver a book-entry Series I savings bonds purchased as a gift to a minor?
363.83 May an account owner transfer a book-entry Series I savings bonds to a minor?
363.84 [Reserved]

Incompetent Person

363.85 May Series I savings bonds be registered in the name of an incompetent person for whom a legal guardian has been appointed?
363.86–363.89 [Reserved]

Deceased Owners

363.90 What happens when a New Treasury Direct account owner dies and his or her estate is entitled to Series I savings bonds held in the account?
363.91–363.94 [Reserved]

Gifts

363.95 How may I give a book-entry Series I savings bonds as a gift?
363.96 What do I need to know if I initially purchase a bonds as a gift?
363.97 What do I need to know if I transfer a book-entry Series I savings bonds to another person as a gift?
363.98 [Reserved]
363.99 What is the minimum amount of a bond that I may transfer or deliver as a gift in any one transaction?
363.100–363.104 [Reserved]

Transactions

363.105 Who has the right to conduct transactions in book-entry Series I savings bonds?
363.106 How are online transactions conducted in Series I savings bonds?
363.107 Does Public Debt reserve the right to require that any transactions be conducted offline?
363.108–363.109 [Reserved]

Judicial and Administrative Proceedings

363.110 Will Public Debt recognize a court order that attempts to defeat the survivorship rights of a beneficiary, secondary owner, or recipient of an undelivered gift bond?
363.111 Will Public Debt accept notice of an adverse claim or notice of pending judicial proceedings involving book-entry Series I savings bonds?
363.112 Is Public Debt a proper party in a judicial proceeding involving competing

claims to a book-entry Series I savings bonds?
363.113 Will Public Debt pay or transfer book-entry Series I savings bonds pursuant to an order in a divorce proceeding?
363.114 Will Public Debt recognize a court order?
363.115 Will Public Debt pay a savings bonds pursuant to a levy?
363.116 Will Public Debt pay a bond to the Internal Revenue Service (IRS) pursuant to a levy?
363.117 Will Public Debt pay a bond to a trustee in bankruptcy or similar court officer?
363.118 What evidence is required to establish the validity of judicial proceedings?
363.119 Will Public Debt pay a bond pursuant to a forfeiture proceeding?
363.120–363.124 [Reserved]

Payment

363.125 How is payment made on a book-entry Series I savings bonds?
363.126 Under what circumstances will payment be made?
363.127–363.129 [Reserved]

Subparts C through E—[Reserved]

Subpart F—Miscellaneous

363.175 May Public Debt waive these regulations?
363.176 Can I be required to provide additional evidence to support a transaction?
363.177 May Public Debt amend or supplement these regulations?

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*, 3105 and 3125; 12 U.S.C. 391

Subpart A—General

§ 363.0 What is the New Treasury Direct system?

The New Treasury Direct system (New Treasury Direct) is an online account system in which you may hold and conduct transactions in eligible book-entry Treasury securities.

§ 363.1 What Treasury securities are covered by these regulations?

The regulations in this part apply to book-entry Treasury securities held in the New Treasury Direct system.

§ 363.2 What agency administers New Treasury Direct?

The Bureau of the Public Debt (Public Debt), Department of the Treasury (Treasury) is responsible for administering New Treasury Direct. Public Debt may delegate authority to process certain transactions in New Treasury Direct to Federal Reserve Banks and Branches as fiscal agents of the United States.

§ 363.3 What Treasury securities may be held in New Treasury Direct?

Initially, only book-entry Series I savings bonds may be held in New Treasury Direct. We intend to offer other Treasury securities to be held in New Treasury Direct in future releases to the system.

§ 363.4 How is New Treasury Direct different from the TreasuryDirect system?

New Treasury Direct is an online (Internet-based) system. The existing *TreasuryDirect* system (*TreasuryDirect*) is a separate book-entry system, available since 1986, for marketable Treasury securities only. The terms and conditions for *TreasuryDirect* are found at part 357, and are substantially different from the terms and conditions of securities held in New Treasury Direct.

§ 363.5 How do I contact Public Debt?

(a) Emails may be sent to: <treasury.direct@bpd.treas.gov>. We will reply by e-mail unless you request otherwise. We are not responsible for the security of e-mail messages you may send to us, or replies we may send to you.

(b) Letters should be addressed to: Bureau of the Public Debt, New Treasury Direct, Parkersburg, WV 26106–1328.

§ 363.6 What special terms do I need to know to understand this part?

Account means a New Treasury Direct account as described in § 363.15.

Authentication service means a public or private service that authenticates the identity of an online applicant for a New Treasury Direct account using information provided by the applicant.

Automated Clearing House (ACH) means a funds transfer system governed by the Rules of the National Automated Clearing House Association (NACHA). NACHA provides for the interbank clearing of electronic entries for participating financial institutions.

Beneficiary refers to the second individual named in the registration of a security held in the New Treasury Direct system registered ''John Doe SSN 123–45–6789 POD (payable on death to) Joseph Doe SSN 987–65–4321.'' In this example, Joseph Doe is the beneficiary.

Book-entry security means a Treasury security maintained by us in electronic or paperless form as a computer record.

Business day means any day that funds may be settled through ACH.

Court means a court of law with jurisdiction over the parties and the subject matter.

Definitive security means a Treasury security held in paper form.

Delivery means moving a minimum amount of $25 (consisting of principal and proportionate interest) of a security held as a gift from the account of the purchaser to the account of the recipient.

Depository financial institution means an entity described in 12 U.S.C. 461 (b)(1)(A)(i)–(vi).

Federal Reserve Bank (Reserve Bank) means a Federal Reserve Bank or Branch.

Final maturity of a savings bonds means the date beyond which an unredeemed savings bonds no longer earns interest.[1]

Gift means a Treasury security purchased for or transferred to an intended recipient, without consideration.

Individual means a natural person. Individual does not mean an organization, representative, or fiduciary.

Interest on a savings bonds means the difference between the principal (par) and the redemption value of the bond.

Legal guardian of a minor or incompetent person refers to the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to act for the minor or incompetent individual.

Legal representative refers to the court-appointed or otherwise qualified person, regardless of title, who is legally authorized to manage and settle the estate of a decedent. The term includes an executor and an administrator.

Legally incompetent means a court has declared an individual to be incapable of handling his or her business affairs.

Minor means an individual who is under the age of 18 years.

Online means use of the Internet.

Owner is either a single owner, the first person named in the registration of a security held in the owner with beneficiary form of registration, or the primary owner of a security held in the primary owner with secondary owner form of registration.

Person means an entity including an individual, trust, estate, corporation, government entity, association, partnership, and any other similar organization. Person does not mean a Federal Reserve Bank.

Primary owner means the first person named in the registration of a security held in New Treasury Direct registered, *e.g.*, ''John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321.'' In this example, John Doe is the primary owner.

Principal amount means the amount of the original investment. Principal

[1] 1 Series I savings bonds have a maturity period of 30 years, consisting of an original maturity period of 20 years and an extension period of 10 years.

amount does not include any interest earned.

Recipient means the person to whom a gift is given.

Redemption of a savings bonds refers to the payment of principal and interest at final maturity, or prior to final maturity at the option of the owner. The owner may redeem all principal and interest or a portion of the principal and the proportionate amount of interest.

Redemption value means principal plus accrued interest of a bond, or a portion of the principal plus a proportionate amount of accrued interest on the bond, as of the date of redemption.

Registration or *Registered* means that the name and taxpayer identification number(s) (TIN) of the person(s) named on the security are maintained on our records.

Secondary owner means the second person named in the registration of a book-entry security held in New Treasury Direct registered, *e.g.* ''John Doe SSN 123–45–6789 with Joseph Doe SSN 987–65–4321.'' In this example, Joseph Doe is the secondary owner.

Security, or *Treasury security*, as used in this part, means an obligation issued by Treasury that may be held in New Treasury Direct.

Series I savings bonds is a savings bonds, either in definitive (paper) form or in book-entry form, that sells at par and pays interest in accordance with a formula that includes a fixed component and a component indexed to the rate of inflation.

Signature guarantee program means a signature guarantee program established under 17 CFR 240.17Ad–15, issued under authority of the Securities Exchange Act of 1934. For the purpose of this part, we recognize the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchanges Medallion Program (SEMP), and the New York Stock Exchange, Inc., Medallion Signature Program (MSP). These certifications are acceptable for transfers of securities, but are not acceptable for offline account establishment.

Single owner means the person named in the registration of a book-entry Treasury security without a beneficiary or secondary owner.

Social security account number or *social security number (SSN)* means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service by an individual. A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789.

Taxpayer identification number (TIN) means the identifying number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or an employer identification number (EIN). A SSN is composed of nine digits separated by two hyphens, for example, 123–45–6789. An EIN is composed of nine digits separated by one hyphen, for example, 12–3456789. The hyphens are an essential part of the numbers.

Transaction is any action affecting Treasury securities or account information.

Transfer means moving a minimum amount of $25 (consisting of principal and proportionate interest) of a security from one New Treasury Direct account to another New Treasury Direct account in a transaction involving a change in the ownership of the security. The transfer of a specific security may be restricted by the terms of this part that apply to that security.

We, *us*, or *our* refers to the Bureau of the Public Debt. The term includes the Secretary of the Treasury and the Secretary's delegates at the Treasury Department and Bureau of the Public Debt. The term also includes any fiscal or financial agent we designate to act on behalf of the United States.

You or *your* refers to a New Treasury Direct account holder.

§§ 363.7–363.14 [Reserved]

Subpart B—New Treasury Direct System

§ 363.15 What is a New Treasury Direct account?

A New Treasury Direct account is an online account maintained by us solely in your name in which you may hold and conduct transactions in eligible book-entry Treasury securities. Your New Treasury Direct account may contain Treasury securities that are your personal holdings, gifts that have not yet been delivered, and Treasury securities that you hold on behalf of someone else, as permitted by these regulations.

§ 363.16 Who is eligible to open a New Treasury Direct account?

In order to open a New Treasury Direct account, you must:

(a) Have a valid social security number;

(b) Have a United States address of record;

(c) Have an account at a United States depository financial institution that will accept debits and credits using the Automated Clearing House method of payment;

(d) Be 18 years of age or over;

(e) Be legally competent; and

(f) Be an individual.

§ 363.17 How can I open a New Treasury Direct account?

You must establish a New Treasury Direct account online before you purchase a Treasury security to be held in your account. Instructions for online account establishment may be found at the official Public Debt website at *http://www.publicdebt.treas.gov*, or such other Internet address as Public Debt may from time to time announce by publication in the **Federal Register**. When you have completed the application, you will create a password to access your account. We will authenticate your identity and send your account number to you by email when your account application is approved.

