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Presidential Documents

Title 3—

The President

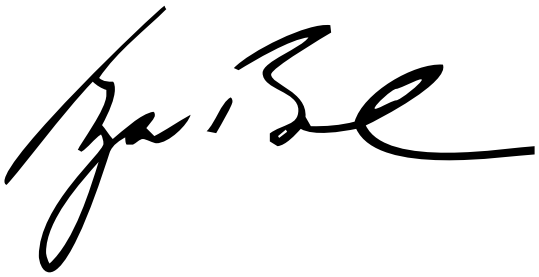
Presidential Determination No. 2003–15 of February 13, 2003

Presidential Determination to Authorize a Drawdown for Afghanistan and Jordan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the laws and Constitution of the United States, including section 202 and other relevant provisions of the Afghanistan Freedom Support Act (Public Law 107–327) (the ''Act'') and section 506 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318, I hereby direct the drawdown of up to $165 million of defense articles, defense services, and military education and training from the Department of Defense, $158 million for the Transitional Islamic State of Afghanistan, and $7 million to Jordan to assist in its operations in Afghanistan, and further have determined, in accordance with section 205 of the Act, that such assistance to Jordan is important to the national security interests of the United States.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish this determination in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 13, 2003.

[FR Doc. 03–5464
Filed 3–5–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–20–AD; Amendment 39–13077; AD 2003–05–01]

RIN 2120–AA64

Airworthiness Directives; Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–Rzeszow S.A. Franklin 6A–350–C1, –C1A, –C1L, –C1R –C2, –C2A, and 4A–235 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an emergency airworthiness directive (AD) that was sent previously to all known U.S. owners and operators of WSK PZL–Rzeszow S.A. Franklin 6A–350–C1, –C1A, –C1L, –C2, –C2A, and 4A–235 series reciprocating engines. This action requires removing diaphragm type AC4886 fuel pump, AC part number (P/N) 5656774, PZL P/N 26.11.1710, before further flight, and prohibits installing diaphragm type AC4886 fuel pump, AC P/N 5656774, PZL P/N 26.11.1710. This amendment is prompted by several reports of failures of the valves and diaphragms in certain diaphragm type AC4886 fuel pumps, AC P/N 5656774, PZL P/N 26.11.1710, and adds the 6A–350–C1R engine to the applicability. The actions specified by this AD are intended to prevent reduction or loss of engine power or external fuel leaks.

DATES: Effective March 21, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 5, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–20–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *''9–ane–adcomment@faa.gov''.* Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Richard Woldan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7136; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On August 27, 2002, the Federal Aviation Administration (FAA) issued Emergency airworthiness directive (AD) 2002–18–51, that applies to WSK PZL–Rzeszow S.A. Franklin 6A–350–C1, –C1A, –C1L, –C2, –C2A, and 4A–235 series reciprocating engines. That AD requires before further flight, removing type AC4886 fuel pump, AC P/N 5656774, PZL P/N 26.11.1710, and prohibits installation of diaphragm type AC4886 fuel pump, AC P/N 5656774, PZL P/N 26.11.1710 fuel pump after receipt of that AD. That action was prompted by several reports of pump failure. This condition, if not corrected, could result in reduction or loss of engine power or external fuel leaks.

Since AD 2002–18–51 was issued, the FAA has determined that the 6A–350–C1R engine was inadvertently omitted from the applicability of that AD.

FAA's Determination of an Unsafe Condition and Required Actions

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued emergency AD 2002–18–51 to prevent reduction or loss of engine power or external fuel leaks. This AD requires before further flight, removing diaphragm type AC4886 fuel pumps, AC P/N 5656774, PZL P/N 26.11.1710, and prohibits installation of diaphragm type AC4886 fuel pumps, AC P/N 5656774, PZL P/N 26.11.1710, fuel pump after the effective date of this AD.

Immediate Adoption of This AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately on August 27, 2002, to all known U.S. owners and operators of WSK PZL–Rzeszow S.A. Franklin 6A–350–C1, –C1A, –C1L, –C2, –C2A, and 4A–235 series reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to

Docket Number 2002–NE–20–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has 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. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–05–01 Wytwornia Sprzetu Komunikacyjnego PZL–Rzeszow: Amendment 39–13077. Docket No. 2002–NE–20–AD. Supersedes AD 2002–18–51.

Applicability: This airworthiness directive (AD) is applicable to Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–Rzeszow S.A. Franklin 6A–350–C1, –C1A, –C1L, –C1R, –C2, –C2A, and 4A–235 series reciprocating engines with diaphragm type AC4886 fuel pump, AC part number (P/N) 5656774, PZL P/N 26.11.1710, installed. These engines are used on, but not limited to AERMACCHI S.p.A. S.205–22/R, Cessna 170, 172, and 175 series, Maule Aerospace Technologies, Inc. M–4–220, –220C, –220S, –220T, and M–5–220C, S.O.C.A.T.A.—Groupe AEROSPATIALE Model MS 894E, Swift Museum Foundation Model GC–1B, and Univair Aircraft Corp. (Stinson) 108 series airplanes.

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

Compliance: Compliance with this AD is required before further flight, unless already done.

To prevent reduction or loss of engine power or external fuel leaks, do the following:

(a) Before further flight, remove diaphragm type AC4886 fuel pump, AC P/N 5656774, PZL P/N 26.11.1710. Type AC4886 pumps might have a metal tag with 4886 attached to a bolt on the upper cover. PZL–Rzeszow has issued Service Bulletin No. PZL–F/71/2002, dated August 2002 on this subject.

(b) After receipt of this AD, do not install diaphragm type AC4886 fuel pump, AC P/N 5656774, PZL P/N 26.11.1710.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Effective Date

(e) This amendment becomes effective March 21, 2003.

Issued in Burlington, Massachusetts, on February 27, 2003.

Francis A. Favara,

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

[FR Doc. 03–5246 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14346; Airspace Docket No. 2003–ANE–101]

Amendment to Class E Airspace; Presque Isle, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace area at the Northern Maine Regional Airport in Presque Isle, Maine (KPQI) to eliminate reference to the now closed Rogers Airport.

DATES: Effective 0901 UTC, May 15, 2003.

Comments for inclusion in the Rules Docket must be received on or before April 7, 2003.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–14346 / Airspace Docket No. 03–ANE–101, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated above. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Call the Manager, Airspace Branch, ANE–520, telephone (781) 238–7520; fax (781) 238–7596, to make prior arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520, Federal Aviation Administration, 12 New

England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7552; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: Recently, the Rogers Airport near Easton, Maine, was abandoned. Since the Rogers Airport lay in close proximity to the Northern Maine Regional Airport at Presque Isle, Maine (KPQI), the Class E controlled airspace extending from the surface for Northern Main Regional Airport included an exclusion that centered on the Rogers Airport. Since Rogers Airport is now abandoned, that exclusion is no longer needed. This amendment will remove the exclusion centered on the now abandoned Rogers airport from the Class E airspace extending from the surface for Northern Maine Regional Airport. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation amended by this document will be amended subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is non-controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[Amended]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ANE ME E2 Presque Isle, ME [Revised]

Northern Maine Regional Airport at Presque Isle, ME

(Lat. 46°41′20″N, long. 68°02′41″W).

EXCAL LOM

(Lat. 46°36′37″N, long. 68°01′08″W).

Within a 6.8-mile radius of Northern Maine Regional Airport at Presque Isle, and within 2.5 miles on each side of the Northern Maine Regional Airport at Presque Isle 165° bearing extending from the 6.8-mile radius to 8.2 miles southeast of the EXCAL LOM. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on February 11, 2003.

Thomas R. Davidson,

Manager, Air Traffic Division, New England Region.

[FR Doc. 03–5295 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9045]

RIN 1545–BA34

Earned Income Credit for Taxable Years Beginning After December 31, 1978

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the earned income credit. The regulations reflect changes in the law since the existing regulations were published in the **Federal Register** on March 13, 1980. Due to subsequent statutory changes in the applicable tax law, substantial portions of the regulations are no longer in conformity with current law. Accordingly, portions of the existing regulations are removed. These regulations apply to individual taxpayers claiming the earned income credit.

DATES: *Effective Date:* These regulations are effective March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Shoshanna Tanner at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 32 of the Internal Revenue Code (Code). Section 32 allows a refundable credit to low-income taxpayers who meet certain income and eligibility requirements. Section 43 (the predecessor of section 32) was added to the Code by the Tax Reduction Act of 1975 (Pub. L. 94–12, 89 Stat. 26) and made permanent by the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2763). Final regulations (TD 7683) under section 43 were published in the **Federal Register** (45 FR 16174) on March 13, 1980. Section 43 was redesignated as section 32 by the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 494). Section 1.43–2 was redesignated as § 1.32–2 in Treasury Decision 8448 (57 FR 54919) on November 23, 1992.

Section 1.32–2(b)(2) of the existing regulations refers to section 143 for an explanation of the term ''married individual''. The provisions of section 143 were reenacted as section 7703 by the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085).

In addition, portions of the existing regulations are inconsistent with changes made by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, 104 Stat. 1388), the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107–16, 115 Stat. 38), and various other legislative enactments.

Explanation of Provisions

To comport with the redesignation of section 43 to section 32 and §§ 1.43–2 to 1.32–2, these final regulations replace references to section 43 with references to section 32. Similarly, these regulations replace the references to section 143 in § 1.32–2(b)(2) with references to section 7703. These regulations also remove the inconsistent provisions in the existing regulations.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f), these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Department of Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.32–2 is amended as follows:

1. Paragraphs (a), (b)(1), (c)(1), and (d) are removed and reserved.

2. Paragraphs (b)(2), (b)(3), (c)(2), and (e)(2) are revised.

The revisions read as follows:

§ 1.32–2 Earned income credit for taxable years beginning after December 31, 1978.

(a) [Reserved].

(b) * * * (1) [Reserved].

(2) *Married individuals.* No credit is allowed by section 32 in the case of an eligible individual who is married (within the meaning of section 7703 and the regulations thereunder) unless the individual and spouse file a single return jointly (a joint return) for the taxable year (see section 6013 and the regulations thereunder relating to joint returns of income tax by husband and wife). The requirements of the preceding sentence do not apply to an eligible individual who is not considered as married under section 7703(b) and the regulations thereunder (relating to certain married individuals living apart).

(3) *Length of taxable year.* No credit is allowed by section 32 in the case of a taxable year covering a period of less than 12 months. However, the rule of the preceding sentence does not apply to a taxable year closed by reason of the death of the eligible individual.

(c) * * * (1) [Reserved].

(2) *Earned income.* For purposes of this section, earned income is computed without regard to any community property laws which may otherwise be applicable. Earned income is reduced by any net loss in earnings from self-employment. Earned income does not include amounts received as a pension, an annuity, unemployment compensation, or workmen's compensation, or an amount to which section 871(a) and the regulations thereunder apply (relating to income of nonresident alien individuals not connected with United States business).

(d) [Reserved].

(e) * * * (1) * * *.

(2) *Reconciliation of payments advanced and credit allowed.* Any additional amount of tax under paragraph (e)(1) of this section is not treated as a tax imposed by chapter 1 of the Internal Revenue Code for purposes of determining the amount of any credit (other than the earned income credit) allowable under part IV, subchapter A, chapter 1 of the Internal Revenue Code.

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: February 11, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–5339 Filed 3–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1082–F]

RIN 1120–AA77

Visiting Regulations: Prior Relationship

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its visiting regulations to require that regular visiting privileges at all institutions ordinarily will be extended to friends and associates only when the relationship had been established prior to confinement. This requirement currently applies to visiting at Medium Security Level, High Security Level, and Administrative institutions, but not at Low and Minimum Security Level institutions. The purpose of this revision is to provide for uniformity of visiting procedures for all security levels and to maintain the security and good order of the institution while continuing to afford inmates with reasonable and equitable access to visiting. Because the prior relationship requirement is to apply to regular visitors, we also clarify the distinction between regular and special visitors.

EFFECTIVE DATE: April 7, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on visiting (28 CFR part 540, subpart D). We published a proposed rule on this subject on May 18, 1999 (64 FR 27166).

Why Is the Bureau Revising the Visiting Regulations?

As part of a general review of security measures at Bureau institutions, this revision is to provide for uniformity of visiting procedures for all security levels and to maintain the security and good order of the institution while continuing to afford inmates with reasonable and equitable access to visiting. The heightened security measures were deemed necessary to better ensure that inmates do not abuse visiting privileges or use them to further criminal activity.

Who Is Affected by the Changes Made to the Visiting Regulations?

Inmates currently confined at low or minimum security level facilities and any visitor for such inmate who did not have a relationship with the inmate prior to the inmate's incarceration are affected by this change. As of January 31, 2000, nearly 58,700 federal inmates (49% of the total inmate population) are housed in low or minimum security level facilities.

Summary of Comments Received and Agency Response

The Bureau received comments from six respondents. Three commenters expressed concerns about the impact on family visits (for example, children born after the inmate was incarcerated and new extended family members). In response, the Bureau notes that the prior relationship requirement pertains to friends and associates (28 CFR 540.44(c)). The prior relationship requirement does not apply to immediate family members (28 CFR 540.44(a)) and other relatives (28 CFR 540.44(b)).

One commenter believed that the policy could be easily circumvented if the proposed visitors were willing to lie about the prior relationship. The Bureau believes that visitors would be ill-advised to make false statements as certain federal penalties apply.

One commenter believes the proposed rule is biased and discourages the inmate from making new friends or associates while in prison. This commenter believes that if a visitor has no criminal record and poses no security threat to the institution that they should not be prohibited from visiting.

The purpose of the amendment is to maintain the security and good order of Bureau institutions. In accordance with our security review the Bureau believes it is necessary to standardize the prior relationship requirement at all security levels. Existing provisions still provide for exceptions to the prior relationship rule. The inmate retains access to new friends and associates through correspondence and the telephone.

Another commenter believes there is no problem with current visiting regulations and that the proposed rule lacks specificity, does not provide guidance to staff for administering the regulation, and will lead to a lack of uniformity among institutions. As noted above, the Bureau believes that for security reasons it is necessary to extend the prior relationship provision to all Bureau institutions. The Bureau must rely upon the Warden's correctional judgment in making determinations for exceptions to the prior relationship requirement.

The final commenter believes the current background information provided by visitors or an NCIC check is sufficient to protect the Bureau's interests and that the prior relationship requirement be removed for medium security and above institutions. This commenter states that the Bureau already has in place a procedure to restrict an inmate's visiting privileges and/or a visitor's ability to visit based on penological concerns and that further restrictions are not necessary. The Bureau assumes that the commenter is referring to the Bureau's discipline procedure (see 28 CFR part 541) when he states that the Bureau already has in place a procedure to restrict an inmate's visiting privileges. The Bureau believes that taking action after the fact does not sufficiently address the threat to the orderly operation of the visiting room. The Bureau believes, furthermore, that the prior relationship requirement serves a legitimate penological purpose at all security levels, and that it is necessary to extend the prior relationship requirement to minimum and low security level facilities. In extending the restrictions, the Bureau has chosen to retain the Warden's discretion to make exceptions to the prior relationship requirement.