§ 363.18 How will you authenticate my identity?

We may use an online authentication service to authenticate your identity using information you provide about yourself on the application. At our option, we may require offline authentication.

§ 363.19 What is the procedure for offline authentication?

In the event we require offline authentication, we will provide a printable authentication form. Your signature on the form must be certified or guaranteed as provided at § 363.43, and the form must be mailed to us at the address provided in § 363.5.

§ 363.20 How do I access my account?

You may access your account online using your account number and password.

§ 363.21 Who is liable if someone else accesses my New Treasury Direct account using my password?

You are solely responsible for the confidentiality and use of your password. We will treat any transactions conducted using your password as having been authorized by you. We are not liable for any loss, liability, cost or expense that you may incur as a result of transactions made using your password.

§ 363.22 Is Public Debt liable if the electronic transmission of my data is intercepted?

We are not liable for any interception of electronic data or communication.

§ 363.23 What should I do if I become aware that my password has become compromised?

You should change your password immediately if you become aware that your password has become compromised. If you become aware of any misuse of your password, you

should notify us by email at *treasury.direct@bpd.treas.gov* or call us at 304–480–8783.

§ 363.24 What transactions can I perform online through my New Treasury Direct account?

The following transactions are by way of illustration only, and are not intended to limit transactions that may be added to the system in the future:

(a) You can purchase eligible Treasury securities in your own right or as gifts;

(b) You can redeem savings bonds;

(c) You can make changes to the registration of securities held in your account on which you are the single owner, owner with beneficiary, or primary owner;

(d) You can transfer a Treasury security to another person;

(e) You can grant and revoke the right to view a security held in your account to any other New Treasury Direct account owner, providing the security is:

(1) in the single owner form of registration, and

(2) not being held in your account as a gift;

(f) You can grant and revoke the right to view a security held in your account to the beneficiary named in the registration of the security, if the beneficiary is a New Treasury Direct account owner;

(g) You can grant and revoke the right to view or the rights to view and redeem a security on which you are the primary owner to the secondary owner, if the secondary owner is a New Treasury Direct account owner;

(h) You can view or redeem Treasury securities on which you are the secondary owner, if the primary owner has granted those rights to you, and if you are a New Treasury Direct account owner;

(i) You can deliver gift Treasury securities to the New Treasury Direct account of another person;

(j) You can make changes to your account information;

(k) You can change your ACH information;

(l) You can view a history of purchases, transactions, and pending transactions;

(m) You can change or delete pending transactions;

(n) You can change your password; and

(o) You can change account security information.

§ 363.25 How do I conduct transactions in my account or in Treasury securities held in my account?

We will provide online instructions for conducting transactions through your account. If you are unable to conduct a transaction online, you should contact us at the address provided in § 363.5. Offline transactions will require a certified or guaranteed signature. See § 363.43 for instructions for obtaining a certified or guaranteed signature.

§ 363.26 What is a transfer?

(a) A transfer is a transaction to move a minimum amount of $25 (consisting of principal and proportionate interest) of a Treasury security from one New Treasury Direct account to another New Treasury Direct account, in which the ownership of the security changes.

(b) Transfers of a specific type of security may be limited by the subparts that refer to that security.

§ 363.27 May a New Treasury Direct account be opened in the name of a minor?

A parent or legal guardian may open an account for a minor. The parent or legal guardian must have an existing New Treasury Direct account in order to open the minor's account. The parent or legal guardian will open the minor's account through the New Treasury Direct account of the parent or guardian. The account will be held in the name and SSN of the minor.

§ 363.28 What is the procedure for opening a New Treasury Direct account for a minor?

Online instructions will be provided to the parent or legal guardian of a minor for establishing an account for a minor child. The parent or legal guardian will select the password for the account. The parent or legal guardian must certify that he or she is acting on behalf of the minor, and that all transactions conducted through the account will be on the minor's behalf.

§ 363.29 How are transactions conducted in the minor's account?

The parent or guardian must conduct all transactions in the minor's account on behalf of the minor.

§ 363.30 What transactions are permitted in securities held in the New Treasury Direct account of a minor?

We will not permit purchases or transfers to be conducted from the account of a minor. Treasury securities may be transferred to the minor's account, and gift Treasury securities may be delivered to the minor's account.

§ 363.31 How can a minor gain control of his or her account when he or she reaches the age of 18 years?

The parent or legal guardian who opened the account on the minor's behalf must provide the minor with the password and control of the account when the minor reaches the age of 18 years. If the parent or guardian fails to provide the password and control of the account to the minor when he or she reaches the age of 18 years, the minor may contact us for instructions.

§ 363.32 Does Public Debt assume any liability for any transactions conducted by a parent or legal guardian in the minor's account?

We assume no liability for any transactions conducted by any person in an account opened on behalf of a minor.

§ 363.33 Can an attorney-in-fact conduct transactions in my New Treasury Direct account?

(a) An attorney-in-fact who provides a copy of a durable power of attorney granting him or her the authority to conduct New Treasury Direct transactions on behalf of the owner may conduct transactions online.

(b) An attorney-in-fact who provides a copy of a limited power of attorney may only conduct transactions that he or she is permitted by his or her power. Such transactions will be through an offline process.

(c) A written copy of the power of attorney must be sent to the address provided in § 363.5. We may require any additional evidence that we consider necessary to support the power.

§ 363.34 What happens if an owner becomes incompetent after opening a New Treasury Direct account?

If we receive written notice that the owner of a New Treasury Direct account has become incompetent, we will suspend all transactions in the account until we establish the authority of another person to act in his or her behalf.

§ 363.35 When is a transaction effective?

A transaction is effective when we post it to our records.

§ 363.36 What securities can I purchase and hold in my New Treasury Direct account?

You can purchase and hold eligible Treasury securities in your account. Initially, the only eligible securities will be book-entry Series I savings bonds. We intend to designate additional Treasury securities as eligible securities from time to time.

§ 363.37 How do I purchase eligible Treasury securities to be held in my New Treasury Direct account?

Eligible Treasury securities can only be purchased online through your New Treasury Direct account. Payment for the securities is made by a debit to your designated account at a United States

depository financial institution using the ACH method.

§ 363.38 What happens if the ACH debit for purchase of a book-entry Series I savings bonds is returned by my financial institution?

If your designated financial institution returns the ACH debit for payment of a bond, we reserve the right to reinitiate the debit at our option, and to remove the bond from your New Treasury Direct account. We are not responsible for any fees your financial institution may charge relating to returned ACH debits.

§ 363.39 Will I receive a confirmation of my request to purchase a Treasury security?

At the time that you submit a request to purchase a Treasury security through your New Treasury Direct account, we will make available a printable online confirmation of your request. Final confirmation will occur when the security is issued into your account. You will not receive a mailed confirmation.

§ 363.40 How are payments of principal and interest made?

You must select a specific bank account at a United States depository financial institution for your payment. This selected bank account may be the same one that you designated as your primary bank account in your New Treasury Direct account, or it may be a different bank account. We will make payments using the ACH method.

§ 363.41 What happens if an ACH payment of principal or interest to my account at a financial institution is returned to Public Debt?

We will notify you electronically of the returned payment. We will hold your payment until you provide us with instructions. Returned payments will not earn interest. We reserve the right to redirect returned payments to the bank account at a financial institution that you have designated in your New Treasury Direct account as your primary bank account, if that account is different from the one that returned the payment to us. We are not responsible for any fees your financial institution may charge relating to returned ACH payments.

§ 363.42 How will my interest income be reported for tax purposes?

When you open your New Treasury Direct account, you consent to receive the appropriate tax reporting forms by electronic means. We will notify you when your tax reporting forms are available. The form will be available in printable form through your New Treasury Direct account. If you withdraw your consent to receive tax reporting forms by electronic means, we reserve the right to redeem any Series I savings bonds held in your account and close your account.

§ 363.43 What are the procedures for certifying my signature on an offline application for a New Treasury Direct account, or on an offline transaction form?

(a) *Certification within the United States.* For certifications within the United States, the certifying individual must be authorized to bind his or her institution by his or her acts, to guarantee signatures to assignments of securities, or to certify assignments of securities. The following table provides a list of authorized certifying individuals and the required evidence of authority. Members of Treasury-recognized signature guarantee programs are for security transfers only.

Who can certify signatures in the U.S.	Evidence of certifying individual's authority
(1) Officers and employees of depository institutions	(i) We require the institution's seal or signature guarantee stamp. (ii) If the institution is an authorized paying agent for U.S. Savings Bonds, we require a legible imprint of the paying agent's stamp.
(2) Institutions that are members of Treasury—recognized signature guarantee programs (for security transfers only).	We require the imprint of the signature guarantee stamp, i.e., the STAMP, SEMP, or MSP stamp for members of the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program, or the New York Stock Exchange Inc. Medallion Signature Program.
(3) Officers and employees of corporate central credit unions, Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives, the Central Bank for Cooperatives, and Federal Home Loan Banks.	We require the entity's seal.
(4) Commissioned or warrant officers of the United States Armed Forces, for signatures executed by Armed Forces personnel, civilian field employees, and members of their families.	(i) We require a statement that the person executing he assignment is one whose signature the officer is authorized to certify under our regulations. (ii) The certifying official's rank must be shown.
(5) A judge or clerk of the court	We require the seal of the court.
(6) Other persons as designated by the Commissioner or Deputy Commissioner of Public Debt.	Evidence is determined by our procedures.

(b) *Certification within foreign countries.* The following table lists the authorized certifying individuals for foreign countries and the required evidence of the individual's authority.

Who can certify signatures in foreign countries	Evidence of certifying individual's authority
(1) United States diplomatic or consular officials	(i) We require the seal or stamp of the office. (ii) If there is no seal or stamp, then we require certification by some other authorized individual, under seal or stamp.
(2) Managers and officers of foreign branches of U.S. depository institutions and institutions that are members of Treasury-recognized signature guarantee programs (for security transfers only).	We require the seal of the depository institution, or the imprint of the signature guarantee stamp, i.e., the STAMP, SEMP, or MSP stamp for members of the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program, or the New York Stock Exchange Incorporated Medallion Signature Program.
(3) Notaries Public and other officers authorized to administer oaths, provided their authority is certified by a United States diplomatic or consular official.	(i) We require the official seal or stamp of the office. (ii) If there is no seal or stamp, the position must be certified by some other authorized individual, under seal or stamp, or otherwise proved to our satisfaction.

(c) *Duties and liabilities of certifying individuals.*

(1) The certifying individual must first establish the identity of the signer.

(2) The form must be signed in the presence of the certifying individual.

(3) If the certifying individual is not an officer, the certifying individual must insert the words ''Authorized Signature'' in the space provided for the title.

(4) If the certifying individual is negligent in making the certification, the certifying individual and his or her organization are jointly and severally liable for any loss the United States may incur as a result of the negligence.

(d) *Guaranteed signatures.* (1) A security or other form requiring certification need not be executed in the presence of a certifying individual if the signature is unconditionally guaranteed by the certifying individual. To guarantee a signature, the certifying individual must add a dated endorsement after the signature. For example:

Signature guaranteed, First National Bank of Smithville, Smithville, NH, by A. B. Doe, President, dated 1/1/2001.

(2) The certifying individual and his or her organization unconditionally guarantee to us that the signature is genuine and the signer had the legal capacity to execute the assignment or related form.

(e) *Guaranteed absence of a signature.* (1) A form requiring a certified signature need not be signed when a certifying individual associated with a depository financial institution places the following endorsement on the security or the form:

Absence of signature by owner and validity of transaction guaranteed, Second State Bank of Jonesville, Jonesville, NC, by B. R. Butler, Vice President, dated 11/1/2001.

(2) The endorsement must be dated and the seal of the institution must be added.

(3) This form of endorsement is an unconditional guarantee to us that the institution is acting for the signer under proper authorization.

(f) *Persons who cannot act as certifying individuals.* Any person having an interest in a security involved in the transaction cannot act as a certifying individual. However, an authorized officer or employee of a depository financial institution that is a member of a Treasury-recognized signature guarantee program can act as a certifying individual for transfer of a security to the institution or on behalf of the institution.

§§ 363.44–363.49 [Reserved]

Subpart C—Book-Entry Series I Savings Bonds

General

§ 363.50 What Treasury securities does this subpart cover?

This subpart covers book-entry Series I savings bonds only. As we designate other securities as eligible to be held in New Treasury Direct, the applicable terms and conditions will be set forth in separate subparts. The offering of Series I savings bonds is contained in part 359.

§ 363.51 Who may purchase and hold a book-entry Series I savings bonds?

(a) A New Treasury Direct account holder may purchase and hold bonds through his or her account.

(b) Bonds may not be purchased through the account of a minor.

(c) We do not permit a legally incompetent person to purchase savings bonds once we have been provided with an acceptable court order determining incompetency.

(d) We do not permit a legal representative or a legal guardian to purchase savings bonds on behalf of the estate of a decedent or an incompetent person.

§ 363.52 What amount of book-entry Series I savings bonds may I purchase in one year?

(a) *Purchase limitation.* The amount of bonds that you may purchase in any calendar year is limited to $30,000 per account.

(b) *Computation of amount for gifts.* Bonds purchased or transferred as gifts will be included in the computation of the purchase limitation for the account of the recipient for the year in which the bonds are delivered to the recipient.

§ 363.53 What is the minimum amount of book-entry Series I savings bonds that I may purchase in any transaction?

Each bond purchase must be in a minimum amount of $25, with additional one-cent increments above that amount, in any one transaction. For example, a purchase may be $25.00, $25.01, $25.02, or $25.03, and so forth.

§ 363.54 What is the minimum amount of a book-entry Series I savings bonds that I must hold in my account?

Each bond held in your account must have a redemption value of at least $25. If you request a transaction that would reduce the remaining redemption value of the bond to an amount less than $25, we will not permit the transaction to occur.

§ 363.55 May I transfer my book-entry savings bonds to another person?

(a) You may transfer a bond or a portion of a bond to the New Treasury Direct account of another individual as a gift, or in response to a final judgment, court order, a divorce decree, or property settlement agreement. You must certify online that the transfer is a gift or a specified exception.

(b) We do not permit the transfer of Series I savings bonds for consideration, unless it is an exception specified in paragraph (a) of this section.

(c) The bond will be transferred in the single owner form of registration.

(d) We reserve the right to limit the transferability of Series I savings bonds at any time by amendment to these regulations.

§ 363.56 What is the minimum amount of book-entry Series I savings bonds that I may transfer in any one transaction?

Each transfer must be in a minimum amount of $25 redemption value, with additional one-cent increments above that amount, in any one transaction. For example, you may transfer $25.00, $25.01, $25.02, or $25.03, and so forth. Transfers will be comprised of principal and proportionate interest.

§ 363.57 What is the minimum amount of book-entry Series I savings bonds that I may redeem in any one transaction?

Each redemption must be in a minimum amount of $25 redemption value, with additional one-cent increments above that amount, in any one transaction. For example, you may redeem $25.00, $25.01, $25.02, or $25.03, and so forth. Redemptions will be comprised of principal and proportionate interest.

§ 363.58 May book-entry Series I savings bonds be pledged or used as collateral?

Bonds may not be pledged or used as collateral for the performance of an obligation.

§§ 363.59–363.64 [Reserved]

Registration

§ 363.65 What do I need to know about the registration of book-entry Series I savings bonds?

(a) Registration must express the actual ownership of, and interest in, the bond. Registration conclusively establishes ownership of a bond.

(b) You must provide a last name and a first name for each individual included in the registration.

(c) You must provide the valid social security number of the owner of the bond.

§ 363.66 What forms of registration are available for book-entry Series I savings bonds?

The forms of registration available are single owner, owner with beneficiary, primary owner with secondary owner, and several special forms of registration.

§ 363.67 What do I need to know about the single owner form of registration?

(a) An individual is the single owner of the bond.

(b) A single owner may add a beneficiary or secondary owner.

(c) A single owner may conduct online transactions on bonds held in his or her account.

(d) Upon the death of the single owner, his or her estate is entitled to the bond. In determining entitlement, the law of the decedent's domicile will be followed.

(e) Registration example: ''John Doe, SSN 123–45–6789.''

§ 363.68 What do I need I need to know about the owner with beneficiary form of registration?

(a) The purchaser must be named as the owner with another individual as beneficiary.

(b) The owner may remove or change the beneficiary without the consent of the beneficiary.

(c) The owner may conduct online transactions on bonds held in his or her account without the consent of the beneficiary.

(d) The beneficiary has no ownership rights to the bond during the owner's lifetime. Upon the death of the owner, the beneficiary is the absolute owner of the bond, despite any attempted testamentary disposition by the owner or any state law to the contrary.

(e) If the beneficiary does not survive the owner, the bond belongs to the estate of the owner.

(f) If both the owner and the beneficiary die under conditions where it cannot be established, either by presumption of law or otherwise, which one died first, the bond is the property of the estate of the owner.

(g) In order for the beneficiary to obtain the bond or the bond proceeds after the death of the owner, the beneficiary must provide proof of death of the owner. If the beneficiary has a New Treasury Direct account, the bond will be transferred to that account. If the beneficiary does not have an account, he or she may establish an account or request redemption. If the beneficiary requests redemption, he or she must provide ACH instructions for the payment.

(h) Registration example: ''John Doe, SSN 123–45–6789 POD (payable on death to) Jane Doe, SSN 987–65–4321.''

§ 363.69 What do I need to know about the primary owner with secondary owner form of registration?

(a) The purchaser must be named in the registration as the primary owner.

(b) The primary owner holds the bonds in his or her account and may view or conduct online transactions in the bonds.

(c) The primary owner may remove the secondary owner without the consent of the secondary owner.

(d) The secondary owner has no rights to view or conduct transactions in any bond unless the primary owner gives the secondary owner these rights.

(e) The primary owner may give the secondary owner the right to view any bond or rights to view and redeem any bond, online from the account of the secondary owner.

(f) Once the right to conduct transactions in a bond has been given to the secondary owner, the primary owner may view and conduct transactions in the bond from his or her account, and the secondary owner may view and redeem the bond using his or her own account.

(g) The primary owner may revoke any rights previously given to the secondary owner at any time.

(h) Upon the death of either the primary or secondary owner, the survivor is the absolute owner of the bond, despite any attempted testamentary disposition or any state law to the contrary.

(i) If both the primary and the secondary owner die under conditions where it cannot be established, either by presumption of law or otherwise, which one died first, the bond is the property of the estate of the primary owner.

(j) In order for the secondary owner to obtain the bond or the bond proceeds after the death of the owner, the secondary owner must provide proof of death of the owner. If the secondary owner has a New Treasury Direct account, the bond will be transferred to that account. If the secondary owner does not have an account, he or she may establish an account or request redemption. If the secondary owner requests redemption, he or she must provide ACH instructions.

(k) Registration example: ''John Doe, SSN 123–45–6789 with Joseph Doe, SSN 987–65–4321.''

§ 363.70 What are special forms of registration?

(a) Special forms of registration are used when a legal guardian or representative is appointed by a court to handle the affairs of a decedent or an incompetent individual.

(b) Special forms of registration are not permitted on original issue.

(c) Bonds registered in this form may be held in the New Treasury Direct account of the legal guardian or representative.

§ 363.71 What special forms of registration are permitted?

(a) *Legal guardian of the estate of an incompetent individual.* A court-appointed legal guardian may hold bonds on behalf of an incompetent individual.

(b) *Legal representative of the estate of a decedent.* A court-appointed legal representative of the estate of a decedent may hold bonds on behalf of the estate.

(c) *General rule.* Bonds registered in the name of a legal guardian of an incompetent person or legal representative of an estate will be held in the New Treasury Direct account of the legal guardian or legal representative.

§§ 363.72–363.79 [Reserved]

Minors

§ 363.80 May a minor purchase book-entry Series I savings bonds?

We do not permit a minor to purchase bonds.

§ 363.81 May book-entry Series I savings bonds be purchased for a minor as a gift?

A New Treasury Direct account owner may purchase bonds as a gift with a minor as the recipient.

§ 363.82 May an account owner deliver a book-entry Series I savings bonds purchased as a gift to a minor?

An account owner may deliver a bond purchased as a gift to the New Treasury Direct account of the recipient who is a minor.

§ 363.83 May an account owner transfer a book-entry Series I savings bonds to a minor?

An account owner may transfer a bond to a minor as a gift or pursuant to one of the specified exceptions in § 363.55(a).

§ 363.84 [Reserved]

Incompetent Person

§ 363.85 May Series I savings bonds be registered in the name of an incompetent person for whom a legal guardian has been appointed?