After due consideration of the comments received, the Bureau is adopting the proposed rule as final without change. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons,

and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 307–2105.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 540 as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. Revise the authority citation for 28 CFR part 540 to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

2. Revise the introductory text and paragraph (c) of § 540.44 to read as follows:

§ 540.44 Qualification as regular visitor.

An inmate desiring to have regular visitors must submit a list of proposed visitors to the designated staff. See § 540.45 for qualification as special visitor. Staff are to compile a visiting list for each inmate after suitable investigation in accordance with § 540.51(b) of this part. The list may include:

* * * * *

(c) *Friends and associates.* The visiting privilege ordinarily will be extended to friends and associates having an established relationship with the inmate prior to confinement, unless such visits could reasonably create a threat to the security and good order of the institution. Exceptions to the prior relationship rule may be made, particularly for inmates without other visitors, when it is shown that the proposed visitor is reliable and poses no threat to the security or good order of the institution.

* * * * *

3. Revise § 540.45 to read as follows:

§ 540.45 Qualification as special visitor.

Persons in the categories listed in this section may qualify as special visitors rather than as regular visitors. Visits by special visitors ordinarily are for a specific purpose and ordinarily are not of a recurring nature. Except as specified, the conditions of visiting for special visitors are the same as for regular visitors.

(a) *Business visitor.* Except for pretrial inmates, an inmate is not permitted to engage actively in a business or profession. An inmate who was engaged in a business or profession prior to commitment is expected to assign authority for the operation of such business or profession to a person in the community.

Pretrial inmates may be allowed special visitors for the purpose of protecting the pretrial inmate's business interests. In those instances where an inmate has turned over the operation of a business or profession to another person, there still may be an occasion where a decision must be made which will substantially affect the assets or prospects of the business. The Warden accordingly may permit a special business visit in such cases. The Warden may waive the requirement for the existence of an established relationship prior to confinement for visitors approved under this paragraph.

(b) *Consular visitors.* When it has been determined that an inmate is a citizen of a foreign country, the Warden must permit the consular representative of that country to visit on matters of legitimate business. The Warden may not withhold this privilege even though the inmate is in disciplinary status. The requirement for the existence of an established relationship prior to confinement does not apply to consular visitors.

(c) *Representatives of community groups.* The Warden may approve visits on a recurring basis to representatives from community groups (for example, civic, volunteer, or religious organizations) who are acting in their official capacity. These visits may be for the purpose of meeting with an individual inmate or with a group of inmates. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to representatives of community groups.

(d) *Clergy, former or prospective employers, sponsors, and parole advisors.* Visitors in this category ordinarily provide assistance in release planning, counseling, and discussion of family problems. The requirement for the existence of an established relationship prior to confinement for visitors does not apply to visitors in this category.

4. Revise § 540.46 to read as follows:

§ 540.46 Attorney visits.

Requirements for attorney visits are governed by the provisions on inmate legal activities (see §§ 543.12 through 543.16 of this chapter). Provisions pertinent to attorney visits for pretrial inmates are contained in § 551.117 of this chapter.

5. Revise § 540.47 to read as follows:

§ 540.47 Media visits.

Requirements for media visits are governed by the provisions on contact with news media (see subpart E of this part). A media representative who wishes to visit outside his or her official duties, however, must qualify as a regular visitor or, if applicable, a special visitor.

§ 540.48 [Removed and reserved]

6. Remove and reserve § 540.48.

7. In § 540.51, redesignate paragraphs (c) through (g) as paragraphs (d) through (h), and add a new paragraph (c) to read as follows:

§ 540.51 Procedures.

* * * * *

(c) *Verification of special visitor credentials.* Staff must verify the qualifications of special visitors. Staff may request background information and official assignment documentation

from the potential visitor for this purpose.

* * * * *

[FR Doc. 03–5256 Filed 3–5–03; 8:45 am]

BILLING CODE 4410–05–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

RIN 3076AA09

Arbitration Schedule of Fees

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: The Federal Mediation and Conciliation Service is issuing a final regulation replacing the fee schedule item for processing requests for panels of arbitrators with two new fee schedule categories—one for processing requests on-line and the other for requests which require processing by FMCS staff. In addition, FMCS is increasing the rates for requests which require staff processing and for requests for lists and biographic sketches of arbitrators.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Vella M. Traynham, Director of Arbitration Services, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5111; Fax (202) 606–3749.

SUPPLEMENTARY INFORMATION: On November 25, 2002, FMCS issued proposed regulations to amend the appendix to 29 CFR part 1504 by replacing the general category on the fee schedule for requests for panels with two new categories, one for processing electronic requests for panels and the other for requests which require processing by FMCS staff. FMCS proposed maintaining the $30.00 fee for processing electronic requests but increasing the fee to $50.00 for requests that must be processed by FMCS staff. FMCS also proposed increasing the cost for lists and biographical sketches of arbitrators in specific areas from $10.00 per request plus $.10 per page to $25.00 per request for $.25 per page. FMCS did not receive any comments before the comment period closed on January 23, 2003 and is therefore amending this rule as proposed on November 25, 2002.

Executive Order 12866

This regulation has been deemed significant under section 3(f)(3) of Executive Order 12866 and as such has been submitted to and reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small Governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with Foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 1404

Administrative practice and procedure, Arbitration, Arbitration fees, Labor Management relations.

For the reasons set forth in the preamble, FMCS amends 29 CFR part 1404 as follows:

PART 1404—ARBITRATION SERVICES

1. The authority citation for part 1404 continues to read as follows:

Authority: 29 U.S.C. 172 and 29 U.S.C. 173 *et seq.*

2. The Appendix to 29 CFR part 1404 is revised to read as follows:

Appendix to 29 CFR Part 1404—Arbitration Policy; Schedule of Fees

Annual listing fee for all arbitrators: $100 for the first address; $50 for the second address

Request for panel of arbitrators processed by FMCS staff: $50

Request for panel of arbitrators on-line: $30.00

Direct appointment of an arbitrator when a panel is not used: $20.00 per appointment

List and biographic sketches of arbitrators in a specific area: $25.00 per request plus $.25 per page.

John J. Toner,

Chief of Staff.

[FR Doc. 03–5063 Filed 3–5–03; 8:45 am]

BILLING CODE 6372–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–055a; FRL–7458–3]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: New Hampshire; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d) negative declaration submitted by the New Hampshire Department of Environmental Services (DES) on July 22, 1998. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of New Hampshire that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, landfills). The state of New Hampshire submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on May 5, 2003, without further notice unless EPA receives significant adverse comment by April 7, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

SUPPLEMENTARY INFORMATION:

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I. What Action is EPA Taking Today?

II. What is the Origin of the Requirements?
III. When did the Requirements First Become Known?
IV. When did New Hampshire Submit its Negative Declaration?
V. Regulatory Assessment Requirements

I. What Action Is EPA Taking Today?

EPA is approving the negative declaration submitted by the state of New Hampshire on July 22, 1998.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by April 7, 2003, this action will be effective May 5, 2003.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective May 5, 2003.

II. What Is the Origin of the Requirements?

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the Requirements First Become Known?

On May 30, 1991 (56 FR 24468), EPA proposed emission guidelines for existing MSW landfills. This action enabled EPA to list existing MSW landfills as designated facilities. EPA specified non-methane organic compounds (NMOC) as a designated pollutant by proposing the emission guidelines for existing MSW landfills. These guidelines were published in final form on March 12, 1996 (61 FR 9905).

IV. When Did New Hampshire Submit Its Negative Declaration?

On July 22, 1998, the New Hampshire Department of Environmental Services (DES) submitted a letter certifying that there are no existing MSW landfills subject to 40 CFR part 60, subpart B. section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.7405.

V. Regulatory Assessment Requirements

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

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

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 20, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Subpart EE is amended by adding a new § 62.7405 and a new undesignated center heading to read as follows:

Emissions From Existing Municipal Solid Waste Landfills

§ 62.7405 Identification of plan-negative declaration.

On July 22, 1998, the New Hampshire Department of Environmental Services submitted a letter certifying that there are no existing municipal solid waste landfills in the state subject to the emission guidelines under part 60, subpart B of this chapter.

[FR Doc. 03–5306 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NJ57–251a, FRL–7459–4]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the New Jersey Department of Environmental Protection's (NJDEP) request for delegation of authority to implement and enforce the Federal Plan for Large Municipal Waste Combustors (MWC). On November 12, 1998, EPA promulgated the Federal Plan to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for MWCs. The Federal Plan addresses the implementation and enforcement of the emissions guidelines applicable to existing large MWC units located in areas not covered by an approved and currently effective state plan. The Federal Plan imposes emission limits and control requirements for existing MWC units with individual capacity to combust more than 250 tons per day of municipal solid waste which will reduce the designated pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. On January 24, 2001, EPA and NJDEP signed a Memoranda of Agreement which is intended to be the mechanism for the transfer of authority between the EPA and the NJDEP and defines the policies, responsibilities, and procedures pursuant to the Federal Plan for large MWCs.

DATES: This direct final rule is effective on May 5, 2003 without further notice, unless EPA receives adverse comment by April 7, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of New Jersey's request for delegation or the Memoranda of Agreement are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

What Are the Clean Air Act Requirements?

On December 19, 1995 (60 FR 65387), EPA adopted emission guidelines (40 CFR part 60, subpart Cb) for existing Municipal Waste Combustor (MWC) units. Section 129 of the Clean Air Act (Act) requires states with existing MWC units subject to the guidelines, including New Jersey, to submit plans to EPA that implement and enforce the emission guidelines. The state plans were due on December 19, 1996. If a state with existing MWC units did not submit an approvable plan within 2 years after promulgation of the guidelines (*i.e.*, December 19, 1997), the Act requires EPA to develop, implement, and enforce a Federal Plan for MWC units in that state. This Federal Plan for large MWCs (40 CFR part 62, subpart FFF) was promulgated by EPA on November 12, 1998 (63 FR 63191). Because New Jersey does not have an approved State plan regulating existing large MWCs, they are subject to the Federal Plan requirements.

What Was Submitted by New Jersey and How Did EPA Respond?

On November 9, 1999, New Jersey Department of Environmental Protection (NJDEP) submitted to EPA a request for delegation of authority from EPA to implement and enforce the Federal Plan for existing large MWCs. On January 17, 2001, EPA prepared and signed a Memoranda of Agreement (MOA) between the EPA and the NJDEP that defines the policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart FFF and 40 CFR part 60, subpart Cb, by which the Federal Plan for large MWCs will be administered by both the NJDEP and EPA. The MOA is meant to be the mechanism for the transfer of authority between the EPA and the NJDEP. A copy of the MOA is available upon request.

On January 24, 2001, Robert C. Shinn, Commissioner NJDEP, signed the MOA, therefore agreeing to the terms and conditions of the MOA and accepting responsibility to implement and enforce the policies, responsibilities, and procedures of the Federal Plan for large MWCs.

What Action Is EPA Taking?

Pursuant to 40 CFR 62.14100, ''Scope and Delegation of Authority,'' EPA is approving the NJDEP's request for delegation of authority to implement and enforce the MWC Federal Plan and to adhere to the terms and conditions prescribed in the MOA. The purpose of this delegation is to acknowledge NJDEP's ability to implement a program and to transfer primary implementation and enforcement responsibility from EPA to NJDEP for existing large MWCs. While NJDEP is delegated the authority to implement and enforce the MWC Federal Plan, nothing in the delegation agreement shall prohibit EPA from enforcing section 111(d) of the Act or the Federal Plan for large MWCs.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the plan revision should adverse comments be filed. This rule will be effective May 5, 2003 without further notice unless the Agency receives adverse comments by April 7, 2003.

If the EPA receives adverse comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, as that term is defined in 5 U.S.C. 804(3).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: February 21, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Part 62 is amended by adding § 62.7603 and an undesignated heading to subpart FF to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Large Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.7603 Identification of plan—delegation of authority.

(a) On November 9, 1999, the New Jersey Department of Environmental Protection (NJDEP) submitted to the Environmental Protection Agency (EPA) a request for delegation of authority to implement and enforce the Federal Plan (40 CFR part 62, subpart FFF) for Large Municipal Waste Combustors (MWC).

(b) Identification of sources: The Federal Plan applies to existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste.

(c) On January 17, 2001, EPA prepared and signed a Memoranda of Agreement (MOA) between the EPA and the NJDEP that defines the policies, responsibilities, and procedures pursuant to 40 CFR part 62, subpart FFF and 40 CFR part 60, subpart Cb, by which the Federal Plan for large MWCs will be administered by both the NJDEP and EPA. On January 24, 2001, Robert C. Shinn, Commissioner NJDEP, signed the MOA, therefore agreeing to the terms and conditions of the MOA and accepting responsibility to enforce and implement the policies, responsibilities, and procedures of the Federal Plan for large MWCs.

[FR Doc. 03–5321 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[RI–1047a; FRL–7458–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Rhode Island; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d) negative declaration submitted by the Rhode Island Department of Environmental Management (DEM) on May 27, 1998. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Rhode Island that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills. EPA publishes regulations under sections 111(d) and 129 of the Clean Air Act requiring states to submit control plans to EPA. These state control plans show how states intend to control the emissions of designated pollutants from designated facilities (*e.g.*, landfills). The state of Rhode Island submitted this negative declaration in lieu of a state control plan.

DATES: This direct final rule is effective on May 5, 2003, without further notice unless EPA receives significant adverse comment by April 7, 2003. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, MA 02114–2023.

Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

SUPPLEMENTARY INFORMATION:

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III. When did the Requirements First Become Known?
IV. When did Rhode Island Submit its Negative Declaration?
V. Regulatory Assessment

I. What Action Is EPA Taking Today?

EPA is approving the negative declaration submitted by the state of Rhode Island on May 27, 1998.

EPA is publishing this negative declaration without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve this negative declaration should relevant adverse comments be filed. If EPA receives no significant adverse comment by April 7, 2003, this action will be effective May 5, 2003.

If EPA receives significant adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register**. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective May 5, 2003.

II. What Is the Origin of the Requirements?

Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a control plan.

III. When Did the Requirements First Become Known?

On May 30, 1991 (56 FR 24468), EPA proposed emission guidelines for existing MSW landfills. This action enabled EPA to list existing MSW landfills as designated facilities. EPA specified non-methane organic compounds (NMOC) as a designated pollutant by proposing the emission guidelines for existing MSW landfills. These guidelines were published in final form on March 12, 1996 (61 FR 9905).

IV. When Did Rhode Island Submit Its Negative Declaration?

On May 27, 1998, the Rhode Island Department of Environmental Management (DEM) submitted a letter certifying that there are no existing MSW landfills subject to 40 CFR part 60, subpart B. Section 111(d) and 40 CFR 62.06 provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of ''negative declaration'' instead of a control plan. EPA is publishing this negative declaration at 40 CFR 62.7405.

V. Regulatory Assessment Requirements

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a

federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing sections 111(d)/129 State Plans, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 2003. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: February 20, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart OO—Rhode Island

2. Subpart OO is amended by adding a new § 62.9985 and a new undesignated center heading to read as follows:

Emissions From Existing Municipal Solid Waste Landfills

§ 62.9985 Identification of Plan-negative declaration.

On May 27, 1998, the Rhode Island Department of Environmental Management submitted a letter certifying that there are no existing municipal solid waste landfills in the state subject to the emission guidelines under part 60, subpart B of this chapter.

[FR Doc. 03–5307 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–491, MB Docket No. 02–81, RM–10422]

Digital Television Broadcast Service; Bethlehem, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sonshine Family Television, Inc., substitutes DTV channel 9 for DTV channel 59 at Bethlehem, Pennsylvania. *See* 67 FR 20940, April 29, 2002. DTV channel 9 can be allotted to Bethlehem, Pennsylvania, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates 40–33–52 N. and 75–26–24 W. with a power of 3.2, HAAT of 284 meters and with a DTV service population of 2634 thousand. Since the community of Bethlehem is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's report and order, MB Docket No. 02–81, adopted February 21, 2003, and released February 27, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating 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 *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV channel 59 and adding DTV channel 9 at Bethlehem.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–5241 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–345; MB Docket No. 02–300, RM–10576; MB Docket No. 02–296, RM–10571; MB Docket No. 02–298, RM–10574; MB Docket No. 02–299, RM–10575; MB Docket No. 02–297, RM–10572; MB Docket No. 02–302, RM–10579]

Radio Broadcasting Services; Colorado City, O'Brien, Panhandle, Shamrock, Stamford, TX, and Taloga, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots channels in six separate docketed proceedings which were proposed together in a multiple docket *Notice of Proposed Rule Making. See* At the request of Linda Crawford, Channel 257A is allotted at Colorado City, Texas, as the community's third local aural transmission service at a site 10.1 kilometers (6.3 miles) northwest of the community at coordinates 32–26–23 NL and 100–57–29 WL. At the request of Katherine Pyeatt, Channel 261A at O'Brien, Texas is allotted as the first local aural transmission service at a site 3.7 kilometers (2.3 miles) north of the community at coordinates 33–24–47 NL and 99–51–02 WL. At the request of Linda Crawford, Channel 291C3 is allotted at Panhandle, Texas, as the community's first local aural transmission service at a site 18.0 kilometers (11.2 miles) east of the community at coordinates 35–20–38 NL and 101–10–54 WL. At the request of Maurice Salsa, Channel 271A is allotted at Shamrock, Texas as the second local aural transmission service at a site 2.4 kilometers (1.5 miles) west of the community at coordinates 35–12–22 NL and 100–16–23 WL. At the request of Katherine Pyeatt, Channel 295C2 is allotted at Stamford, Texas, as the third local aural transmission service at a site 7.8 kilometers (4.9 miles) north of the community at coordinates 33–00–57 NL and 99–47–46 WL. At the request of Robert Fabian, Channel 226A is allotted at Taloga, Oklahoma, as the community's first local aural transmission service at a site 7.8 kilometers (4.8 miles) south of the community at coordinates 35–57–57 NL and 98–59–11 WL.

DATES: Effective April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Report and Order, MB Docket Nos. 02–296, 02–297, 02–298, 02–299, 02–300, 02–301, 02–302, adopted February 12, 2003, and released February 18, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

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 Texas, is amended by adding Channel 257A at Colorado City, O'Brien, Channel 261A, Panhandle, Channel 291C3, Channel 271A at Shamrock, and Channel 233A at Stamford.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Taloga, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–5338 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–490, MB Docket No. 02–348, RM–10455]

Television Broadcast Service; Presque Isle, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Western Broadcasting Company, LLC, substitutes channel 47 for channel 62 at Presque Isle, Maine. *See* 67 FR 70195, November 21, 2002. TV channel 47 can be allotted to Presque Isle in compliance with the principle community coverage requirements of Section 73.610 with a zero offset. The coordinates for channel 47 at Presque Isle are 46–45–12 N. and 68–10–28 W. Since the community of Presque Isle is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's report and order, MB Docket No. 02–348, adopted February 21, 2003, and released February 27, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Maine, is amended by removing TV channel 62+ and adding TV channel 47 at Presque Isle.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–5242 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 44
Thursday, March 6, 2003

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 110

RIN 3206–AJ73

Posting Regulations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to revise the rules relating to notice of new regulations and information collection requirements. The revisions include eliminating one subpart and renaming the remaining subpart and plain language modifications.

DATES: Submit comments on or before May 5, 2003.

ADDRESSES: Send or deliver written comments to: Claudio A. Benedi, Chief, Publications Services Division, Office of Contracting and Administrative Services, Office of Personnel Management, Room 5H35, 1900 E St NW., Washington, DC 20415–7730, or Fax: (202) 606–0909.

FOR FURTHER INFORMATION CONTACT: Robert T. Coco, (202) 606–1822, Fax: (202) 606–0909, or email *rtcoco@opm.gov.*

SUPPLEMENTARY INFORMATION: We are revising part 110 to reflect the removal of old subpart B—Information Collection Requirements. Old subpart B was a requirement arising from an internal OPM housekeeping function no longer in effect. Its removal requires us to eliminate the old subpart A designation and use the designation part 110 to refer to the remaining material. We have also made minor word changes and changed the order of material within the section. Except as otherwise noted, the purpose of these revisions is not to make substantive changes but, rather, to make part 110 more readable.

Section 110.101: Changes ''special bulletins'' to ''notice'' and changes ''new regulations'' to ''new proposed, interim, and final regulations.'' Corrects the name of the type of issuance currently used, which was changed in 1994 when the bulletin system was abolished, and clarifies regulation description to indicate that it includes new proposed, interim, and final regulations.

Section 110.101(b): (Note old paragraphs (a) and (b) have been reversed, and redesignated as paragraphs (b) and (a), respectively, so that they are now in a more logical sequence). Provides the option for viewing documents either in paper format or via Web site, thus providing the ability to use electronic as well as paper format of documents.

Section 110.102(b): Adds ''agency Web sites'' as a supplemental posting option. This provides the option for an agency to make new OPM regulations available on the agency's Web site or through a link to the OPM Web site.

Regulatory Flexibility Act

I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 110

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise part 110 of title 5, Code of Federal Regulations as follows:

PART 110—POSTING NOTICES OF NEW OPM REGULATIONS

Sec.
110.101 What are OPM's Notice and Posting System responsibilities?
110.102 What are Agency responsibilities?

Authority: 5 U.S.C. 1103.

§ 110.101 What are OPM's Notice and Posting System responsibilities?

OPM will issue a notice that will provide information for Federal agencies, employees, managers, and other stakeholders on each of its new proposed, interim, and final regulations. Each notice will transmit:

(a) A posting notice that briefly explains the nature of the change, and provides a place for Federal agencies to indicate where the full text of the **Federal Register** notice will be available for review.

(b) A copy of the notice of rulemaking that appears in the **Federal Register** or a link to a Web site where the notice of rulemaking appears.

§ 110.102 What are Agency responsibilities?

(a) *Agencies will make regulations available for review by employees, managers, and other interested parties.* Federal agencies receiving the notices of rulemaking described in § 110.101(b) will make those regulations available for review upon request. Each agency will complete the posting notice described in § 110.101(a) indicating where and how requests to review these materials should be made.

(b) *Agencies will determine posting locations and, if desired, develop supplemental announcements.* Agencies will display completed posting notices in a prominent place where the notices can be easily seen and read. Agencies will choose the posting location that best fits their physical layout. Agencies may supplement these postings with announcements in employee newsletters, agency Web sites, or other communication methods. The basic requirement to post the notice continues, however, even if supplemental announcement methods are used.

(c) *Agencies will post notices of the new regulations even if the* ***Federal Register*** comment date has passed. The public comment period on proposed regulations begins when a notice of proposed rulemaking is published in the **Federal Register**, not with the posting of the notice described in § 110.101(a). The purpose of the § 110.101(a) notice is solely to inform agency personnel of changes. Agencies are required to post the § 110.101(a) notice even if the formal deadline for comments shown in the preamble of the **Federal Register** notice of rulemaking has passed. Agencies should make every reasonable effort to minimize delays in distributing the notice described in § 110.101 to their field offices.

(d) *No fixed posting period.* There are no minimum or maximum time limits

on displaying the notice described in § 110.101(a). Each office receiving a notice for posting should choose the posting period which provides the best opportunity to inform managers and employees of regulatory changes based upon office layout, geographic dispersion of employees, and other local factors.

[FR Doc. 03–5021 Filed 3–5–03; 8:45 am]

BILLING CODE 6325–44–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 01–036–1]

Requirements for Recognizing the Animal Health Status of Foreign Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that set out our procedures for recognizing the animal health status of regions. Specifically, we propose to require regions that have been granted status under the regulations to provide information, or allow us to access information, to confirm the regions' animal health status when we request it. We believe this action is necessary to help prevent the introduction of foreign animal health diseases into the United States.

DATES: We will consider all comments that we receive on or before May 5, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–036–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–036–1'' on the subject line.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, ''Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions'' (referred to below as the regulations), set out the process by which a foreign government may request recognition of the animal health status of a region or approval to export animals or animal products to the United States based on the risk associated with animals or animal products from that region. As provided in § 92.2, each request must include information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.,* the region's emergency response capacity.

Recognition by the Animal and Plant Health Inspection Service (APHIS) of a region's animal health status makes exports of animals and animal products from that region subject to a certain set of import conditions, depending on that region's animal health status. These conditions are intended to ensure that animals and animal products imported from the region will not introduce animal diseases into the United States. However, once a region has been granted a particular animal health status for a specified disease, the regulations provide no mechanism for APHIS to verify that the assigned import conditions remain appropriate and effective over time. We believe that such verification is sometimes necessary and appropriate to ensure continued protection from the introduction of foreign animal diseases into the United States.

Therefore, we are proposing to add a paragraph to § 92.2 that would require, at the discretion of the Administrator, that regions submit, or allow the collection of, information we believe is necessary to ensure that the animal health status of the region has been maintained. For example, we may determine that a site visit is necessary to verify information provided by the region, or we may require information to confirm that the import requirements of the region have not changed. Similarly, if a region with recognized animal health status borders a region that reports an outbreak of an animal health disease, we may require information regarding security along that border. These listed examples are simply that—examples of information we may require. Specific information collection activities, if determined necessary, will vary based on the information required to adequately assess a region's animal health status.

Executive Order 12866 and Regulatory Flexibility Act

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

We are proposing to amend the regulations that set out our procedures for recognizing the animal health status of regions. Specifically, we propose to require regions that have been granted status under the regulations to provide information, or allow us to access information, to confirm and/or assess the regions's animal health status when we request to do so. We believe this action is necessary to help prevent the introduction of foreign animal health diseases into the United States. We do not expect that this action will result in any economic effects, positive or negative.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and

regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 01–036–1. Please send a copy of your comments to: (1) Docket No. 01–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 40 hours per response.

Respondents: Veterinary authorities in regions that have been granted a particular animal health status for a specified animal disease.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 3.

Estimated total annual burden on respondents: 120 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR part 92

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

Accordingly, we propose to amend 9 CFR part 92 as follows:

PART 92—IMPORTATION ANIMALS AND ANIMAL PRODUCTS; PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 92.2 would be amended by redesignating paragraph (a)(1) as paragraph (a) and adding a new paragraph (g) to read as follows:

§ 92.2 Application for recognition of the animal health status of a region.

* * * * *

(g) If a region is granted animal health status under the provisions of this section, that region may be required to submit additional information pertaining to animal health status or allow APHIS to conduct additional information collection activities in order for that region to maintain its animal health status.

Done in Washington, DC, this 28th day of February 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–5280 Filed 3–5–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 02N–0276]

[RIN 0910–AC40]

Registration of Food Facilities Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of proposed rulemaking that appeared in the **Federal Register** of February 3, 2003 (68 FR 5378). The document proposed a regulation that would require domestic and foreign facilities that manufacture, process, pack, or hold food for human and animal consumption in the United States to register with FDA by December 12, 2003. Due to a printing error, the document was published with inadvertent errors in the appendix. This document corrects those errors.

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

SUPPLEMENTARY INFORMATION: In FR Doc. 03–2443, appearing on page 5378, at page 5421, in the **Federal Register** of Monday, February 3, 2003, the appendix, which is a draft food facility registration form, has several errors. For the convenience of the reader, we are republishing the appendix.

Dated: February 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4160–01–C

Form Approval: OMB No. 0910-xxxx
Expiration Date:
See OMB Statement at end of form

DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Date: _____ **(MONTH/DAY/YEAR)**

Section 1 - TYPE OF REGISTRATION

1a. ❑ **DOMESTIC REGISTRATION** ❑ **FOREIGN REGISTRATION**

1b. ❑ **INITIAL REGISTRATION**

❑ **UPDATE OF REGISTRATION INFORMATION**
Provide the facility registration number: _____

Check all that apply below and further identify changes in the applicable sections.