(a) If a person owning bonds becomes incompetent, and there is a legally qualified guardian, the bonds must be registered in the name of the guardian.

(b) We will require satisfactory evidence of appointment.

(c) Registration will be as follows: ''John Doe, SSN 123–45–6789, Legal Guardian of the estate of James Doe, an incompetent, SSN 987–65–4321.''

§§ 363.86–363.89 [Reserved]

Deceased Owners

§ 363.90 What happens when a New Treasury Direct account owner dies and his or her estate is entitled to Series I savings bonds held in the account?

(a) *Estate is being administered.* (1) We will require appropriate proof of appointment for the legal representative of the estate. Letters of appointment must be dated within six months of submission, unless the appointment was made within one year before submission.

(2) The bonds will be registered in the following form: ''John Doe, SSN 123–45–6789, Legal Representative of the estate of James Doe, deceased, SSN 987–65–4321.''

(3) The bonds may be held in the New Treasury Direct account of the legal representative.

(4) The legal representative of the estate may request payment of bonds to the estate or to the person(s) entitled, or may have the bonds transferred to the New Treasury Direct account(s) of the person(s) entitled.

(5) The legal representative of the estate may not purchase bonds on behalf of the estate.

(6) If payment is requested, we will require ACH instructions.

(b) *Estate has been settled previously.* If the estate has been previously settled through judicial proceedings, the person(s) entitled may request payment of bonds or may have the bonds transferred to the New Treasury Direct account of the person(s) entitled. If payment is requested, we will require ACH instructions. We will require a certified copy of the court-approved final accounting for the estate, the court's decree of distribution, or other appropriate evidence.

(c) *Summary administration procedures.* If there is no formal administration and no representative of the estate is to be appointed, the person(s) entitled under state law summary or small estates procedures may request payment of bonds or may have the bonds transferred to the New Treasury Direct account(s) of the person(s) entitled. We will require appropriate evidence. If payment is requested, we will require ACH instructions.

(d) *Survivors' order of precedence for payment or transfer.* If there has been no administration, no administration is contemplated, no summary or small estate procedures have been used, and the redemption value of the bonds is $100,000 or less,[2] then bonds may be paid or transferred to the persons named in the following order of precedence:

(1) There is a surviving spouse and no surviving child or descendant of a deceased child: to the surviving spouse.

(2) There is a surviving spouse and a child or children of the decedent, or descendants of deceased children: one-half to the surviving spouse and one-half to the child or children of the decedent, and the descendants of deceased children, by representation, or by agreement of all persons entitled in this class;

(3) There is no surviving spouse and there is a surviving child or descendant of deceased children: to the child or children of the decedent, and the descendants of deceased children, by representation.

(4) There are no surviving spouse, no surviving child, and no surviving descendants of deceased children: to the parents of the decedent, one-half to each, or in full to the survivor.

(5) There are no surviving spouse, no surviving child or surviving descendants of deceased children, and no surviving parents: to the brothers and sisters and descendants of deceased brothers and sisters by representation.

(6) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, and no brothers or sisters or descendants of deceased brothers and sisters: to other next of kin, as determined by the laws of the decedent's domicile at the time of death.

(7) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, and no next of kin, as determined by the laws of the decedent's domicile at the time of death: to persons related to the decedent by marriage, *i.e.*, heirs of a spouse of the last decedent where the spouse predeceased that registrant.

(8) There are no surviving spouse, no surviving child or surviving descendants of deceased children, no surviving parents, no brothers or sisters or descendants of deceased brothers and sisters, no next of kin, as determined by the laws of the decedent's domicile at the time of death, and no persons related to the decedent by marriage: to the person who paid the burial and funeral expenses, or a creditor of the decedent's estate, but payment may be made only to the extent that the person has not been reimbursed. Transfers are not permitted.

(9) Escheat according to the applicable state law.

(e) When we make payments or transfers according to paragraph (d) of this section, we will make the payments by the ACH method to either a person individually, or individually and on behalf of all other persons entitled. We will require ACH instructions for payment. A person who receives payment of bond proceeds individually and on behalf of others agrees to make distribution of the proceeds to the other persons entitled by the law of the decedent's domicile. The provisions of this section are for our convenience and do not determine ownership of the bonds or their proceeds. We may rely on information provided by the person who requests payment or transfer, and are not liable for any action taken in reliance on the information furnished.

[2] We require estates with bonds over $100,000 redemption value to be administered.

§§ 363.91–363.94 [Reserved]

Gifts

§ 363.95 How may I give a book-entry Series I savings bonds as a gift?

You may give a book-entry Series I savings bonds as a gift in two ways:

(a) You may purchase a bond online as a gift; or

(b) You may transfer a bond that you own to another person as a gift with immediate delivery.

§ 363.96 What do I need to know if I initially purchase a bond as a gift?

(a) The gift bond will be registered in the name of the recipient(s). The registration is irrevocable with regard to the owner named on the gift bond.

(b) You must provide the SSN of the recipient.

(c) You may deliver the bond upon purchase, or you may hold the bond in your New Treasury Direct account until you are ready to deliver the bond to the owner named on the gift bond.

(d) If the purchaser dies before delivering a gift bond to the recipient, the bond belongs to the owner named on the gift bond, notwithstanding any testamentary attempts to the contrary by the purchaser, or any state law to the contrary. We will hold the bond until we receive instructions from the owner named on the gift bond.

(e) When the gift bond is delivered, it will be delivered in the single owner form of registration to the owner named on the gift bond.

§ 363.97 What do I need to know if I transfer a book-entry Series I savings bonds to another person as a gift?

(a) You must certify online that the transfer is a gift.

(b) You must provide the SSN of the recipient.

(c) Once the transfer is made, the gift is irrevocable.

(d) The bond will be transferred in the single owner form of registration to the recipient.

§ 363.98 [Reserved]

§ 363.99 What is the minimum amount of a bond that I may transfer or deliver as a gift in any one transaction?

You may transfer or deliver gift bonds in any one-cent increment value equal to or greater than $25.00 redemption value. For example, you may deliver a gift bond with a redemption value of $25.00, $25.01, $25.02, and so forth. If the bond was held in your account prior to delivery to the recipient for a period of time and has accrued interest, the delivery will include principal and proportionate interest.

§§ 363.100–363.104 [Reserved]

Transactions

§ 363.105 Who has the right to conduct transactions in book-entry Series I savings bonds?

(a) *Single owner form of registration.* A single owner can conduct transactions in bonds held in his or her New Treasury Direct account.

(b) *Owner with beneficiary form of registration.* The owner can conduct transactions in bonds held in his or her New Treasury Direct account. The beneficiary has no rights during the lifetime of the owner and therefore cannot conduct transactions in the bonds.

(c) *Primary Owner with secondary owner form of registration.* The primary owner can conduct transactions in bonds held in his or her New Treasury Direct account. The secondary owner can redeem bonds using his or her New Treasury Direct account providing the primary owner has given the secondary owner that right, and has not revoked that right.

(d) *Legal guardian of an incompetent form of registration.* A legal guardian or other court-appointed representative of an incompetent can conduct transactions in bonds belonging to the incompetent consistent with the authority of the legal guardian.

(e) *Legal representative of an estate.* A legal representative of an estate can conduct transactions in bonds belonging to the estate consistent with the authority of the legal representative.

§ 363.106 How are online transactions conducted in Series I savings bonds?

We will provide online forms, including instructions, for transactions.

§ 363.107 Does Public Debt reserve the right to require that any transaction be conducted offline?

We reserve the right to require any transaction to be conducted offline using an approved form. Signatures on offline transactions must be certified or guaranteed as provided in instructions in § 363.43.

§§ 363.108–363.109 [Reserved]

Judicial and Administrative Proceedings

§ 363.110 Will Public Debt recognize a court order that attempts to defeat the survivorship rights of a beneficiary, secondary owner, or recipient of an undelivered gift bond?

We will not recognize a judicial determination that attempts to defeat or impair the rights of survivorship of a beneficiary, secondary owner, or recipient of an undelivered gift bond, after the death of the owner or primary owner.

§ 363.111 Will Public Debt accept notice of an adverse claim or notice of pending judicial proceedings involving book-entry Series I savings bonds?

We are not subject to and will not accept a notice of an adverse claim or notice of pending judicial proceedings involving book-entry Series I savings bonds.

§ 363.112 Is Public Debt a proper party in a judicial proceeding involving competing claims to a book-entry Series I savings bonds?

Treasury, Public Debt, and the Federal Reserve Banks are not proper defendants in a judicial proceeding involving competing claims to a book-entry Series I savings bonds.

§ 363.113 Will Public Debt pay or transfer book-entry Series I savings bonds pursuant to an order in a divorce proceeding?

We will pay or transfer bonds pursuant to a divorce decree that either disposes of savings bonds or ratifies a property settlement agreement disposing of bonds. The owner (as defined in § 363.6) of the bonds must be a party to the proceedings. If the divorce decree does not set out the terms of the property settlement agreement, we will require a certified copy of the agreement.

§ 363.114 Will Public Debt recognize a court order?

We will recognize a final order entered by a court that affects ownership rights in a Series I book-entry savings bonds only to the extent that the order is consistent with the provisions of this part. The owner (as defined in § 363.6) of the bond must be a party to the proceedings. We will require a certified copy of the court order.

§ 363.115 Will Public Debt pay a savings bonds pursuant to a levy?

We will pay a savings bonds pursuant to a valid levy to satisfy a money judgment against the owner (as defined in § 363.6) of the bond. Payment will be made only to the extent necessary to satisfy the money judgment.

§ 363.116 Will Public Debt pay a bond to the Internal Revenue Service (IRS) pursuant to a levy?

We will honor an IRS administrative levy under § 6331 of the Internal Revenue Code with respect to the owner (as defined in § 363.6).

§ 363.117 Will Public Debt pay a bond to a trustee in bankruptcy or similar court officer?

We will pay a savings bonds to a trustee in bankruptcy, a receiver of an insolvent's estate, a receiver in equity, or a similar court officer, if the original court order is against the owner (as defined in § 363.6).

§ 363.118 What evidence is required to establish the validity of judicial proceedings?

(a) We require certified copies of the final judgment, decree, or court order, and any necessary supplementary proceedings.

(b) A request for payment by a trustee in bankruptcy or a receiver of an insolvent's estate must be supported by evidence of appointment and qualification.

(c) A request for payment by a receiver in equity or a similar court officer (other than a receiver of an insolvent's estate), must be supported by a copy of an order that authorizes the redemption of the bond.