❑ **Facility Name/Address Change**	❑ **Seasonal Facility Dates of Operation Change**
❑ **Preferred Mailing Address Change**	❑ **Establishment Type Change**
❑ **Parent Company Change**	❑ **Warehouse Storage Type Change**
❑ **Emergency Contact Change**	❑ **Human Food Product Category Change**
❑ **Trade Name Change**	❑ **Animal Food Product Category Change**
❑ **United States Agent Change - Foreign Countries only**	❑ **Owner, Operator, or Agent in Charge Change**

Section 2 - FACILITY NAME / ADDRESS INFORMATION

FACILITY NAME:	
FACILITY STREET ADDRESS:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	PHONE NUMBER (If a foreign facility, include Area & Country Codes):
FAX NUMBER (If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS (if available):

Section 3 - OPTIONAL: PREFERRED MAILING ADDRESS INFORMATION
(only complete this section if different from Section 2, Facility Name/Address Information)

NAME:	
ADDRESS:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	PHONE NUMBER (If a foreign facility, include Area & Country Codes):
FAX NUMBER (If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS:

Form 3537 (1/03)

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DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Section 4 - PARENT COMPANY NAME / ADDRESS INFORMATION (IF APPLICABLE)	
NAME OF PARENT COMPANY:	
STREET ADDRESS OF PARENT COMPANY:	
CITY:	STATE:
ZIP CODE (POSTAL CODE):	PROVINCE/TERRITORY:
COUNTRY:	PHONE NUMBER (If a foreign facility, include Area & Country Codes):
FAX NUMBER (If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS (if available):

Section 5 - FACILITY EMERGENCY CONTACT INFORMATION	
INDIVIDUAL'S NAME:	
TITLE:	OFFICE PHONE (If a foreign facility, include Area & Country Codes):
HOME PHONE (If a foreign facility, include Area & Country Codes):	CELL PHONE (if available; if a foreign facility, include Area & Country Codes):
E-MAIL ADDRESS (if available):	

Section 6 - TRADE NAMES (IF THIS FACILITY USES TRADE NAMES OTHER THAN THAT LISTED IN SECTION 2 ABOVE, LIST THEM BELOW (E.G., "ALSO DOING BUSINESS AS," "FACILITY ALSO KNOWN AS"):
ALTERNATE TRADE NAME #1:
ALTERNATE TRADE NAME #2:

Section 7 - UNITED STATES AGENT **(TO BE COMPLETED BY FACILITIES LOCATED OUTSIDE ANY STATE OR TERRITORY OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, OR THE COMMONWEALTH OF PUERTO RICO.)**	
NAME OF UNITED STATES AGENT:	
TITLE:	
ADDRESS:	
CITY:	STATE:
ZIP CODE:	COUNTRY:
PHONE NUMBER (include Area Code):	
FAX NUMBER (if available; include Area Code):	
E-MAIL ADDRESS (if available):	

Form 3537 (1/03)

Form Approval: OMB No. 0910-xxxx
Expiration Date:
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DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Section 8 - OPTIONAL: SEASONAL FACILITY DATES OF OPERATION

(GIVE THE APPROXIMATE DATES THAT YOUR FACILITY IS OPEN FOR BUSINESS, IF ITS OPERATIONS ARE ON A SEASONAL BASIS)

DATES OF OPERATION:

Section 9 - OPTIONAL: ESTABLISHMENT TYPES

(CHECK ALL TYPES OF OPERATIONS THAT ARE PERFORMED AT THIS FACILITY REGARDING THE MANUFACTURING, PROCESSING, PACKING OR HOLDING OF FOOD)

❑ Warehouse / Holding Facility (e.g., storage facilities, including storage tanks, grain elevators)
NOTE: If the facility is a warehouse / holding facility only, ***go to Section 10 (solely warehouse / holding facility) and check all that apply.***

❑ Acidified / Low Acid Food Processor	❑ Labeler / Relabeler
❑ Interstate Conveyance Caterer/Catering Point	❑ Manufacturer / Processor
❑ Molluscan Shellfish Establishment	❑ Repacker / Packer
❑ Commissary	❑ Salvage Operator (Reconditioner)
❑ Contract Sterilizer	❑ Animal food manufacturer / processor / holder

Section 10 - OPTIONAL: IF YOUR FACILITY IS *SOLELY* A WAREHOUSE / HOLDING FACILITY, COMPLETE THIS SECTION; ALL OTHER FACILITIES, COMPLETE SECTION 11 (human or animal product categories) INSTEAD OF THIS SECTION.

❑ Ambient Storage (including heated storage)	❑ Refrigerated Storage	❑ Frozen Storage

Section 11 - GENERAL PRODUCT CATEGORIES - FOOD FOR HUMAN CONSUMPTION

To be completed by all human food facilities except those that are solely warehouses.
[Note: Categories are derived from the Product Code Builder (www.fda.gov/search/databases.html), with cross-references to the categories found under 21 CFR 170.3. Please see instructions for further examples.]

❑ 1. ALCOHOLIC BEVERAGES
[21 CFR 170.3 (n) (2)]

❑ 2. BABY (INFANT AND JUNIOR) FOOD PRODUCTS Including Infant Formula (Optional Selection)

❑ 3. BAKERY PRODUCTS, DOUGH MIXES, OR ICINGS
[21 CFR 170.3 (n) (1), (9)]

❑ 4. BEVERAGE BASES
[21 CFR 170.3 (n) (3), (16), (35)]

❑ 5. CANDY WITHOUT CHOCOLATE, CANDY SPECIALITIES & CHEWING GUM
[21 CFR 170.3 (n) (6), (9), (25), (38)]

❑ 6. CEREAL PREPARATIONS, BREAKFAST FOODS, QUICK COOKING/INSTANT CEREALS
[21 CFR 170.3 (n) (4)]

❑ 7. CHEESE AND CHEESE PRODUCTS
[21 CFR 170.3 (n) (5)]

❑ 8. CHOCOLATE AND COCOA PRODUCTS
[21 CFR 170.3 (n) (3), (9), (38), (43)]

❑ 9. COFFEE AND TEA
[21 CFR 170.3 (n) (3), (7)]

❑ 10. COLOR ADDITIVES FOR FOODS
[21 CFR 170.3 (o) (4)]

Form Approval: OMB No. 0910-xxxx
Expiration Date:
See OMB Statement at end of form

DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

❑ 11. DIETARY CONVENTIONAL FOODS OR MEAL REPLACEMENTS (includes Medical Foods) [21 CFR 170.3 (n) (31)]

12. DIETARY SUPPLEMENTS
- ❑ Proteins, Amino Acids, Fats and Lipid Substances [21 CFR 170.3 (o) (20)]
- ❑ Vitamins and Minerals [21 CFR 170.3 (o) (20)]
- ❑ Animal By-Products and Extracts (Optional Selection)
- ❑ Herbals and Botanicals (Optional Selection)

❑ 13. DRESSINGS AND CONDIMENTS [21 CFR 170.3 (n) (8), (12)]

❑ 14. FISHERY/SEAFOOD PRODUCTS [21 CFR 170.3 (n) (13), (15), (39), (40)]

❑ 15. SUBSTANCES THAT MIGRATE INTO FOOD FROM FOOD PACKAGING AND OTHER ARTICLES THAT CONTACT FOOD (Optional Selection)

❑ 16. FOOD ADDITIVES, GENERALLY RECOGNIZED AS SAFE (GRAS) INGREDIENTS, OR OTHER INGREDIENTS USED FOR PROCESSING [21 CFR 170.3 (n) (42); 21 CFR 170.3 (o) (1), (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32)

❑ 17. FOOD SWEETENERS (NUTRITIVE) [21 CFR 170.3 (n) (9), (41), 21 CFR 170.3 (o) (21)]

❑ 18. FRUITS AND FRUIT PRODUCTS [21 CFR 170.3 (n) (16), (27), (28), (35), (43)]

❑ 19. GELATIN, RENNET, PUDDING MIXES, OR PIE FILLINGS [21 CFR 170.3 (n) (22)]

❑ 20. ICE CREAM AND RELATED PRODUCTS [21 CFR 170.3 (n) (20), (21)]

❑ 21. IMITATION MILK PRODUCTS [21 CFR 170.3 (n) (10)]

❑ 22. MACARONI OR NOODLE PRODUCTS [21 CFR 170.3 (n) (23)]

❑ 23. MEAT, MEAT PRODUCTS AND POULTRY (FDA REGULATED) [21 CFR 170.3 (n) (17), (18), (29), (34), (39), (40)]

❑ 24. MILK, BUTTER, OR DRIED MILK PRODUCTS [21 CFR 170.3 (n) (12), (30), (31)]

❑ 25. MULTIPLE FOOD DINNERS, GRAVIES, SAUCES AND SPECIALTIES [21 CFR 170.3 (n) (11), (14), (17), (18), (23), (24), (29), (34), (40)]

❑ 26. NUT AND EDIBLE SEED PRODUCTS [21 CFR 170.3 (n) (26), (32)]

❑ 27. PREPARED SALAD PRODUCTS [21 CFR 170.3 (n) (11), (17), (18), (22), (29), (34), (35)]

❑ 28. SHELL EGG AND EGG PRODUCTS [21 CFR 170.3 (n) (11), (14)]

❑ 29. SNACK FOOD ITEMS (FLOUR, MEAL OR VEGETABLE BASE) [21 CFR 170.3 (n) (37)]

❑ 30. SPICES, FLAVORS, AND SALTS [21 CFR 170.3 (n) (26)]

❑ 31. SOUPS [21 CFR 170.3 (n) (39), (40)]

❑ 32. SOFT DRINKS AND WATERS [21 CFR 170.3 (n) (3), (35)]

❑ 33. VEGETABLES AND VEGETABLE PRODUCTS [21 CFR 170.3 (n) (19), (36)]

❑ 34. VEGETABLE OILS (INCLUDES OLIVE OIL) [21 CFR 170.3 (n) (12)]

❑ 35. VEGETABLE PROTEIN PRODUCTS (SIMULATED MEATS) [21 CFR 170.3 (n) (33)]

❑ 36. WHOLE GRAINS, MILLER GRAIN PRODUCTS (FLOURS), OR STARCH [21 CFR 170.3 (n) (1), (23)]

❑ 37. MOST/ALL HUMAN FOOD PRODUCT CATEGORIES (Optional Selection)

Form 3537 (1/03)

Form Approval: OMB No. 0910-xxxx
Expiration Date:
See OMB Statement at end of form

DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Section 11a - OPTIONAL GENERAL PRODUCT CATEGORIES – FOOD FOR ANIMAL CONSUMPTION

- ❑ 1. GRAIN PRODUCTS (E.G., BARLEY, GRAIN SORGHUMS, MAIZE, OAT, RICE, RYE AND WHEAT)
- ❑ 2. OILSEED PRODUCTS (E.G., COTTONSEED, SOYBEANS, OTHER OIL SEEDS)
- ❑ 3. ALFALFA AND LESPEDEZA PRODUCTS
- ❑ 4. AMINO ACIDS
- ❑ 5. ANIMAL-DERIVED PRODUCTS
- ❑ 6. BREWER PRODUCTS
- ❑ 7. CHEMICAL PRESERVATIVES
- ❑ 8. CITRUS PRODUCTS
- ❑ 9. DISTILLERY PRODUCTS
- ❑ 10. ENZYMES
- ❑ 11. FATS AND OILS
- ❑ 12. FERMENTATION PRODUCTS
- ❑ 13. MARINE PRODUCTS
- ❑ 14. MILK PRODUCTS
- ❑ 15. MINERALS
- ❑ 16. MISCELLANEOUS AND SPECIAL PURPOSE PRODUCTS
- ❑ 17. MOLASSES
- ❑ 18. NON-PROTEIN NITROGEN PRODUCTS
- ❑ 19. PEANUT PRODUCTS
- ❑ 20. RECYCLED ANIMAL WASTE PRODUCTS
- ❑ 21. SCREENINGS
- ❑ 22. VITAMINS
- ❑ 23. YEAST PRODUCTS
- ❑ 24. MIXED FEED (POULTRY, LIVESTOCK, AND EQUINE)
- ❑ 25. PET FOOD
- ❑ 26. MOST/ALL ANIMAL FOOD PRODUCT CATEGORIES

Form Approval: OMB No. 0910-xxxx
Expiration Date:
See OMB Statement at end of form

DHHS/FDA - DRAFT FOOD FACILITY REGISTRATION FORM

Section 12 - CERTIFICATION STATEMENT		
The owner, operator, or agent in charge of the facility must submit this form. *By submitting this form to FDA, the owner, operator, or agent in charge certifies that the above information is true and accurate and that the facility has authorized the submitter to register on its behalf. Under 18 U.S.C. 1001, anyone who makes a materially false, fictitious, or fraudulent statement to the U.S. Government is subject to criminal penalties.*		
PRINT NAME OF PERSON SUBMITTING THE REGISTRATION FORM		
PHONE NUMBER (If a foreign facility, include Area & Country Codes):	FAX NUMBER ((If available; if a foreign facility, include Area & Country Codes):	E-MAIL ADDRESS (if available):

FDA USE ONLY	
DATE REGISTRATION FORM RECEIVED	**DATE NOTIFICATION SENT TO FACILITY**

Public reporting burden for this collection of information is estimated to average between 1 and 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Department of Health and Human Services
Food and Drug Administration
CFSAN (HFS-024)
5100 Paint Branch Parkway
College Park, MD 20740

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Form 3537 (1/03)

[FR Doc. 03–5203 Filed 3–5–03; 8:45 am]
BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRN–7459–7]

Notice of Intent To Negotiate Proposed Rule on All Appropriate Inquiry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Establish FACA Committee and Negotiate a Proposed Rule.

SUMMARY: The Environmental Protection Agency (EPA) is giving notice that it intends to establish a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA) to negotiate proposed federal standards for conducting all appropriate inquiry. The purpose of the Committee will be to conduct discussions and reach consensus, if possible, on proposed regulatory language setting standards and practices for conducting all appropriate inquiry, as required by the Small Business Liability Relief and Brownfields Revitalization Act (the Brownfields Law). The Committee will consist of representatives of parties with a definable stake in the outcome of the proposed standards. EPA also is announcing the date of an open public meeting to discuss the use of the negotiated rulemaking process to develop a proposed rule. During the public meeting, EPA officials will discuss the Agency's plans for the establishment of a FACA committee to negotiate the proposed standards for all appropriate inquiry.

DATES: EPA must receive comments on this notice by April 7, 2003. Comments received after this date may not be considered. The public meeting will be held on April 15, 2003. The meeting is scheduled for 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held in Learning Forum Rooms A and B of the Marriott Learning Complex in the Ronald Reagan Building and International Trade Center at 1300 Pennsylvania Avenue NW., Washington, DC 20004. The Marriott Learning Center Complex is on the concourse level of the Ronald Reagan Building just inside the building entrance from the Federal Triangle Metro station.

Comments on today's notice may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions for submitting public comments provided in paragraph B of the **SUPPLEMENTARY INFORMATION** section below. Please reference Docket number SFUND–2003–0006 when submitting your comments.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of today's notice, contact Patricia Overmeyer, Office of Brownfields Clean up and Redevelopment (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, 202–566–2774. *overmeyer.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. How Can I Get Copies of the Background Materials Supporting Today's Notice or Other Related Information?

1. EPA has established an official public docket for this notice under Docket ID No. SFUND–2003–0006. The official public docket consists of the documents specifically referenced in this rule and other information related to this notice. 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 EPA Docket Center located at 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (202) 566–0276. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

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/.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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 docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff. For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your

comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA will not consider late comments in formulating a final decision.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the party submitting the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. SFUND–2003–0006. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *E-mail.* Comments may be sent by electronic mail (e-mail) to *Superfund.Docket@epamail.epa.gov.* Make sure this electronic copy is in an ASCII format that does not use special characters or encryption. Cite the docket Number SFUND–2003–0006 in your electronic file. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

4. *By Mail.* Send two (2) copies of your comments to: EPA Docket Center, U.S. Environmental Protection Agency Headquarters, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. SFUND–2003–0006.

5. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20007. Attention Docket ID No. SFUND–2003–0006. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

Preamble

I. Statutory Authority
II. Background
III. Proposed Negotiating Procedures
IV. Comments Requested

I. Statutory Authority

This notice announcing EPA's intent to negotiate a proposed regulation setting federal standards for the conduct of all appropriate inquiry was developed under the authority of sections 563 and 564 of the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561, Public Law 104–320). The proposed regulation setting standards for the conduct of all appropriate inquiry that EPA is proposing to develop under a negotiated rulemaking process will be developed under the authority of section 101(35)(B) of CERCLA (42 U.S.C. 9601(35)(B)(ii)).

II. Background

As required by the Federal Advisory Committee Act (5 U.S.C. App. 2. section 9(a)(2)), and the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561, Pub. L. 104–320), we are giving notice that the Environmental Protection Agency is establishing a Negotiated Rulemaking Committee to develop proposed standards and practices for conducting all appropriate inquiry.

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Law''). In general, the Brownfields Law amends CERCLA and provides funds to assess and clean up brownfields sites, clarifies CERCLA liability provisions for certain landowners, and provides funding to enhance State and Tribal clean up programs. Subtitle B of Title II of the Brownfields Law revises some of the provisions of CERCLA Section 101(35) clarifying the requirements necessary to establish the innocent landowner defense under CERCLA in addition to providing Superfund liability limitations for bona fide prospective purchasers and contiguous property owners. Among the requirements added to CERCLA is the requirement that such parties undertake ''all appropriate inquiry'' into prior ownership and use of a property at the time at which a party acquires the property.

The Brownfields Law requires EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiry and promulgate the standards within two years of its enactment. Congress included in the Brownfields Law a list of criteria that the Agency must address in the regulations establishing standards and practices for conducting all appropriate inquiry (section 101(35)(2)(B)(ii)). The Brownfields Law also requires that parties receiving funding under the federal brownfields program to conduct site assessments must conduct the site assessment in accordance with the standards and practices for all appropriate inquiry established under the same provision of the Brownfields Law.

A. Negotiated Rulemaking

EPA has decided to use the negotiated rulemaking process to develop proposed federal standards for conducting all appropriate inquiry. In the Brownfields Law, Congress mandated that EPA develop regulations establishing standards and practices for conducting all appropriate inquiry and set forth a series of criteria for the Agency to follow in developing the federal regulations. The most important reason for using the regulatory negotiation process for developing a proposed federal standard is that all stakeholders strongly support a consensual rulemaking effort. EPA believes a regulatory negotiation process will be less adversarial than the regulatory rulemaking process and that a regulatory negotiation will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation process will allow EPA to solicit direct input from informed, interested, and affected parities when drafting the regulation, rather than delay public input until the public comment period provided after

publishing a proposed rule; therefore, ensuring that the rule is more sensitive to the needs and limitations of both the parties and the Agency. A rule drafted by negotiation with informed and affected parties is expected to be more pragmatic and more easily implemented, therefore providing the public with the benefits of the rule while minimizing the negative impact of a regulation conceived or drafted without the input of outside knowledgeable parties. Since a negotiating committee includes representatives from the major stakeholder groups affected by or interested in the rule, the number of public comments on the proposed rule may be reduced and those comments that are received may be more moderate. EPA anticipates that there will be a need for few substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final regulation.

B. The Concept of Negotiated Rulemaking

Usually, EPA develops a proposed rulemaking using Agency staff and consultant resources. The concerns of affected parties are made known through various informal contacts, the circulation of a draft proposal to known affected parties for their informal comment, through advance notices of proposed rulemaking published in the **Federal Register**, or formal consultation with an advisory committee. After the notice of proposed rulemaking is published for comment, affected parties may submit arguments and data defining and supporting their positions with regard to the issues raised in the proposed rule. All communications from affected parties are directed to the Agency. In general, there is not much communication among parties representing different interests. Many times, effective regulations have resulted from such a process. However, as Congress noted in the Negotiated Rulemaking Act, such regulatory development procedures may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *'' (Sec. 2(2)). Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (Sec. 2(3)).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by consensus, which generally require concurrence among the interests represented. The process is started by the Agency's careful identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the **Federal Register**, such as this one, which identifies a preliminary list of interests and requests public comment on that list. Following receipt of the comments, the Agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The Agency is a member of the committee representing the Federal government's own set of interests. The negotiated rulemaking advisory committee is facilitated by a trained mediator, who facilitates the negotiation process. The role of this mediator, or facilitator, is to apply proven consensus building techniques to the advisory committee setting.

Once a regulatory negotiation advisory committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses such consensus as the basis of its proposed rule, to be published in the **Federal Register**. This provides the required public notice and allows for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested) and judicial review. EPA anticipates, however, that the pre-proposal consensus agreed upon by this Committee will effectively address all major issues prior to publication of a proposed rulemaking.

C. Proposed Rule Setting Standards for All Appropriate Inquiry

The negotiated Rulemaking Act allows EPA to establish a negotiated rulemaking committee if it is determined that the use of the negotiated rulemaking procedure is in the public interest. We understand that voluntary standards developed by standards developing organizations, such as the ASTM 1527–2000 standard, are available and are currently being used to conduct all appropriate inquiry in conjunction with private real estate property transactions. In addition, site assessment protocols have been established under the federal Superfund program and Resource Conservation and Recovery Act (RCRA) corrective action programs. Similarly, many State response programs include site assessment requirements. We intend to develop federal regulations that build upon the depth of experience accrued in both the public and private sectors in implementing these standards and programs. We believe that building upon currently available private sector standards for undertaking all appropriate inquiry as well as building on the experience of state and federal government site assessment programs is the most efficient and economical way to develop federal regulatory standards that will both meet the criteria set in the Brownfields Law and ensure minimal disruption to the private market and state and federal site assessment programs.

EPA has determined that the regulatory negotiation process will ensure that we obtain a diverse array of input from both private sector stakeholders and state program officials who are familiar with and experienced in implementing processes to conduct all appropriate inquiry. During the fall of 2002, we initiated the convening stage of the negotiated rulemaking process to identify appropriate stakeholder groups and solicit advice and input from experienced public and private sector users of similar standards. We retained an expert facilitator to contact parties potentially affected by the all appropriate inquiry rule to determine whether or not stakeholders are interested in participating in a negotiated rulemaking process and determine the potential for stakeholder issues to be successfully addressed through a regulatory negotiation. Following an evaluation of stakeholder interest and input during the convening process, our facilitator determined that there is sufficient enthusiasm among stakeholders for a negotiated rulemaking process and almost all stakeholders that we identified and interviewed expressed a belief that potential issues and differences between interested parties could be successfully addressed and negotiated through the regulatory negotiation process. A description of the issues raised by identified stakeholders and a list of interested stakeholders, as well as the findings of our facilitator are contained in the final report entitled *Convening Assessment Report on the*

Feasibility of a Negotiated Rulemaking Process to Develop the All Appropriate Inquiry Standard Required Under the Small Business Liability Relief and Brownfields Revitalization Act. A copy of this final report is included in the regulatory docket for today's notice.

D. Agency Commitment

In initiating this regulatory negotiation process, EPA is making a commitment to provide adequate resources to ensure timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Agency who need to be involved in the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. EPA will provide administrative support for the process and will take steps to ensure that the negotiated rulemaking committee has the dedicated resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as: Properly equipped space adequate for public meetings and caucuses; logistical support; word processing and distribution of background information; the service of a facilitator; and such additional research and other technical assistance as may be necessary.

To the maximum extent possible consistent with the legal obligations of the Agency, EPA will use the consensus of the regulatory negotiation committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency is committed to publishing a consensus proposal that is consistent with the legal mandate of the Brownfields Law.

E. Negotiating Consensus

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for developing a proposed rule. Negotiation allows interested and affected parties to discuss possible approaches to various issues rather than only asking them to respond to details on an Agency proposal. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of such approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up to EPA to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. The Negotiated Rulemaking Act defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all potential parties, including EPA, to identify their interests in the rule and so to be able to reevaluate previously stated positions on issues involved in this rulemaking effort.

III. Proposed Negotiating Procedures

A. Key Issues for Negotiation

We anticipate the issues to be addressed by the Negotiated Rulemaking Committee on All Appropriate Inquiry may include:

- Balancing the goals and priorities of state regulatory programs, privately-developed consensus standards, and the Congressional mandate for a federal standard for conducting all appropriate inquiry.
- Developing clear and concise standards that address each of the statutory criteria (Section 101(35)(B)(iii) of CERCLA).
- Balancing the need to put abandoned properties back into productive reuse with concerns for public health and environmental protection.
- Balancing a need for clear and comprehensive standards that will ensure a high level of certainty in identifying potential environmental concerns without imposing time consuming and unnecessarily expensive regulatory requirements.
- Defining the shelf life of an assessment and the extent to which an assessment, or the results of all appropriate inquiry, may be transferred to subsequent property owners.
- Minimizing disruptions to the current real estate market due to the development of a federal standard that is different from current industry protocols while ensuring that the federal standard is protective and in compliance with statutory criteria.
- Identifying the extent to which sampling and analysis of potentially contaminated property may be required to document the presence, or the lack of, environmental contamination.
- Identifying what information is necessary on the potential contamination of adjacent and adjoining properties, as well as underlying groundwater resources.
- Establishing a list of contaminants to include in the investigation when conducting all appropriate inquiry.

B. Committee Formation

The negotiated rulemaking Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee (FACA) in a manner consistent with the requirements of the Negotiated Rulemaking Act.

C. Interests Involved/Committee Membership

The Agency intends to conduct the negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule setting standards for conducting all appropriate inquiry. Section 562 of the NRA defines the term ''interest'' as ''with respect to an issue or matter multiple parties which have a similar point of view or which are likely to be affected in a similar manner.'' Listed below are parties which the Agency has identified tentatively as being ''significantly affected'' by the matters that may be included in the proposed rule.

EPA anticipates that the negotiating committee will be composed of approximately 25 members representing parties of interest to the rulemaking. EPA will monitor membership carefully to ensure that there is a balanced representation from affected and interested stakeholder groups. EPA anticipates that the committee will contain the following types of representatives:

- Environmental Interest Groups
- Environment Justice Community
- Federal Government
- Tribal Government
- State Government
- Local Government
- Real Estate Developers
- Bankers and Lenders
- Environmental Professionals

We point out that one purpose of this notice is to determine whether federal standards for conducting all appropriate inquiry will significantly affect interests that are not listed above, as well as whether the list provided below identifies accurately and comprehensively a group of stakeholders representing the interests listed above. We invite comment and suggestions on the list of ''significantly affected'' interests, as well as the list of suggested stakeholders, or committee members.

EPA recognizes that the regulatory actions we take under this program may at times affect various segments of society in different ways, and that this may in some cases produce unique ''interests'' in a proposed rule based on

income, gender, or other factors. Particular attention will be given by the Agency to ensure that any unique interests that have been identified in this regard, and that may be significantly affected by the proposed rule, are fully represented.

EPA tentatively identified the following list of possible interests and parties as representing the above list of interested stakeholder groups. The following list includes those organizations tentatively identified by EPA as being either a potential member of the Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests listed above:

- U.S. Environmental Protection Agency
- Sierra Club
- Environmental Defense
- Center for Public Environmental Oversight
- Partnership for Sustainable Brownfields Redevelopment
- Association of State and Territorial Solid Waste Management Officials
- National Association of Attorneys General
- Gila Tribe, Department of Environmental Quality
- U.S. Conference of Mayors
- National Association of Local Government Environmental Professionals
- National Association of Home Builders
- The Real Estate Roundtable
- National Association of Industrial and Office Parks
- Trust for Public Land
- National Brownfields Association
- Bank of America
- Freddie Mac
- Mortgage Bankers Association
- Wasatch Environmental
- National Groundwater Association
- Associated Soil and Foundation Engineers

The list of potential parties shown above is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed to participate as a member of the committee or as a member of a coalition. The list merely indicates parties that EPA has tentatively identified as representing significantly affected interests in the outcome of the proposed rule establishing federal standards for the conduct of all appropriate inquiry. This document gives notice of this process to other potential participants and affords them the opportunity to request representation in the negotiations. The procedure for requesting such representation is set out under Section I ''General Information'' part of this document. In addition, comments and suggestions on this tentative list are invited.

The negotiating group should not exceed 25 members. The Agency believes that more than 25 members would make it difficult to conduct effective negotiations. EPA is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the Committee. The Agency does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can be adequately represented. To have a successful negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, to provide adequate representation, must agree to support, both financially and technically, a member to the Committee whom they will choose to represent their ''interest.''

It is very important to recognize that interested parties who are not selected to membership on the Committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

- The person could request to be placed on the Committee mailing list, submitting written comments, as appropriate;
- The person could attend the Committee meetings, which are open to the public, caucus with his or her interest's member on the Committee, or even address the Committee (usually allowed at the end of an issue's discussion or the end of the session, as time permits); or
- The person could assist in the work of a workgroup that might be established by the Committee.

Informal workgroups are usually established by an advisory committee to assist the Committee in ''staffing'' various technical matters (*e.g.*, researching or preparing summaries of the technical literature or comments on particular matters such as economic issues) before the Committee so as to facilitate Committee deliberations. They also might assist in estimating costs and drafting regulatory text on issues associated with the analysis of the affordability and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

Because it recognizes the importance of this staffing work for the Committee, EPA will provide appropriate technical expertise for such workgroups. EPA requests comment regarding particular appointments to membership on the regulatory negotiation committee. Members can be individuals or organizations. If the effort is to be fruitful, participants should be able to fully and adequately represent the viewpoints of their respective interests. Those who wish to be appointed as members of the committee should submit a request to EPA, in accordance with the public participation procedures outlined in Section I ''General Information'' of this notice.

The list of potential committee members provided above includes those who have been tentatively identified by EPA as being either a potential member of the Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests, also listed above.

D. Good Faith Negotiation

Committee members should be willing to negotiate in good faith and have the authority, from his or her constituency, to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members that must be sustained for up to a year. Other qualities that can be very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more

traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the committee.

E. Facilitator

The facilitator will not be involved with the substantive development of the standard. Rather, the facilitator's role generally includes:

- Facilitating the meetings of the committee in an impartial manner; and
- Impartially assisting the members of the Committee in conducting discussions and negotiations;

F. EPA Representative

The EPA representative will be a full and active participant in the consensus building negotiations. The Agency's representative will meet regularly with various senior Agency officials, briefing them on the negotiations and receiving their suggestions and advice, to effectively represent the Agency's views regarding the issues before the Committee. EPA's representative also will ensure that the entire spectrum of federal governmental interests affected by the all appropriate inquiry rulemaking, including the Office of Management and Budget, the Department of Justice, and other Departments and agencies, are kept informed of the negotiations and encouraged to make their concerns known in a timely fashion.

G. Committee Notice and Schedule

EPA will have an open public meeting of all parties to discuss the possibility of using negotiated rulemaking on April 15, 2003. The Public Meeting will be held in Learning Forum Rooms A and B of the Marriott Learning Complex in the Ronald Reagan Building at 1300 Pennsylvania Avenue NW., Washington, DC 20004. The meeting is scheduled for 1 p.m. to 3 p.m. If EPA proceeds with a negotiated rulemaking committee on all appropriate inquiry, EPA plans for the Committee to begin deliberations in May, 2003 and conclude negotiations in December, 2003.

After evaluating the comments on this announcement and the requests for representation, EPA will issue a notice that will announce the establishment of the committee and its membership, unless after reviewing the comments, it is determined that such an action is inappropriate. The negotiation process will begin once the committee membership roster is published in the **Federal Register**.