§ 363.119 Will Public Debt pay a bond pursuant to a forfeiture proceeding?

(a) *General.* Bonds will be paid pursuant to a judicial or administrative forfeiture made by a Federal agency. We will rely exclusively upon the information provided by the Federal forfeiting agency and will not make any independent evaluation of the validity of the forfeiture order, the request for payment, or the authority of the individual signing the request for payment. The amount paid is limited to the redemption value of the savings bonds as of the date of forfeiture. All inquiries or claims from the previous owner will be referred to the forfeiting agency.

(b) *Definition of special terms relating to forfeitures.*

Contact point means the individual designated by the Federal investigative

agency, United States Attorney's Office, or forfeiting agency, to receive referrals from Public Debt, using Public Debt Form 1522.

Forfeiting agency means the federal law enforcement agency responsible for the forfeiture.

Forfeiture means the process by which property may be forfeited by a federal agency. Administrative forfeiture is forfeiture by a federal agency without judicial proceedings; judicial forfeiture is a forfeiture through either a civil or criminal proceeding in a United States District Court resulting in a final judgment and order of forfeiture.

Public Debt Form 1522 (PD 1522) is the form on which written notification of the forfeiture is provided by the forfeiting agency to Public Debt.

(c) *Procedures for a forfeiting agency to request forfeiture of Treasury securities.* A forfeiting agency must request forfeiture on PD 1522. An individual authorized by the forfeiting agency must sign the form. The completed PD 1522 must be mailed to the Department of the Treasury, Bureau of the Public Debt, Parkersburg, WV 26106–1328.

(d) *Public Debt procedures upon receipt of PD 1522.* (1) Upon receipt and review of the Public Debt Form 1522, we will make payment to the forfeiture fund specified on the form. We will record the forfeiture, the forfeiture fund into which the proceeds were paid, the contact point, and any related information.

(2) We will rely exclusively upon the information provided by the Federal agency and will not make any independent evaluation of the validity of the forfeiture order, the request for payment, or the authority of the individual signing the request for payment.

(e) *Amount paid on a forfeiture.* The amount we will pay on a forfeiture is limited to the redemption value of the savings bonds as of the date of forfeiture.

(f) *Inquiries from previous owners of forfeited Treasury securities.*

(1) We will refer all inquiries from the previous owner, including requests for payment, reissue, or applications for relief, to the contact point.

(2) We will tell the person who inquired that we referred his or her inquiry to the contact point.

(3) We will not investigate the inquiry.

(4) We will defer to the forfeiting agency's determination of the appropriate course of action, including settlement where appropriate.

(5) Any settlement will be paid from the forfeiture fund into which the proceeds were deposited.

§§ 363.120–363.124 [Reserved]

Payment

§ 363.125 How is payment made on a book-entry Series I savings bonds?

We will make payment by the ACH method to the designated account at a United States depository financial institution.

§ 363.126 Under what circumstances will payment be made?

We will make payment:

(a) Upon your request for redemption prior to maturity;

(b) When the bond reaches final maturity; and

(c) If a person who becomes entitled to the bond is unable, unwilling or ineligible to open a New Treasury Direct account.

§§ 363.127–363.129 [Reserved]

Subparts C through E [Reserved]

Subpart F Miscellaneous

§ 363.175 May Public Debt waive these regulations?

We may waive or modify any provision of the regulations in this part. We may do so in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship:

(a) If the waiver would not be inconsistent with law or equity;

(b) If the waiver does not impair any material existing rights; and

(c) If we are satisfied that the waiver would not subject the United States to any substantial expense or liability.

§ 363.176 Can I be required to provide additional evidence to support a transaction?

We may require additional evidence and/or a bond of indemnity, with or without surety, in any case where we determine it necessary to protect the interests of the United States.

§ 363.177 May Public Debt amend or supplement these regulations?

We may amend, revise, or supplement these regulations at any time.

Dated: October 11, 2002.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 02–26406 Filed 10–11–02; 1:50 pm]

BILLING CODE 4810–39–P

Federal Register

Thursday,
October 17, 2002

Part VI

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Closing Date; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410097–2225–06]

[RIN 0660–ZA11]

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Closing Date for Solicitation of Television Applications.

SUMMARY: Subject to the availability of fiscal year (FY) 2003 funds, the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces the solicitation of applications for planning and construction grants for public television facilities under the Public Telecommunications Facilities Program (PTFP).

DATES: Pursuant to 15 CFR 2301.8(b), the NTIA Administrator hereby establishes the following closing date for the filing of television applications for PTFP grants. The closing date selected for the submission of all television applications for FY 2003 is Tuesday, November 19, 2002. Applications must be received prior to 6 p.m. Tuesday, November 19, 2002. Applications submitted by facsimile or electronic means are not acceptable.

ADDRESSES: Application materials may be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*). To obtain a printed application package, submit completed applications, or send any other correspondence, write to: NTIA/PTFP, Room H–4625, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via the Internet (*http://www.ntia.doc.gov/ptfp*).

SUPPLEMENTARY INFORMATION:

I. Closing Date

In order to assist as many public television stations as possible in meeting the Federal Communications Commission (FCC) May 2003 deadline to begin digital broadcasting, NTIA announces that all television applicants for matching grants under the PTFP must file their applications on or before 6 p.m., Tuesday, November 19, 2002. Issuance of grants is subject to the availability of FY 2003 funds. At this time, the Congress is considering the President's request to appropriate $43.5 million for the PTFP. NTIA intends to divide any funds appropriated by the Congress into two parts. One portion of the appropriation will be set aside to fund television applications submitted in response to this Notice and radio and nonbroadcast applications submitted in response to a future Notice to be published by NTIA. A second portion of the appropriation will be set aside to fund additional phases of multi-phase projects initially funded in FY 2000, FY 2001 and FY 2002. At the appropriate time, notice will be published in the **Federal Register** about the final status of funding for the PTFP. In awarding grants, NTIA will strive to maintain an appropriate balance between traditional grants and those to stations converting to digital broadcasting. Information regarding digital television Broadcast Other projects is included in Section VII of this document. Section VII also describes revisions of the PTFP Rules which will be applicable for the FY 2003 Grant Round for television applications in the Broadcast Other category. The amount of any grants awarded by NTIA will vary, depending on the approved project. For FY 2002, NTIA awarded $37.4 million in funds to 59 television projects. The television awards ranged from $21,447 to $1,800,000.

Any applications submitted in response to this Notice which are for radio or nonbroadcast projects will be returned to the applicant without review. Applications so returned may be resubmitted at the appropriate time pursuant to a future Notice establishing a closing date for radio and nonbroadcast applications. NTIA intends to publish a Notice announcing the closing date for receipt of radio and nonbroadcast applications at a later time and anticipates that the closing date for these applications will be after February 1, 2003.

All television applications will be reviewed as a group according to the Evaluation Process discussed in Section XI. Because of the FCC digital conversion deadline, NTIA anticipates that awards for television digital conversion applications submitted in response to this Notice will be issued during the second quarter of FY 2003 (January–March 2003). Applications submitted for television replacement or signal extension projects will be awarded in the fourth quarter of FY 2003 (July–September 2003) and will compete with applications submitted in response to the future Notice announcing a closing date for radio and nonbroadcast applications.

II. Application Forms

All applicants must use the official application form for the FY 2003 grant cycle. This form expires on October 31, 2003, and no previous versions of the form may be used. Each page of the application form has the expiration date of 10/31/2003 printed on the bottom line. To apply for a PTFP grant, an applicant must file an original and five copies of a timely and complete application on the application form. Applicants for television projects are requested to supply one additional copy of their application (an original and six copies), if this does not create a hardship on the applicant. The current application form is available on the Internet and will be provided to applicants as part of the application package upon request.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number. The PTFP application form has been cleared under OMB control no. 0660–0003.

III. Authority

The Public Telecommunications Facilities Program is authorized by the Communications Act of 1934, as amended, 47 U.S.C. 390–393, 397–399(b).

IV. Catalog of Federal Domestic Assistance (CFDA)

CFDA No. 11.550, Public Telecommunications Facilities Program.

V. Regulations

The applicable Rules for the PTFP were published on November 8, 1996 (61 FR 57966). In accordance with provisions provided in 15 CFR part 2301, section 2301.26, certain requirements of the PTFP are modified in this Notice for FY 2003. Copies of the 1996 Rules are posted on the NTIA Internet site and NTIA will make printed copies available to applicants upon request. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

Applicants sending applications must ensure that the carrier will be able to guarantee delivery of the application by the Closing Date and Time. Applicants should be aware that all material sent via the United States Postal Service (including ''overnight'' or ''Express Mail'') are subject to delivery delays due to increased mail security procedures at the Department of Commerce. NTIA *will not* accept applications posted on the Closing Date or later and received after the above deadline. However, if an application is received after the Closing Date due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the Closing Date, or (2) significant weather delays or natural disasters, NTIA will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants submitting applications by hand delivery are notified that, due to security procedures in the Department of Commerce, all packages must be cleared by the Department's security office. Entrance to the Department of Commerce Building for security clearance is on the 15th Street side of the building. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current Grant Round and will be returned to the applicant. See 15 CFR 2301.8(c); but see also 15 CFR 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR 2301.3 or 2301.4. The Agency will inform the applicant of the reason for the return of any application.

All persons and organizations on the PTFP's mailing list will be sent a notification of the FY 2003 Grant Round. Copies of the application forms, Final Rules, Closing Date notification and application guidelines will be available on the NTIA Internet site: *www.ntia.doc.gov/ptfp.* Those not on the mailing list or who desire a printed copy of these materials may obtain copies by contacting the PTFP at the telephone and fax numbers, at the Internet site, or at mailing address listed above. Prospective applicants should read the Final Rules carefully before submitting applications. Television applicants whose applications were deferred in FY 2002 will be mailed information regarding the reactivation of their applications. Applicants whose television projects were deferred from FY 2002 should carefully review Section VII. Television Broadcasting and Digital Conversion, regarding policies which apply to the reactivation of their applications.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

VI. Radio Broadcasting

NTIA is not accepting applications for radio projects at this time and will publish a Notice in the **Federal Register** announcing a Closing Date for radio applications in the future. NTIA will take great care to ensure that its funding of radio applications reflects its responsibilities under 47 U.S.C. 393(c) that ''a substantial amount'' of each year's PTFP funds should be awarded to public radio.

VII. Television Broadcasting and Digital Conversion

The FCC's adoption of the Fifth Report and Order in April 1997 requires that all public television stations begin the broadcast of a digital signal by May 1, 2003.