IV. Comments Requested

EPA requests comments on whether it should use negotiated rulemaking to develop draft language for this rule and the extent to which the issues, parties and procedures described above are adequate and appropriate.

Dated: February 27, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.

[FR Doc. 03–5324 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[NH–055b; FRL–7458–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: New Hampshire; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d) negative declaration submitted by the New Hampshire Department of Environmental Services (DES) on July 22, 1998. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of New Hampshire that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills.

DATES: EPA must receive comments in writing by April 7, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Air Permits, Toxics & Indoor Program Unit, Office of Ecosystem Protection, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that a state submit a negative declaration in lieu of a control plan.

The New Hampshire DES submitted the negative declaration to satisfy the requirements of 40 CFR part 60, subpart B. In the Final Rules section of this **Federal Register**, EPA is approving the New Hampshire negative declaration as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, we will withdraw the direct final rule and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

Dated: February 20, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–5305 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NJ57–251b; FRL–7459–5]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of the New Jersey Department of Environmental Protection's request

for delegation of authority to enforce and implement the Federal Plan (40 CFR part 60, subpart Cb) for Large Municipal Waste Combustors (MWC). In the ''Rules and Regulations'' section of this **Federal Register**, EPA is announcing its approval of the State's request as a direct final rule without prior proposal because the EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before April 7, 2003.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Pollution Control, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–3381.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: February 21, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–5320 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[RI–1047b; FRL–7458–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Rhode Island; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the sections 111(d) negative declaration submitted by the Rhode Island Department of Environmental Management (DEM) on May 27, 1998. This negative declaration adequately certifies that there are no existing municipal solid waste (MSW) landfills located in the state of Rhode Island that have accepted waste since November 8, 1987 and that must install collection and control systems according to EPA's emissions guidelines for existing MSW landfills.

DATES: EPA must receive comments in writing by April 7, 2003.

ADDRESSES: You should address your written comments to: Mr. Steven Rapp, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Air Permits, Toxics & Indoor Program Unit, Office of Ecosystem Protection, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA—New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov.* While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: Under section 111(d) of the Clean Air Act, EPA published regulations at 40 CFR part 60, subpart B which require states to submit control plans to control emissions of designated pollutants from designated facilities. In the event that a state does not have a particular designated facility located within its boundaries, EPA requires that the state submit a negative declaration in lieu of a control plan.

The Rhode Island DEM submitted the negative declaration to satisfy the requirements of 40 CFR part 60, subpart B. In the Final Rules Section of this **Federal Register**, EPA is approving the Rhode Island negative declaration as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA does not receive any significant, material, and adverse comments to this action, then the approval will become final without further proceedings. If EPA receives adverse comments, we will withdraw the direct final rule and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

Dated: February 20, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–5308 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–427; MB Docket No. 03–41; RM–10642]

Radio Broadcasting Services; Lincoln City and Monmouth, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Radio Beam, LLC, licensee of Station KSND, Channel 236C2, Lincoln City, Oregon, proposing the substitution of Channel 236C3 for Channel 236C2 at Lincoln City and reallotment of Channel 236C3 to Monmouth, Oregon. The coordinates for Channel 236C3 at Monmouth, Oregon, are 44–50–43 and 123–30–07. The proposal complies 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 236C3 at Monmouth, Oregon.

DATES: Comments must be filed on or before April 11, 2003, and reply comments on or before April 28, 2003.

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 petitioner's counsel, as follows: John E. Fiorini III, Evan Henschel, Wiley Rein & Fielding LLP, 1776 K Street, NW., Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–41, adopted February 12, 2003, and released February 18, 2003. 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 Oregon, is amended by adding Monmouth, Channel 236C3, and by removing Channel 236C2 at Lincoln City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–5334 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–428; MB Docket No. 03–42, RM–10648; MB Docket No. 03–43, RM–10649; Docket No. 03–44, RM–10650]

Radio Broadcasting Services; Daisy, AR, Rattan, OK, and Water Mill, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three allotments in Daisy, Arkansas, Rattan, Oklahoma, and Water Mill, New York. The Commission requests comment on a petition filed by Gray Media Corporation proposing the allotment of Channel 293C3 at Daisy, Arkansas, as the community's first local service. Channel 293C3 can be allotted to Daisy in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.1 km (13.1 miles) northwest of Daisy. The coordinates for Channel 293C3 at Daisy are 34–21–49 North Latitude and 93–54–48 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before April 11, 2003, and reply comments on or before April 28, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Scott A. Gray, President, Gray Media Corporation, Post Office Box 491, Bryant, Arkansas 72089; and Isabel Sepulveda, President, Isabel Sepulveda, Inc., 9 Lake Side Drive, Southampton, New York 11968.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–42, 03–43, and 03–44; adopted February 12, 2003 and released February 18, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY–B402, Washington, D.C. 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Gray Media Corporation proposing the allotment of Channel 258A at Rattan, Oklahoma, as the community's first local service. Channel 258A can be allotted to Rattan in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 km (4.7 miles) south of Rattan. The coordinates for Channel 258A at Rattan are 34–07–58 North Latitude and 95–23–57 West Longitude.

The Commission further requests comment on a petition filed by Isabel Sepulveda, Inc. proposing the allotment of Channel 277A at Water Mill, New York, as the community's first local service. Channel 277A can be allotted to Water Mill in compliance with the Commission's minimum distance separation requirements without site restriction at center city reference coordinates. The coordinates for Channel 277A at Water Mill are 40–54–21 North Latitude and 72–21–45 West Longitude.

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 Arkansas, is amended by adding Daisy, Channel 293C3.

3. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Rattan, Channel 258A.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Water Mill, Channel 277A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–5335 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–430; MM Docket No. 01–257; RM–10267]

Radio Broadcasting Services; Bad Axe, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: Charles Crawford (''Crawford'') filed a petition for rule making requesting the allotment of FM Channel 231A to Bad Axe, Michigan, as that community's second local FM service. *See* 66 FR 52733, October 17, 2001. Subsequently, Crawford withdrew his interest in this proceeding. A showing of continuing interest is required before a channel will be allotted to a community. Further, Commission policy refrains from making an allotment in the absence of an expression of interest. Therefore, since no other expressions of interest in applying for the allotment proposal at Bad Axe, Michigan, were received, we dismiss Crawford's proposal, as requested.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–257, adopted February 12, 2003, and released February 18, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–5336 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–489, MB Docket No. 03–48, RM–10559]

Television Broadcast Service; Brawley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Board of Trustees for the California State University for San Diego State University, proposing the substitution of channel *43 for channel *26. TV Channel *43 can be allotted to Brawley with a minus offset at reference coordinates 33–05–00 N. and 115–32–00 W. Since the community of Brawley is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before April 21, 2003, and reply comments on or before May 6, 2003.

ADDRESSES: 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 petitioner, or its counsel or consultant, as follows: Margaret L. Miller, Low, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MB Docket No. 03–48, adopted February 21, 2003, and released February 27, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY—B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

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

Television 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.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under California, is amended by removing Channel *26 and adding Channel *43 at Brawley.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–5243 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 44

Thursday, March 6, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eyerly Fire Salvage, Deschutes National Forest, Jefferson County, OR

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) on a proposed action to salvage dead and severely damaged trees, utilize small diameter forest products resulting and to plant trees to assist in the restoration of the area burned in the Eyerly fire on the Sisters Ranger District of the Deschutes National Forest. The purpose of the proposed action is to make burned commercial timber and small diameter trees available to the economy and community, and to facilitate development of a long term sustainable forest through reforestation. The Eyerly Fire, located about 20 miles north of Sisters, Oregon, burned about 25,573 acres. Approximately 76 percent (17,871 acres) of the fire area is on the Deschutes National Forest. The alternatives will include the proposed action, no action, and any additional alternatives that respond to issues generated during the scoping process. The proposed action will require a non-significant amendment to the Deschutes National Forest Land and Resource Management Plan (Forest Plan) to substitute other old growth stands for two old growth areas that were burned. The proposed salvage and reforestation activities are among several actions being considered to facilitate recovery and restoration of the area burned in the Eyerly Fire. Additional projects intended to aid in restoration of damage caused by the Eyerly Fire are planned, and will be analyzed under separate environmental analysis efforts. Such restoration projects include: Road obliteration and closure to reduce sediment delivery to stream channels; planting bitterbrush to increase wildlife forage; tree planting in areas outside of salvage units; replacement or repair of wildlife guzzlers damaged in the fire to provide water sources for wildlife; in-stream additions of large wood or rock placement to improve fish habitat; re-vegetation of burned riparian area; and hazard tree removal from Perry South Campground. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may be able to participate and contribute in the final decision.

DATES: Comments concerning the scope of the analysis must be received by March 31, 2003.

ADDRESSES: Send written comments to Bill Anthony, District Ranger, Sisters Ranger District, P.O. Box 249, Sisters, Oregon 97759.

FOR FURTHER INFORMATION CONTACT: Dave Owens, Project Leader, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754, phone 541–416–6425. E-mail *deowens@fs.fed.us.*

SUPPLEMENTARY INFORMATION: *Proposed Action.* The proposed action is for salvage of commercial timber on approximately 4,388 acres and utilization of small diameter forest products such as posts, rails, house logs, chips, or firewood on approximately 622 acres on the Sisters Ranger District. Reforestation of the same areas is also proposed. The intensity of the Eyerly Fire varied and resulted in some areas of no damage while other areas experienced complete stand mortality. The volume of burned timber ranges from 1 to 15 thousand board feet per acre. Estimated total volume of fire-killed and severely damaged timber is in excess of 100 million board feet. The proposed salvage harvest would yield approximately 23 million board feet.

The purpose of the salvage is to recover the economic value of merchantable timber from trees that were killed or severely damaged by the Eyerly Fire. The design of salvage operations will consider the current condition, sensitivity and long term restoration of the landscape. Salvage logging would be conducted by a combination of ground-based tractor, skyline and helicopter yarding. Dead and severely damaged trees in excess of wildlife habitat and soil protection needs would be salvaged and generally include trees greater than 12 inches diameter. Dead and severely damaged trees smaller than 12 inches diameter unsuited for commercial timber are proposed for utilization as posts, rails, house logs, chips or firewood on about 622 acres. The proposed action includes construction of short temporary roads, totaling less than 2 miles, to provide access. Timber harvest residues would be treated by a variety of methods including lopping and scattering, burning in place, piling and burning, or yarding tops to landings to be burned. To reduce value loss due to wood deterioration the timber would be offered for sale in the Fall 2003.

Areas treated would be located outside of Riparian Reserves and Riparian Habitat Conservation Areas (RHCA). Riparian Reserve and RHCA widths vary by stream class. Dead trees (snags) and down wood would be left at levels consistent with Forest Plan standards. No salvage or small diameter utilization is proposed within the roadless area within the project area.

Purpose and Need for Action. The purpose of the salvage and tree planting is to recover the economic and social value of merchantable timber from trees that were killed or severely damaged by the Eyerly Fire, and to facilitate development of a long term sustainable forest through reforestation.

Scoping Process. Public participation will be sought at several points during the analysis, including listing of this project in the Winter 2002 and subsequent issues of the Ochoco and Deschutes National Forest's Schedule of Proposed Activities; letters to agencies, organizations, tribes, and individuals who have previously indicated their interest in such activities. Scoping is an integral part of environmental analysis. Scoping includes refining the proposed action, determining the responsible official and lead and cooperating agencies, identifying preliminary issues, and identifying interested and affected persons. The results of scoping are used to identify public involvement methods, refine issues, select an interdisciplinary team, establish analysis criteria, and explore possible alternatives and their probable environmental effects.

Preliminary Issues. Preliminary issues identified include: Snag and downed wood habitat; big game habitat; disturbance of cultural resources;

potential for noxious weed invasion and expansion; effects of proposed activities on soil productivity and erosion; effects of proposed activities on water quality and fish habitat including Bull Trout populations; effects of the proposed activities on late successional reserves and old growth habitat; potential loss of commercial timber value; economic viability of timber salvage; effects of the proposed activities on potential wildfire intensity; and effects on public access, safety and use of the area.

Public comments about this proposal are requested in order to assist in properly scoping issues, determining how to best manage the resources, and fully analyzing environmental effects. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decisions under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review. A draft EIS will be filed with the Environmental Protection Agency (EPA) and available for public review by May 2003. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the NOA appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of 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 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS 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 EIS 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.

The final EIS is scheduled to be available October 2003. In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS. The Forest Service is the lead agency and the responsible official is the Forest Supervisor, Deshutes National Forest. The responsible official will decide where, and whether or not to salvage timber. The responsible official will also decide how to mitigate impacts of these actions and will determine when and how monitoring of effects will take place. The Eyerly Fire Salvage 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: February 26, 2003.

Kevin D. Martin,

Deputy Forest Supervisor, Deschutes National Forest.

[FR Doc. 03–5245 Filed 03–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Public Meeting of the Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (NFAB) will hold a meeting to review its charter, discuss its roles and responsibilities in relation to the Black Hills National Forest (BHNF) management, and establish operational procedures. Secretary of Agriculture Ann M. Veneman approved the board's formation on January 16, 2003, and Regional Forester Rick Cables appointed 15 members to the board in early February 2003. The meeting is open, and the public may attend any part of the meeting.

DATES: The meeting will be held on Saturday, March 29, 2003, from 9:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will take place at the Ramkota Best Western Hotel located at 2111 LaCrosse Street, Rapid City, SD.

FOR FURTHER INFORMATION CONTACT: Lois Ziemann, Black Hills National Forest, 25041 North Highway 16, Custer, SD 57730, (605) 673–9200.

Dated: February 28, 2003.

William G. Schleining,

Acting Black Hills National Forest Supervisor.

[FR Doc. 03–5249 Filed 3–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–874]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Cindy Lai Robinson, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965, and (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

Pursuant to section 735 of the Tariff Act of 1930, as amended (the Act), we determine that ball bearings from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV). The estimated margins of sales at LTFV are shown in the ''Final Determination of Investigation'' section of this notice.

Background

On October 15, 2002, the Department of Commerce (the Department) published its preliminary determination of sales at LTFV in the antidumping duty investigation of ball bearings from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Ball Bearings and Parts Thereof from the People's Republic of China,* 67 FR 63609 (October 15, 2002) (*Preliminary Determination*).

On November 20, 2002, the Department published the amended preliminary determination of sales at LTFV in the antidumping duty investigation of ball bearings from the PRC. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China,* 67 FR 70053 (November 20, 2002) (*Amended Preliminary Determination*). Since the preliminary determination, the following events have occurred.

During November and December 2002, the Department conducted verifications of the mandatory respondents'[1] sales and factors of production information.

Both the petitioner[2] and the mandatory respondents (respondents) filed surrogate value information and data on December 13, 2002. On December 23, 2002, petitioner and respondents filed information rebutting the December 13 factor value submissions.

Parties filed case and rebuttal briefs on January 13 and January 21, 2003, respectively. On January 22, 2003, a public hearing was held at the Department of Commerce.

We note that although we stated in our *Amended Preliminary Determination* that we would make the final determination no later than February 26, 2003, the actual statutory deadline pursuant to section 735(a)(2) of the Act is February 27, 2003. Accordingly, we are issuing our final determination on February 27, 2003, in accordance with the statutory requirement.

Scope of the Investigation

The scope of the investigation includes all antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element (whether ground or unground) and parts thereof (inner ring, outer ring, cage, balls, seals, shields, *etc.*) that are produced in China. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts and parts thereof, ball bearings (including thrust, angular contact, and radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof. The scope includes ball bearing type pillow blocks and parts thereof and wheel hub units incorporating balls as the rolling element. With regard to finished parts, all such parts are included in the scope of the petition. With regard to unfinished parts, such parts are included if (1) they have been heat-treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the petition are those that will be subject to heat treatment after importation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.93.30, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4000, 8708.99.4960, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

Specifically excluded from the scope are unfinished parts that are subject to heat treatment after importation. Also excluded from the scope are cylindrical roller bearings, mounted or unmounted, and parts thereof (CRB) and spherical plain bearings, mounted and unmounted, and parts thereof (SPB). CRB products include all antifriction bearings that employ cylindrical rollers as the rolling element. SPB products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.

Scope Clarification

In the *Preliminary Determination*, the Department addressed scope inquiries received from Caterpillar Inc., Nippon Pillow Block Sales Company Limited, Nippon Pillow Block Manufacturing Company Limited and FYH Bearing Units USA, Inc. (collectively, NPBS), and Wanxiang.

On April 22, 2002, Caterpillar Inc. requested that XLS (English) series ball bearings and pin-lock slot XLS (English) series ball bearings having an inside diameter of between 1¾ inches and 5½ inches be excluded from the scope of the investigation.

On April 23, 2002, NPBS requested that the Department clarify whether split pillow block housings and non-split pillow block housings, which are imported separately from ball bearings, are excluded from the scope of the investigation.

On May 28, 2002, Wanxiang, one of the three mandatory respondents, requested guidance as to whether the language in the scope stating that the investigation covers ''wheel hub units incorporating balls as the rolling element'' also includes wheel hub units that do not contain ball bearings or any other type of rolling element at the time of importation.

The Department preliminarily determined that the scope of the investigation includes all antifriction bearings, regardless of size, precision grade or use, that employ balls as the rolling element, and parts thereof. Therefore, XLS (English) series ball bearings and pin-lock slot XLS (English) series ball bearings are clearly within the scope. With respect to NPBS's request for clarification of whether split pillow block housings and non-split pillow block housings that are imported separately from ball bearings are excluded from the scope of this investigation, the Department previously determined in *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Republic of Germany,* 54 FR 18992, 19015 (May 3, 1989) (*Antifriction Bearings*) that pillow block housings are not bearings, do not contain bearings, and are not parts or

[1] The mandatory respondents in this investigation are Zhejiang Xinchang Peer Bearing Company Ltd. (Peer), Wanxiang Group Corporation (Wanxiang), and Ningbo Cixing Group Corp. and its U.S. affiliate, CW Bearings USA, Inc. (collectively, Cixing).

[2] The petitioner in this case is the American Bearing Manufacturers Association (ABMA).

subassemblies of bearings. Therefore, consistent with that determination and the facts of this investigation, we found that split pillow block housings (not containing antifriction bearings) are excluded from the scope of this investigation. However, the scope of the current investigation includes ball bearing type pillow blocks and parts thereof. Thus, non-split pillow blocks, even when imported separately, are included in the scope.

Regarding Wanxiang's request for clarification as to whether empty wheel hub units are included in the scope, in the *Preliminary Determination,* the Department stated that we would examine this issue further to determine whether the empty wheel hub units produced by Wanxiang use balls or tapered roller bearings interchangeably. At the verification of Wanxiang, company officials used a model of an empty wheel hub unit to demonstrate that the base of the unit can be used with either ball bearings or tapered bearings as the rolling element. Based on that demonstration, we determine that because the empty wheel hub units produced by Wanxiang can use either balls or tapered roller bearings interchangeably, such merchandise is included within the scope of this investigation. Neither the Department nor Customs can ascertain with certainty which empty well hub units will be solely used for tapered roller bearings and which ones will be designated for use with roller bearings.

Based on the foregoing, the Department maintains its position in the final determination that the scope of the investigation includes XLS (English) series ball bearings and pin-lock slot XLS (English) series ball bearings; non-split pillow blocks, even when imported separately; and empty wheel hub units. *See Preliminary Determination,* 67 FR 63610.

Since the publication of the *Preliminary Determination,* the Department received two requests for scope clarifications. On November 15, 2002, Guangdong Agricultural Machinery Import & Export (GAM), a voluntary Section A respondent, requested that the Department exclude mast guide bearings and chain wheels from the scope, which they claim are used exclusively in forklift trucks. Alternatively, GAM requested that the Department determine that mast guide bearings are a separate class or kind of subject merchandise than all other ball bearings. On December 6, 2002, EMPI Inc. sought a scope clarification for some of the balls that it imports because those balls are used exclusively in the rebuilding of CV joints.

These two additional scope requests were received after the *Preliminary Determination.* Due to time constraints in conducting this investigation, the Department was unable to address the additional scope requests within the context of this investigation. As a result, we have not addressed the scope requests or additional arguments raised by the petitioner in our final determination. However, should an order be issued in the instant investigation, parties can resubmit scope requests in accordance with section 351.225 of the Department's regulations and the Department will examine such requests in that context.

Name Changes

Since the *Preliminary Determination,* a number of parties have notified the Department of incorrect company names or have requested name changes.

On October 31, 2002 and on January 13, 2003, Zhejiang Rolling Bearing Co., Ltd. (ZRB) informed the Department of its name change to Zhejiang Tianma Bearing Co., Ltd. The supporting documentation included a pre-approval from the Zhejiang Industrial and Commercial Administration Bureau. ZRB also stated that notwithstanding the approval, it is required under Chinese law to maintain its original name for one year after final approval. We find that during the period of investigation (POI), the company name remained ZRB; therefore, the company-specific rate is only applicable to ZRB. For further discussion of this issue, *see* Comment 4, ''Corporate Name Change Filing'' of the Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Ball Bearings and Parts Thereof from the People's Republic of China,'' dated concurrently with this notice (Decision Memorandum).

On November 1, 2002, China National *Automotive* Industry Guizhou Import & Export Corporation stated that they had incorrectly reported the company's name as China National Automobile Industry Guizhou Import & Export Corporation. Dong Guan Bearing Factory also reported that it is in the process of changing its name to Dong Guan TR Bearings Group, Ltd. (TR) and requested that the Department use both the old and new names in the instructions to Customs. Regarding the first request, the Department will notify Customs of the correct company name. However, the Department is unable to grant Dong Guan Bearing Factory's request because the company has stated that it must continue to export under its old name until Chinese Customs switches to the new name, and because the company has not provided any supporting documentation. Therefore, the Department will not issue any instructions to Customs pertaining to the company's new name.

On November 25, 2002, Zhejiang Xinchang Peer Bearing Company, Ltd., a Chinese exporter, and Peer Bearing Company, its affiliated U.S. importer of subject merchandise (Peer), requested that the Department inform Customs that the current antidumping rate assigned to Xinchang Peer Bearing Company, Ltd., is also applicable to Zhejiang Xinchang Peer Bearing Company, Ltd. The company stated that its formal company name is Zhejiang Xinchang Peer Bearing Company, Ltd. However, in the *Preliminary Determination* and *Amended Preliminary Determination,* the Department referred to the company as Xinchang Peer Bearing Company, Ltd. Based on record evidence demonstrating the company's true name, the Department determined that Peer's formal name is Zhejiang Xinchang Peer Bearing Company, Ltd. Accordingly, the Department will provide specific instructions to Customs for Zhejiang Xinchang Peer Bearing Company, Ltd.

Period of Investigation

The POI is July 1, 2001, through December 31, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, February 2002). *See* 19 CFR 351.204(b)(1).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the central records unit (CRU), room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Non-Market Economy

The Department has treated the PRC as a non-market economy (NME)

country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China,* 66 FR 58115 (November 20, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China,* 67 FR 62107 (October 3, 2002). A designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as a NME in this investigation. For further details, see the *Preliminary Determination.*

Separate Rates

In our *Preliminary Determination,* we found that forty-five companies met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separates rates determination with respect to these companies. For a complete discussion of the Department's determination that the respondents are entitled to a separate rate, *see* the *Preliminary Determination.*

The PRC-Wide Rate

In the *Preliminary Determination,* we found that the use of adverse facts available for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the three mandatory respondents and the respondents that are entitled to a separate rate.

When analyzing the petition for purposes of the initiation, the Department reviewed all of the data upon which the petitioner relied in calculating the estimated dumping margin and determined that the margin in the petition was appropriately calculated and supported by adequate evidence in accordance with the statutory requirements for initiation. In order to corroborate the petition margin for purposes of using it as adverse facts available, we examined the price and cost information provided in the petition in the context of our preliminary determination. For further details, *see* Memorandum from David Salkeld, Case Analyst, to Melissa G. Skinner, Office Director, ''Corroboration of Secondary Information,'' dated October 1, 2002.

Since the *Preliminary Determination,* we have received comments from the petitioner, which are discussed in the accompanying Decision Memorandum at Comment 5. The Department has continued to use the PRC-wide rate calculation methodology it employed for the *Preliminary Determination,* and the PRC-wide rate is, for the final determination, 59.30 percent.

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, *see* the *Preliminary Determination.*

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, *see* the ''Changes Since the Preliminary Determination'' section below.

Changes Since the Preliminary Determination

Based on our findings at verification and on our analysis of the comments received, we have made adjustments to the calculation methodologies used in the preliminary determination. These adjustments are discussed in detail in the (1) Decision Memorandum, (2) Memorandum from the Team to the File, ''Final Factors of Production Valuation Memorandum,'' dated February 27, 2003, and (3) Memorandum from the Team to the File, ''Calculation Memorandum for the Final Determination,'' dated February 27, 2003.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing Customs to continue suspension liquidation of entries of subject merchandise from the PRC, except for merchandise produced and exported by Cixing, that are entered, or withdrawn from warehouse, for consumption on or after October 15, 2002 (the date of publication of the *Preliminary Determination* in the **Federal Register**). We will instruct Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. Merchandise produced and exported by Cixing will be excluded from any antidumping duty order, if issued. These suspension-of-liquidation instructions will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average percentage margins exist for the period July 1, 2001, through December 31, 2001:

Manufacturer/exporter	Weighted-average margin (percent)
Zhejiang Xinchang Peer Bearing Company Ltd	8.33
Wanxiang Group Corporation	7.22
Ningbo Cixing Group Corp	[1] 0.59
B&R Bearing Co	7.80
Changshan Import & Export Company, Ltd	7.80
Changzhou Daya Import and Export Corporation Limited	7.80
China Huanchi Bearing Group Corp. and Ningbo Huanchi Import & Export Co. Ltd	7.80
China National Automobile Industry Guizhou Import & Export Corp	7.80
China National Machinery & Equipment Import & Export Wuxi Co., Ltd	7.80
Chongqing Changjiang Bearing Industrial Corporation	7.80
CSC Bearing Company Limited	7.80
Dongguan TR Bearing Corporation, Ltd	7.80

Manufacturer/exporter	Weighted-average margin (percent)
Fujian Nanan Fushan Hardware Machinery Electric Co., Ltd	7.80
Guangdong Agricultural Machinery Import & Export Company	7.80
Harbin Bearing Group and Heilongjiang Machinery and Equipment Import and Export Corporation	7.80
Jiangsu CTD Imports & Exports Co., Ltd	7.80
Jiangsu General Ball & Roller Co., Ltd	7.80
Jiangsu Hongye Intl. Group Industrial Development Co., Ltd	7.80
Jinrun Group Ltd. Haining	7.80
Ningbo Cixi Import Export Co	7.80
Ningbo Economic and Technological Development Zone and Tiansheng Bearing Co. Ltd and TSB Group USA Inc. and TSB Bearing Group America, Co. (TSB Group)	7.80
Ningbo General Bearing Co., Ltd	7.80
Ningbo Jinpeng Bearing Co., Ltd. and Ningbo Mikasa Bearing Co. Ltd. and Ningbo Cizhuang Bearing Co. Tahsleh Development Zone	7.80
Ningbo MOS Group Corporation, Ltd	7.80
Norin Optech Co., Ltd	7.80
Premier Bearing & Equipment, Ltd	7.80
Sapporo Precision Inc./Shanghai Precision Bearing Co., Ltd	7.80
Shaanxi Machinery & Equipment Import & Export Corp	7.80
Shandong Machinery Import & Export Group Corp	7.80
Shanghai Bearing (Group) Company Limited	7.80
Shanghai Foreign Service and Economic Cooperation Co. Ltd	7.80
Shanghai General Pudong Bearing Co., Ltd	7.80
Shanghai Hydraulics & Pneumatics Corp	7.80
Shanghai Nanshi Foreign Economic Cooperation & Trading Co., Ltd	7.80
Shanghai SNZ Bearings Co., Ltd	7.80
Shanghai Zhong Ding I/E Trading Co., Ltd. and Shanghai Li Chen Bearings	7.80
Shaoguan Southeast Bearing Co. Ltd	7.80
Sin NanHwa Bearings Co. Ltd. and Sin NanHwa Co. Ltd	7.80
TC Bearing Manufacturing Co. Ltd	7.80
Wafangdian Bearing Company Ltd	7.80
Wholelucks Industrial Limited	7.80
Wuxi New-way Machinery Co., Ltd	7.80
Zhejiang Rolling Bearing Co. Ltd	7.80
Zhejiang Shenlong Bearing Co. Ltd	7.80
Zhejiang Wanbang Industrial Co., Ltd	7.80
Zhejiang Xinchang Xinzhou Industrial Co. Ltd	7.80
Zhejiang Xinchun Bearing Co. Ltd	7.80
Zhejiang ZITIC Import & Export Co. Ltd	7.80
PRC-Wide Rate	59.30

[1] *De Minimis.*

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 27, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

I. General Issues

Comment 1: Valuation of Overhead, SG&A, and Profit Ratios (''Financial Ratios'')