This deadline is only seven months from the publication date of this Notice. In FY 2000, NTIA instituted several new policies regarding applications for projects to convert public television stations to digital transmission capability. NTIA believes that the policies worked well and have permitted PTFP to assist in the digital conversion of over 200 public television stations. These policies are being continued for the FY 2003 Grant Round and are included in full in this document.

NTIA recognizes that meeting the FCC's deadline is one of the greatest challenges facing America's public television stations. Over 350 stations must overcome both technical and financial challenges in order to complete conversion to digital broadcasting within the FCC's timetable.

In February, the Administration proposed an appropriation of $43.5 million to the PTFP for FY 2003. This proposal is currently before the Congress. These funds would primarily be used to assist public television stations in meeting the FCC's deadline. While these sums are significant, NTIA anticipates that the majority of funds required to convert all the nation's public television stations will actually come from non-federal sources.

For FY 2002, NTIA awarded $36.2 million in funds to 52 projects which assisted public television stations in the conversion to digital technologies. The awards ranged from $21,447 to $1,800,000 to assist in the digital conversion of 97 public television stations.

NTIA has considered how best to distribute digital conversion funds to public television stations through the PTFP. One of NTIA's goals during the FY 2003 Grant Round is to ensure that PTFP's administrative procedures as well as its funds can support public television's needs in meeting the FCC's deadline. Another of NTIA's goals is to maintain an acceptable balance between equipment replacement projects and digital television conversion projects.

NTIA is continuing the following policies/procedures instituted during the FY 2000 grant cycle which will assist public television stations in the application for and use of PTFP funds for digital conversion projects.

These policies/procedures are summarized here and then are discussed fully in parts A through G later in this section.

(A) Digital Television Conversion Projects and Digital Equipment Replacement

NTIA has established a ''Digital TV List'' which includes the equipment eligible for PTFP funding under the Broadcast Other category. NTIA will also use the ''Digital TV List'' for most television equipment replacement projects and will modify the way it views television replacement applications.

(B) Multi-Year Funding

NTIA will accept applications under the Broadcast Other category for phased projects requesting funding for up to three years and which are intended to enable all of the applicant's public television stations to meet the FCC's digital broadcasting deadline.

(C) Effective Date for Expenditure of Local Matching Funds

Applicants for digital conversion projects in the Broadcast Other category may include eligible equipment from the Digital TV List in their projects when that equipment is purchased with non-federal funds after July 1, 1999.

(D) Subpriorities for Digital Conversion Projects

NTIA is creating three Subpriorities to aid in the processing of digital conversion applications.

(E) Funding Levels for Television Projects

NTIA has revised the presumption of funding from 50% Federal share for

most television projects to 40%. For digital television conversion applications, NTIA has established simplified procedures so stations can qualify for hardship grants up to a 67% Federal share, and will provide incentives for applicants who request only 25% Federal funding.

(F) Use of CPB Funds

Applicants may use CPB funds as part of their local non-federal match in cases of clear and compelling need.

(G) Partnerships; Urgency

NTIA encourages partnerships with commercial as well as noncommercial organizations and clarifies its consideration of urgency for digital conversion applications. NTIA believes that digital conversion applications should be afforded high urgency when they document time-sensitive partnerships, time-sensitive funding opportunities, or which include the replacement of equipment required to maintain existing service.

NTIA intends to remain responsive to the equipment replacement needs of public television stations. NTIA's balancing of equipment replacement and digital conversion applications is discussed in the following sections.

In order to assist public television stations in meeting the FCC's deadline and to facilitate a station's raising non-federal matching funds required for digital conversion projects, NTIA is modifying its application procedures in the following areas.

(A) Digital Television Conversion Projects and Digital Equipment Replacement

For FY 2003, NTIA will support the equipment necessary for a public television station to comply with the FCC's deadline. This includes equipment required for digital broadcast of programs produced locally in analog format as well as the broadcast of digital programming received from national sources. NTIA is posting on its Internet site a listing of transmission and distribution equipment (as contained in the ''Digital TV List'') which is eligible for PTFP digital television conversion funding. Printed copies of this list are also available from PTFP at the address shown in the **ADDRESSES** section of this document. This list was developed in conjunction with the Public Broadcasting Service and is similar to equipment lists PTFP used during last year's Grant Round. The Digital TV List includes transmission equipment (transmitters, antennas, STLs, towers, etc.) as well as distribution equipment located in a station's master control (routing switchers, video servers, PSIP generators, digital encoders, etc.). Applications seeking funding for the equipment necessary to meet the FCC's deadline will be placed in the Broadcast Other category.

NTIA believes that many stations must replace obsolete equipment in order to complete their digital conversion projects. NTIA is continuing its revised policies to permit the replacement of obsolete equipment as part of digital conversion projects. If the conversion to digital transmission includes the urgent replacement of an existing item of equipment, the application will be considered as a Broadcast Other, rather than as replacement under Priorities 2 or 4. Replacement of existing equipment then is a normal part of a digital conversion application.

If the purpose of an application is just for replacement of urgently needed equipment, even though the equipment is drawn from the Digital TV List, the application will be classified as a Priority 2 or 4, as appropriate.

Any application which includes equipment replacement as a justification for the urgency criterion should submit documentation of downtime or other evidence in support of the urgency evaluation criterion as contained in § 2301.17 of the PTFP Final Rules. The need to replace current equipment in order to maintain existing services will, in many cases, strengthen the urgency criterion of a digital conversion application.

Because of the requirement that all public television stations begin digital broadcasts, all public television applications, whether submitted for Priority 2, Priority 4 or the Broadcast Other category, should include the station's comprehensive plan for digital conversion to meet the FCC's deadline and explain how the requested equipment is consistent with that plan. If the applicant is still developing its plan for digital conversion, the application should address how the requested equipment will be consistent with the overall objective of converting the facility for digital broadcasting. Failure to provide detailed information on the applicant's proposed or existing digital conversion plan will place a television application at a competitive disadvantage during the evaluation of the technical qualification criterion as described in 15 CFR 2301.17 of the PTFP Rules.

NTIA calls applicants' attention to the fact that television production equipment is not included on the Digital TV List but will be found on other equipment lists posted on the NTIA Internet site or available from NTIA by mail. NTIA notes that while a television station must use digital transmission and distribution equipment to begin digital broadcasting, digital production equipment is not required to meet the FCC's deadline. As the FCC deadline approaches, NTIA has reluctantly concluded that, with the funds available to it in FY 2003, it cannot fund television production equipment at the same level as it has prior to the institution of these new digital conversion policies in FY 2000. Television production equipment will continue to be eligible for PTFP funding under Priority 2 and Priority 4, as appropriate. However, for the FY 2003 Grant Round NTIA will fund television production equipment replacement applications only for those projects that present a ''clear and compelling'' case for the urgency of such replacement. NTIA anticipates funding television production replacement projects in FY 2003, though fewer than before this change in policy.

When making the final selection of awards under the procedures of § 2301.17, NTIA will take care to ensure that there is an acceptable balance between projects awarded for equipment replacement projects and those awarded for digital conversion projects. Further, NTIA will consider as part of this balance those stations in the Broadcast Other category (1) which request digital conversion projects and (2) which also include elements of equipment replacement. NTIA will not fund applications in the Broadcast Other category requesting digital conversion to the exclusion of those Broadcast Other applications which include documentation supporting equipment replacement as part of their urgency justification. Further, in making funding decisions for FY 2003, NTIA will limit its support of television replacement applications for production equipment to those applications which present a ''clear and compelling'' justification for funding during the current Grant Round.

A complete listing of equipment eligible for funding during the FY 2003 Grant Round is posted on the NTIA Internet site and printed copies are available from PTFP.

(B) Multi-Year Funding

NTIA anticipates that it will take many public television licensees several years to complete their digital conversion projects. The time required to complete a digital conversion project will be determined by several factors. In some instances, it will take a station several years to raise the local funds

required to complete the project. Even if a station has accumulated all the funds required for its digital conversion project, the technical complexity of some projects (such as the construction of a 1,000-foot tower) will probably require several years to complete. Finally, many public television licensees operate several stations and are, therefore, responsible for the conversion of multiple broadcast facilities.

NTIA recognizes that the construction period for many of these digital conversion projects must, of necessity, be longer than the typical one to two years of the usual PTFP grant. Further, NTIA acknowledges that, with the funds available for award, the PTFP would be unable to fully fund more than a few of the digital conversion applications it could receive in FY 2003.

Therefore, for FY 2003, the PTFP will accept construction applications within the Broadcast Other category for digital television conversion projects which propose multi-year funding. Because of the FCC's approaching deadline, NTIA encourages applicants for digital conversion projects to file multi-year applications. NTIA anticipates that, in the early years of a multi-year project, applicants will request dissemination equipment necessary to meet the FCC's digital transmission requirement. Applicants including non-dissemination equipment in FY 2003 as part of their multi-year application should justify their need.

Applicants may submit project plans and budgets for up to three years. A multi-year application must contain the applicant's entire digital conversion plan. The plan must be divided into severable phases, with a budget request for each phase of the project. The application must identify the Federal funds requested for each phase. Only one phase of the project will be funded in any grant cycle. Once a project is approved, applicants will not be required to compete each year for funding of subsequent phases. Funding of subsequent phases will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s).

Projections based on previous experience indicate availability of between $10 million and $20 million to support multi-year digital television projects in FY 2003. The exact level of funding available for multi-year awards will be determined by NTIA after a review of applications submitted for multi-year awards and those radio, television and distance learning applications requesting a regular award.

NTIA believes that multi-year funding for digital television awards has significant benefits for both public television licensees and NTIA.

- Submission of a multi-year application particularly should help applicants which must convert multiple broadcast transmitters. NTIA understands that many stations have already begun to raise significant non-federal funds with which they can begin to implement their digital conversion plans. Upon submission of a multi-year application, an applicant could begin spending its local match—at its own risk. An applicant, therefore, might be able to complete a portion of its digital conversion project using its local non-federal funds for which Federal matching funds may not be available for several years. (For example, a future phase of a statewide project might be the conversion of two repeater stations; one might be constructed with available non-federal funds, the second constructed if Federal funds are received). Applicants are cautioned, however, that while expenditure of the local match is permitted, PTFP Rules (2301.6(d)) prohibit a grantee from obligating funds from the eventual Federal share of an award before a grant is actually awarded.
- NTIA believes that a multi-year award will reduce the administrative burden on both grantees and the PTFP. Grant recipients will submit only one application to cover the multiple years of their award, saving both the grantee and the PTFP the administrative tasks required to process applications during the annual Grant Round.
- Multi-year applications and awards will also assist both NTIA and public broadcasting licensees in the advance planning required to complete the conversion of almost 350 television facilities.
- By issuing multi-year grants, NTIA would be able to fund the initial phases of more digital conversion projects with the monies available in FY 2003 than if PTFP funded fewer entire digital conversion plans.

NTIA believes that multi-year funding through the Broadcast Other category also is appropriate for projects which include urgent replacement of equipment, since, as noted earlier, most television equipment replacement requests can be viewed as one phase of a station's conversion to digital broadcasting.

Applications which are reactivated for the FY 2003 Grant Round must comply with the guidelines included in this notice, including the funding levels for television projects discussed later in this document.

Applicants submitting projects for consideration under the Broadcast Other category have a choice and may request either multi-year funding or a single-year grant. However, applications submitted for consideration under Priority 2 or Priority 4 may only request a single-year grant for a project, as in the past.

(C) Effective Date for Expenditure of Local Matching Funds for Digital Conversion Projects

NTIA recognizes that many public television stations have begun to raise significant non-federal funds for their digital conversion projects. State or local governments may have appropriated funds to initiate digital conversion projects that, by local law, must be expended during the fiscal year in which they are awarded. Public television licensees that have raised significant non-federal funds may desire to take advantage of unique opportunities (such as partnering with other stations to share broadcast antennas or towers). Some stations may be anxious to begin digital conversion projects with long lead times for completion, or may desire to begin digital broadcasting on the same timetable as commercial stations in their market. Within the limitations of Federal regulations, NTIA supports efforts undertaken by public television stations which bring the benefits of digital television broadcasting to their communities as quickly as possible.

In order to facilitate the raising of non-federal funds for digital television projects and to also permit stations to begin construction of their digital facilities as soon as possible, NTIA is revising section § 2301.6(b)(2) of the PTFP Final Rules. This section states that ''Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justification is provided to PTFP.''

NTIA will publish a final rule shortly to modify § 2301.6(b)(2) to state the following: If eligible equipment for a Broadcast Other project was purchased with non-federal funds after July 1, 1999, NTIA will permit the applicant to include this equipment in a PTFP application. This date was selected to coincide with the beginning of the 2000 fiscal year used by many state and local governments and was announced at the beginning of this digital television conversion initiative in the Notice of Availability of Funds for the FY 2000 PTFP grant cycle (64 FR 72225–72234). NTIA also anticipates that July 1, 1999

will be the effective date in the FY 2004 and FY 2005 Grant Rounds for the expenditure of non-federal funds for projects in the Broadcast Other category. Applicants who desire to use equipment purchased prior to July 1, 1999 as part of their local match must submit a ''clear and compelling justification'' supporting their request.

(D) Subpriorities for Digital Conversion Projects

As almost 350 public television stations are required to convert to digital broadcasting, NTIA anticipates a significant increase in the number of applications in the Broadcast Other category for digital conversion projects. In order to process these applications in an orderly manner and to provide guidance to potential applicants for the FY 2003 Grant Round, NTIA will divide the Broadcast Other category into three subpriorities; Broadcast Other—A; Broadcast Other—B, and Broadcast Other—C.

These three divisions are intended to reflect the priorities NTIA has used in the evaluation of traditional broadcast applications and to place a premium on projects either to assist stations providing sole service, to encourage cooperative efforts among different stations, or to support licensees facing the requirement to convert multiple transmission facilities in several television markets. NTIA notes that in the past it has been able to fund applications each year in most if not all of the five traditional broadcast Priorities and anticipates that it will be able to fund applications in FY 2003 in most if not all of the subpriorities under the Broadcast Other category.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the first subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority A.

—A single applicant providing the sole service in an area unserved by a digital public television signal. This reflects PTFP's funding priority for equipment replacement projects for sole service stations (PTFP Priority 2).

—Cooperative applications by two or more licensees for the first digital public television service to an area. This is intended to encourage cooperation and efficiencies among stations in overlap markets (as listed by CPB) in constructing digital facilities. It would provide stations in overlap markets the opportunity, if they work collaboratively, to be eligible for the highest priority in funding within this category.

—A statewide staged plan for the conversion of multiple stations, whether a state network, or other appropriate statewide organization, or a staged plan from a licensee with stations in several markets. This is intended to encourage licensees that must convert multiple stations and also to encourage groups of stations to work collaboratively in developing a digital conversion project.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the second subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority B.

—An applicant in a multi-PTV station market providing first public television service in an area. An applicant in a multi-PTV station market who chooses to file separately, rather than in conjunction with another licensee in the same area, receives a second priority for funding.

—A cooperative application by two or more licensees in an area already served by a digital public television station. The application is given a priority over Broadcast Other—C to encourage efficiency and cooperation. Since this is not the first service in the area, it is given a second priority.

NTIA will assign the following applications for conversion of public broadcasting facilities to advanced digital technologies at the third subpriority level within the Broadcast Other category. These applications will receive equal consideration as subpriority C.

—Individual applicants proposing a second digital public television service in an area already receiving a digital public television signal. This reflects PTFP's funding priority for equipment replacement applications in served areas (Priority 4).

—All other public television digital conversion applications.

(E) Funding Levels for Television Projects

The policy for PTFP support of equipment replacement applications has long been the presumption of a 50% Federal share, although applicants are permitted to submit justification for a Federal grant of up to 75% of project costs. Those policies are contained in § 2301.6(b) of the PTFP Final Rules.

In reviewing the projected costs to convert all the public television stations in the country, NTIA has concluded that it cannot continue its 50% presumption of Federal funding for television equipment replacement or digital conversion projects. At the same time, NTIA believes that many public television facilities will be unable to raise 50% of the project costs. A significant number of stations may need Federal funding of up to a 67% of a project's cost, or even up to the legal maximum of 75% of a project's cost, in order for them to meet the FCC's deadline.

In order to ensure that sufficient Federal funds are available to support the conversion of the nation's public television stations, NTIA is establishing a new policy regarding the presumed Federal funding level for television equipment. As noted earlier in this section, NTIA recognizes that equipment on the PTFP Digital TV List may be included in either Broadcast Other digital conversion applications or in Priority 2 or Priority 4 equipment replacement applications. In order to treat all applicants equitably, NTIA's new policy will be the presumption of a 40% Federal share of the eligible project costs for television equipment for digital conversion or equipment replacement, improvement or augmentation projects. This 40% presumption will apply whether the application requests consideration under the two equipment replacement priorities (Priority 2 or 4) or under the digital conversion category (Broadcast Other). As noted earlier, NTIA will fund the replacement of production equipment upon a showing of clear and compelling need. However, since the deadline for digital conversion is rapidly approaching and Federal funds are limited, NTIA will fund replacement of production equipment at the same level of Federal support as digital conversion or equipment replacement projects. The presumption of a 40% Federal share will extend to all television projects to replace or upgrade equipment. However, because of the emphasis NTIA places on the extension of broadcast services to unserved areas, NTIA has retained the 75% level of Federal funding applications proposing new television facilities in Priority 1 (§ 2301.4(b)(1)).

As already noted, NTIA recognizes that many small stations, primarily in rural areas, will be unable to raise even a 50% local share of the funds required for their PTFP projects. NTIA has long permitted stations to request more than the standard level of Federal support upon a showing of ''extraordinary need'' per § 2301.6(b)(ii) of the PTFP Rules. NTIA will permit applicants to qualify

for hardship funding and receive up to a 67% Federal share of their project costs. An applicant can qualify for up to a 67% Federal funding by certifying that it is unable to match at least 60% of the eligible project costs, and either (a) by providing documentation that its average annual cash revenue for the previous four years is $2 million or less, or (b) by providing documentation that the eligible project costs are greater than the applicant's average annual cash revenue for the previous four years.

In addition, NTIA will continue to permit any applicant to provide justification that it has an ''extraordinary need'' for Federal funding up to the legal limit of 75% of eligible project costs.

In order to gather additional funds to award to stations which qualify under the hardship criteria, NTIA encourages financially able applicants to request a smaller share of Federal funds for digital equipment projects than the standard 40%. NTIA will add three additional points to the application evaluations from the independent review panel for applicants who request no more than 25% Federal funding. This provision will give extra credit to applications already highly reviewed, and, based on NTIA's previous experience, this extra credit is often sufficient to move highly rated applications into the range for funding.

However, when making the final selection of awards, NTIA will take care to ensure that there is an acceptable balance between projects awarded to stations requesting a 25% Federal share and those requesting a higher Federal share. NTIA will not fund applications requesting a 25% Federal share to the exclusion of applications meeting the hardship criteria or to the exclusion of those requesting the standard 40% Federal share.

(F) Use of CPB Funds

Under the PTFP Rules, NTIA has limited the use of CPB funds for the non-federal share of PTFP projects to circumstances of ''clear and compelling need'' (15 CFR 2301.6(c)(2)). NTIA recognizes that it will be difficult for many public television stations to raise the funds required to meet the FCC's digital broadcasting deadline. Therefore, NTIA continues its past policy that applicants may submit justification under this section for the use of CPB funds as part of their local match. Any request for the use of CPB funds must be accompanied by a statement regarding any limitations that CPB has placed on the expenditure of those funds.

(G) Partnerships, Urgency

As discussed earlier in this section, part (D) on New Subpriorities, NTIA encourages efforts which promote efficiency within the public television system in order to save both current conversion costs and future operating costs. NTIA, therefore, also encourages public television stations to partner with commercial entities when this is in the best interests of the public station and the Federal government. In cases of public television partnerships with commercial entities, the PTFP project will be limited to the public television station's ownership share or use rights in the equipment. NTIA believes that such partnerships with commercial organizations comply with current PTFP regulations and PTFP has funded several projects for joint use of towers and broadcast antennas.

The urgency of an application is one of the criteria under which all PTFP applications are evaluated. (The evaluation criteria are listed in § 2301.17 of the PTFP Rules). NTIA suggests that there are at least three situations in which Broadcast Other applications may present high degrees of urgency. As we have just noted, applications containing proposals for joint use/ownership partnerships with other organizations may demonstrate a high urgency due to a time-sensitive opportunity. NTIA encourages these applicants to document the time-sensitive nature of the partnership opportunity in their response to the urgency criterion.

NTIA also recognizes that some applicants may be presented with time-sensitive funding opportunities and, therefore, encourages these applicants to document the time-sensitive nature of these funding opportunities in their response to the urgency criterion. Finally, as already noted, NTIA expects that some applications will request urgent replacement of existing equipment as part of a Broadcast Other application. NTIA encourages such applicants to provide documentation of their need to replace their equipment during the current Grant Round. This documentation might include maintenance logs, letters from manufacturers, reports from independent engineers, photos, etc.

NTIA will instruct the panels evaluating the FY 2003 Broadcast Other applications that they should award the highest score under the urgency criterion to those applications which fully justify and document either (1) the time sensitive nature of partnerships, (2) the time sensitive nature of funding opportunities, or (3) the need for equipment replacements that must be accomplished during this Grant Round in order to maintain existing services.

VIII. Distance Learning and Nonbroadcast Projects

NTIA is not accepting applications for nonbroadcast projects at this time and will publish a Notice in the **Federal Register** announcing a Closing Date for nonbroadcast applications in the future.

As discussed in Section VII of this document, NTIA anticipates that, in FY 2003, it will receive numerous digital conversion applications in the Broadcast/Other category. NTIA recognizes that, due to the multi-channel capability of digital television, distance learning components may well be a part of a digital conversion application. NTIA will, therefore, consider such broadcast distance learning proposals under the subpriorities established in Section VII. If NTIA determines that a broadcast distance learning project is not part of a digital conversion application, NTIA will evaluate the application pursuant to §§ 2301.4(b)(6) and 2301.17 when all television applications are evaluated for possible funding during the fourth quarter of FY 2003.

IX. Eligible and Ineligible Costs

Eligible equipment for the FY 2003 Grant Round includes the apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers; antennas; transmitters; remote control equipment; transmission line; translators; microwave equipment; mobile equipment; satellite communications equipment; instructional television fixed service equipment; subsidiary communications authorization transmitting and receiving equipment; cable television equipment; and optical fiber communications equipment.

A complete listing of equipment eligible for funding during the FY 2003 Grant Round is posted on the NTIA Internet site and printed copies are available from PTFP.

Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain ''pre-operational expenses'' are eligible for funding. (See 15 CFR 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment

and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading *Support for Salary Expenses* in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of 47 U.S.C. 392 (c). (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 30, 1997. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $300,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

NTIA recognizes that most of its grant recipients are divisions of state and local governments or are public broadcasting facilities, all of which routinely conduct annual audits. In order to make the maximum amount of monies available for equipment purchases and planning activities, NTIA will, therefore, fund audit costs only in exceptional circumstances.

X. Notice of Applications Received

In accordance with 15 CFR 2301.13, NTIA will publish a listing of all applications received by the Agency. The listing will be placed on the NTIA Internet site and NTIA also will make this information available by mail upon request. The address of the NTIA Internet site is: *www.ntia.doc.gov/ptfp.* Listing an application merely acknowledges receipt of an application to compete for funding with other applications. This listing does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The listing will also include a request for comments on the applications from any interested party.

XI. Evaluation Process

See 15 CFR 2301.16 for a description of the Technical Evaluation and 15 CFR 2301.17 for the Evaluation Criteria.

XII. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary recommendations for the PTFP Director. These recommendations incorporate outside reviewers rankings and recommendations, engineering assessments, and input from the National Advisory Panel, State Single Point of Contacts and state telecommunications agencies. Staff recommendations also consider project impact, the cost/benefit of a project and whether review panels have consistently applied the evaluation criteria. The PTFP Director will consider the summary recommendations prepared by program staff, will recommend the funding order of the applications, and will present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval of the recommended slate. The PTFP Director recommends the funding order for applications in three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Available,'' and ''Not Recommended for Funding.'' See 15 CFR 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Communications and Information, the NTIA Administrator.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications for possible grant award taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR 2301.1(a) and (c). Prior to award, applications may be negotiated between PTFP staff and the applicant to resolve whatever differences might exist between the original request and what PTFP proposes to fund. Some applications may be dropped from the proposed slate due to lack of FCC licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. The PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR 2301.18. The Administrator then makes the final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR 2301.1(a) and (c).

XIII. Disposition of Unsuccessful Applications

PTFP will retain unsuccessful applications through the Closing Date of the FY 2004 grant cycle. Applicants may reactivate their unsuccessful applications pursuant to § 2301.9 of the PTFP Rules. Unsuccessful applications not reactivated by the Closing Date of the next grant cycle will be destroyed.

XIV. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods for grants in the five broadcast Priorities and nonbroadcast Special Applications category commonly range from one to two years. Phases of multi-year construction projects funded in the Broadcast Other category would commonly be awarded for a one to two year period with the expectation that subsequent phases would be funded dependent on the availability of Federal funds. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

XV. NTIA Policies on Procedural Matters

Based upon NTIA's experience during the PTFP 2002 Grant Round, NTIA has determined that it is in the best interest of NTIA and applicants to continue recent policies regarding three procedural matters. The following policies are applicable only to the FY 2003 PTFP Grant Round and resulting awards.

Applications Resulting From Catastrophic Damage or Emergency Situations

Section 2301.10 provides for submission of applications resulting from catastrophic damage or emergency situations. NTIA would like to clarify its implementation of this provision. While the intent of this Notice is to address FY 2003 television applications, applicants for radio or television projects may submit applications resulting from catastrophic damage or emergency situations.

For FY 2003 PTFP applicants, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of significant equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment, it may file an emergency application for PTFP funding at any time. NTIA limits this request to equipment essential to a station's continued operation such as transmitters, towers, antennas, STLs or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

When submitting an emergency application, the applicant should describe the circumstances that prompt the request and should provide appropriate supporting documentation. NTIA requires that applicants claiming significant failure of equipment will document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

NTIA will grant an award only if it determines that (1) the emergency satisfies this policy, and (2) the applicant either carried adequate insurance or had acceptable self-insurance coverage.

Applications filed and accepted for emergency applications must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

NTIA will evaluate the application according to the evaluation criteria set forth in § 2301.17(b). The PTFP Director takes into account program staff evaluations (including the outside reviewers) the availability of funds, the type of project and broadcast priorities set forth at § 2301.4(b), and whether the applicant has any current NTIA grants. The Director presents recommendations to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Upon approval by the OTIA Associate Administrator, the Director's recommendation will be presented to the Selecting Official, the NTIA Administrator. The NTIA Administrator makes final award selections taking into consideration the Director's recommendation and the degree to which the application fulfills the requirements for an emergency award and satisfies the program's stated purposes set forth at § 2301.1(a) and (c).

Service of Applications

FY 2003 PTFP applicants are not required to submit copies of their PTFP applications to the FCC, nor are they required to submit copies of the FCC transmittal cover letters as part of their PTFP applications. NTIA routinely notifies the FCC of projects submitted for funding which require FCC authorizations.

FY 2003 PTFP applicants for distance learning projects are not required to notify every state telecommunications agency in a potential service area. Many distance learning applications propose projects which are nationwide in nature. NTIA, therefore, believes that the requirement to provide a summary copy of the application in every state telecommunications agency in a potential service area is unduly burdensome to applicants. NTIA, however, does expect that distance learning applicants will notify the state telecommunications agencies in the states in which they are located.

FCC Authorizations

For the FY 2003 PTFP Grant Round, applicants may submit applications to the FCC after the closing date, but do so at their own risk. Applicants are urged to submit their FCC applications with as much time before the PTFP closing date as possible. No grant will be awarded for a project requiring FCC authorization until confirmation has been received by NTIA from the FCC that the necessary authorization will be issued.

For FY 2003 PTFP applications, since there is no potential for terrestrial interference with Ku-band satellite uplinks, grant applicants for Ku-band satellite uplinks may submit FCC applications after a PTFP award is made. Grant recipients for Ku-band satellite uplinks will be required to document receipt of FCC authorizations to operate the uplink prior to the release of Federal funds.

For FY 2003 PTFP applications, NTIA may accept FCC authorizations that are in the name of an organization other than the PTFP applicant in certain circumstances. Applicants requiring the use of FCC authorizations issued to another organization should discuss in the application Program Narrative why the FCC authorization must be in the other organization's name. NTIA believes that such circumstances will be rare and, in its experience, are usually limited to authorizations such as those for microwave interconnections or satellite uplinks.

As noted above, for FY 2003 PTFP applications, NTIA does not require that the FCC applications be filed by the closing date. While NTIA is permitting submission of FCC applications after the closing date, applicants are reminded that they must continue to provide copies of FCC applications, as they were filed or will be filed, or equivalent engineering data, in the PTFP application so NTIA can properly evaluate the equipment request. These include applications for permits, construction permits and licenses already received for (1) construction of broadcast station, (including a digital broadcasting facility) or translator, (2) microwave facilities, (3) ITFS authorizations, (4) SCA authorizations, and (5) requests for extensions of time.

For those applicants whose projects require authorization by the FCC, information about FCC filing procedures can be found on the Internet at: *www.fcc.gov.*

XVI. Intergovernmental Review

Applicants should note that they must continue to comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before the Closing Date. Applicants are encouraged to contact the appropriate SPOC well before their PTFP closing date. A listing of the state SPOC offices may be found with the PTFP application materials at the NTIA Internet site. A list of the SPOC offices is available from NTIA (see the **ADDRESSES** section above).

XVII. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), are applicable to this solicitation, unless stated otherwise in this notice. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department v. Allbaugh,* 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case is resolved, the Department will provide further

information on implementation of Executive Order 13202.

XVIII. Executive Order 12866

It has been determined that this notice is a ''not significant'' rule under Executive Order 12866.

XIX. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in EO 13132.

XX. Regulatory Flexibility Analysis

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice related to public property, loans, grants, benefits or contracts, 5 U.S.C. 553(a), Regulatory Flexibility Analysis is not required and has not been prepared for this notice. 5 U.S.C. 601 *et seq.*

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 02–26421 Filed 10–16–02; 8:45 am]

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Thursday, October 17, 2002

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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S. 238/P.L. 107–237

To authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin, Owyhee River basin, and Powder River basin, Oregon. (Oct. 11, 2002; 116 Stat. 1485)

S. 1175/P.L. 107–238

Vicksburg National Military Park Boundary Modification Act of 2002 (Oct. 11, 2002; 116 Stat. 1486)

S. 1325/P.L. 107–239

To ratify an agreement between The Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes. (Oct. 11, 2002; 116 Stat. 1488)

H.J. Res. 122/P.L. 107–240

Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Oct. 11, 2002; 116 Stat. 1492)

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