A. Whether Companies Which Reported a Loss Should Be Excluded from Profit Ratios Calculation

B. Whether the Department Should Use a Weighted Average or a Simple Average to Calculate Financial Ratios

C. Whether the Department Should Exclude Companies Which Did Not Manufacture the Merchandise under Investigation

D. Whether the Department Should Exclude Financial Data That Are Not Contemporaneous with the POI

E. Whether the Department Should Exclude Companies That Were Owned and Controlled by the Indian Government

F. Whether the Department Should Exclude Company Data Where the Company Is Less Integrated
G. Whether the Department Should Restate Indian Surrogate Producers' FOH and SG&A to Eliminate Certain Distortions
H. Whether the Department Should Exclude the Financial Statements of Indian Producers Which Are Affiliated with Petitioner
I. Whether the Department Should Exclude the Financial Data of Multinational Corporations: SKF, FAG, and TIL
J. Which Indian Surrogate Producers Should Be Included as Surrogate Source for Valuing Financial Ratios
Comment 2: Respondent Selection
Comment 3: GAM Mast Guide Bearings and Chain Wheels
Comment 4: Corporate Name Change Filing
Comment 5: PRC-Wide Rate
Comment 6: Valuation of Purchased Components
Comment 7: Calculating Margins on a Per-Unit Basis
Comment 8: Market Economy Steel Values-Korea/India

II. Company-Specific Issues

A. Peer

Comment 9: Correction of Errors Made in the Preliminary Margin
Comment 10: Incorporation of Corrections Made Prior to Verification
Comment 11: Incorporation of Corrections for Discrepancies Found at Verifications
Comment 12: Require Peer to Provide Complete and Accurate Data for Certain CONNUMs or Use Facts Available
Comment 13: Whether the Department Should Correct Peer's Scrap Recycle Ratio and Recalculate Peer's Material Costs
Comment 14: Whether the Department Should Confirm That Peer Has Reported Any Estimated Rebates
Comment 15: Whether the Department Should Examine or Restate Peer's Reported ''Section E'' Costs
Comment 16: Whether the Department Should Restate Peer's U.S. Indirect Selling Expenses
Comment 17: Whether the Department Should Restate Certain Factors (Labor and Certain Materials) Which Could Not be Obtained from Suppliers or Subcontractors
Comment 18: Whether the Department Should Use Facts Available for U.S. Inland Freight from the Warehouse to Unaffiliated Customers (INLFWCU)
Comment 19: Whether The Department Should Use Facts Available for Peer's U.S. Unaffiliated Commissions
Comment 20: Whether the Department Should Revise Its Margin Calculation Methodology
Comment 21: Whether the Department Should Exclude Certain Non-Operational Expenses and Reclassify Certain Operational Expenses in Calculating Financial Ratios
Comment 22: Whether the Department Should Use More Contemporaneous Electricity Data
Comment 23: Whether the Department Should Use More Contemporaneous Data Involving Full Shipments for Brokerage and Handling Charges

B. Wanxiang

Comment 24: Surrogate Value for Wooden Packing Pallets, Boxes
Comment 25: Wanxiang's EMQ Bearings
Comment 26: Wanxiang's CEP and Commission Offset
Comment 27: Wanxiang's Steel and Scrap Data
Comment 28: Wanxiang's Brokerage & Handling
Comment 29: U.S. Inland Freight
Comment 30: Ocean Freight
Comment 31: Computer Programming Error (ELASCLP2)
Comment 32: Steel Type for Rings and Balls
Comment 33: Steel Wire Rod (for Balls)
Comment 34: Surrogate Value for SAE 1045 Plain Carbon Steel for Hubs, Spindles and Circlips, Bolts
Comment 35: Surrogate Value for SAE 1566 Structure Carbon Steel for Certain Outer Rings and Spindles
Comment 36: Surrogate Value for Steel Bar (for Rings)
Comment 37: Surrogate Value for Steel Tube (for Rings)
Comment 38: Surrogate Value for Cold-Rolled Steel for Shields, Cages, Rubber Seals, Rivets
Comment 39: Empty Wheel Hub Units

C. Cixing

Comment 40: The Department Made an Error in Calculating the Regression-Based Wage Rate for China
Comment 41: Cixing's Market Economy Purchases of Balls
Comment 42: Cixing's Scrap Offset
Comment 43: Cixing's Surrogate Value for Inner and Outer Ring Steel
Comment 44: Cixing's Market Economy Purchases of Coil
Comment 45: Cixing's Marine and Inland Insurance
Comment 46: Liquidation During the Provisional Period
Comment 47: Cixing's Brokerage and Handling
Comment 48: Cixing's Air Freight
Comment 49: Cixing's Electric Motor Quality (EMQ) Bearings
Comment 50: Cixing's CONNUM Reporting Methodology and Ball Weights
Comment 51: Clerical Errors in the Amended Preliminary Program

[FR Doc. 03–5300 Filed 3–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on bars/wedges from the People's Republic of China (PRC). We preliminarily determine that Shandong Huarong Machinery Company (Huarong) sold bars/wedges in the United States at prices below normal value (NV) during the period of review (POR).

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service (Customs) to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Tom Martin, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5253, (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The POR is February 1, 2001, through January 31, 2002.

Background

On February 19, 1991, the Department published in the **Federal Register** (56 FR 6622) four antidumping duty orders on heavy forged hand tools (HFHTs) from the PRC. Imports covered by these orders comprise the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes. On February 1, 2002, the Department

published a notice of opportunity to request administrative reviews of the antidumping duty orders on HFHTs from the PRC covering the period February 1, 2001, through January 31, 2002 (67 FR 4945). On February 28, 2002, Tianjin Machinery Import & Export Corporation (TMC), Shandong Machinery Import & Export Corporation (SMC), Liaoning Machinery Import & Export Corporation (LMC), and Huarong requested administrative reviews in the above-referenced proceedings. Specifically, TMC requested reviews of the hammers/sledges, bars/wedges, picks/mattocks and axes/adzes orders, SMC requested reviews of the hammers/sledges, bars/wedges, and picks/mattocks orders, LMC requested a review of the bars/wedges order, and Huarong requested a review of the bars/wedges order. Based on these requests, the Department initiated the current administrative reviews of TMC, SMC, LMC, and Huarong under the requested orders on March 20, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 67 FR 14696 (March 27, 2002).

On May 3, 2002, LMC withdrew its request for review of the bars/wedges order. On May 10, 2002, TMC withdrew its requests for review of the hammers/sledges and picks/mattocks orders. On June 7, 2002, SMC withdrew its request for review under the picks/mattocks order. Additionally, on September 26, 2002, TMC withdrew its requests for review of the axes/adzes order and bars/wedges order, and SMC withdrew its requests for review of the bars/wedges and hammers/sledges orders. The Department rescinded these reviews on January 3, 2003. *See Notice of Rescission of Antidumping Duty Administrative Review: Heavy Forged Hand Tools from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 352 (January 3, 2003). The remaining review covers bars/wedges sold by Huarong.

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete these preliminary results within the statutory time limit of 245 days. On October 22, 2002, in accordance with the Act, the Department published its extension of the time limit for completing the preliminary results of this review. *See Heavy Forged Hand Tools from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 67 FR 64869 (October 22, 2002).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review are bars over 18 inches in length, track tools and wedges (bars/wedges), which may or may not be painted, may or may not be finished; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. The subject merchandise is manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting. Bars and wedges are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8205.59.30. Specifically excluded from this review are bars 18 inches in length and under. The HTSUS subheading is provided for convenience and Customs purposes. The written description remains dispositive.

Separate Rates Determination

To establish whether a company operating in a non-market economy (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, NME firms are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to their export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587 and *Sparklers,* 56 FR at 20589.

In the final results of the 2000–2001 administrative reviews of HFHTs from the PRC, the Department granted a separate rate to Huarong. *See Heavy Forged Hand Tools from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 67 FR 57789 (September 12, 2002). It is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal From the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12441 (March 13, 1998).

In the instant review, Huarong submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted by Huarong includes government laws and regulations on corporate ownership, its business licence, and narrative information regarding its operations and selection of management. This evidence supports a finding of a *de jure* absence of government control over export activities: (1) There are no controls on exports of subject merchandise, such as export quotas applied to the subject merchandise and no export license is required for exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or exporting licensing. Huarong has also shown *de facto* absence of government control over exports in its questionnaire response: (1) Huarong sets its own export prices independently of the government and without requiring the approval of a government authority; (2) Huarong retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) Huarong has a general manager and three vice general managers with the authority to negotiate and bind the company in an agreement;

(4) the general manager is selected by company employees, and the general manager appoints the manager of each department and (5) foreign currency is not required to be sold to the government. The Department preliminarily determines that Huarong has established that it qualifies for separate rates under the criteria established by *Silicon Carbide* and *Sparklers.*

Fair Value Comparisons

To determine whether Huarong's sales of bars/wedges were made at prices less than normal value (NV), we compared the export price (EP) to NV, as described in the *Export Price* and *Normal Value* sections of this notice, below.

In its February 4, 2003, supplemental questionnaire response, Huarong stated that it reported identical merchandise under multiple CONNUMs in both its U.S. sales and factors of production databases. To correct this error, we created new CONNUMs and assigned a single CONNUM to identical merchandise originally reported under multiple CONNUMs. *See* Memorandum from Thomas E. Martin, International Trade Compliance Specialist, to the File, ''Calculation Memorandum for the Preliminary Results of the Eleventh Administrative Reviews of Certain Heavy Forged Hand Tools (Bars/Wedges) From the People's Republic of China—February 1, 2001, through January 31, 2002,'' dated February 28, 2003 (Calculation Memorandum).

Export Price

In accordance with section 772(a) of the Act, the Department calculated an EP for Huarong's sales to the United States because the first sale to an unaffiliated party was made before the date of importation and the use of constructed export price (CEP) was not otherwise warranted. When appropriate, we made deductions from the selling price to unaffiliated parties for foreign inland freight, brokerage and handling, port charges, ocean freight, and marine insurance. Each of these services was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values.

We valued foreign inland freight using a truck rate obtained from *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin from The People's Republic of China,* 65 FR 33805 (May 25, 2000) (*Bulk Aspirin*). *See* Memorandum from Thomas E. Martin, International Trade Compliance Specialist, to the File, ''Surrogate Values Used for the Preliminary Results of the Eleventh Administrative Reviews of Certain Heavy Forged Hand Tools (Bars/Wedges) From the People's Republic of China—February 1, 2001, through January 31, 2002,'' dated February 28, 2003 (Surrogate Value Memorandum). Since Huarong ships subject merchandise to the United States using NME carriers, we valued ocean freight using a rate calculated in *Certain Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative and New Shipper Reviews,* 64 FR 856 (January 6, 1999) (*India Wire Rod*).

We valued foreign brokerage and handling using a rate also reported in the questionnaire response in *India Wire Rod. See* Surrogate Value Memorandum. We valued port charges using the charges for services rendered to containers and containerized cargo set by the Board of Trustees of Jawaharlal Nehru Port, effective March 17, 1997. We valued marine insurance using the rate that was reported in the public version of the questionnaire response placed on the record in *India Wire Rod. See* Surrogate Value Memorandum.

We adjusted all surrogate values, as appropriate, to account for inflation between the effective period of the surrogate value information and the POR. We calculated the inflation adjustments for the factor values, using the wholesale price index (WPI) for India obtained from *International Financial Statistics,* which is a publication of the International Monetary Fund (IMF). *See* Surrogate Value Memorandum.

Normal Value

For exports from NMEs, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production (FOP) methodology if (1) the subject merchandise is exported from a NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value. Section 351.408 of the Department's regulations (2001) sets forth the Department's methodology for calculating the NV of merchandise from NME countries. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME. Since none of the parties to this proceeding has contested such treatment in this review, we calculated NV in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing bars and wedges include, but are not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in a market economy that is at a level of economic development comparable to the PRC and a significant producer of comparable merchandise. We preliminarily determine that India is comparable to the PRC in terms of per-capita gross national product, the growth rate in per-capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. Consequently, we preliminarily determine that India is the country most comparable to the PRC among the significant exporting countries of comparable merchandise. *See* Memorandum from Jeffrey May, Director of the Office of Policy, to Thomas Martin, International Trade Compliance Specialist, ''Antidumping Administrative Review of Heavy Forged Hand Tools (Bars/Wedges) from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated January 17, 2003.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value FOP using Indian surrogate values that were in effect during the POR. Where contemporaneous data was not available to the Department, the most recent data was used, and adjusted to account for inflation between the effective period and the POR. As discussed in detail in the Surrogate Value Memorandum, we valued the FOP as follows:

(1) We valued direct materials used to produce bars and wedges, packing materials, and coal used for energy using, where available, the rupee-per-kilogram value of imports that entered India during February 2000 through January 2001, as published in *Monthly Statistics of the Foreign Trade of India,* Volume II—Imports (*Indian Import Statistics*).

(2) We valued labor using a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3). This rate is identified on the Import Administration's Web site. *See http://ia.ita.doc.gov/wages/corrected00wages/corrected00wages.htm.*

(3) We derived ratios for selling, general and administrative (SG&A) expenses, factory overhead, and profit using information reported for 2000–2001, for 1,927 Public Limited Companies, in the *Reserve Bank of India Bulletin* for September 2002 (*RBI Bulletin*). From this information, we

were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses; SG&A expenses as a percentage of the total cost of manufacturing (TOTCOM); and profit as a percentage of the sum of the TOTCOM and SG&A expenses. *See* Surrogate Value Memorandum.

Whenever possible, the Department has used producer-specific data to calculate financial ratios. Unlike industry-specific data, which tends to be broader in terms of merchandise included, product-specific data obtained from producer-specific information pertains directly to the subject merchandise. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from The People's Republic of China,* 66 FR 49345 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 3. However, when the Department and the parties are unable to obtain surrogate information for valuing overhead, SG&A, and profit that pertains to manufacturers of identical or comparable merchandise, the Department must rely upon surrogate information derived from broader industry groupings. *See Notice of Final Results of New Shipper Review: Petroleum Wax Candles from the People's Republic of China,* 67 FR 41395 (June 18, 2002), and accompanying Issues and Decision Memorandum, at Comment 6.

In the present review, neither the petitioner nor the respondent have placed any financial statements on the record. Moreover, the Department has been unable to locate financial statements specific to hand tools producers in India. Therefore, the Department is using broader financial data from the *RBI Bulletin. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China,* 68 FR 7765 (February 18, 2003) and the accompanying Issues and Decision Memorandum at Comment 4; *Final Results of Antidumping New Shipper Review: Potassium Permanganate from the People's Republic of China,* 66 FR 46775 (September 7, 2001), and the accompanying Issues and Decision Memorandum, at Comment 20; *Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part: Heavy Forged Hand Tools from the People's Republic of China,* 66 FR 48026 (September 17, 2001), and the accompanying Issues and Decision Memorandum at Comment 18; *Notice of Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts From the People's Republic of China,* 67 FR 37388, 37391 (May 29, 2002), and the accompanying Issues and Decision Memorandum, at Comment 6.

(4) We valued electricity using 2000–2001 data from the *Annual Report on The Working of State Electricity Boards & Electricity Departments,* published in May, 2002, by the Power & Energy Division of the Planning Commission of the Government of India. We applied the average tariff rate for all industries, as in prior reviews.

(5) We valued truck transportation expenses for direct materials, packing materials, and coal from the suppliers of the inputs to the factory producing subject merchandise utilizing the rate used by the Department in *Bulk Aspirin.*

Huarong reported production ''caps'' for use in determining certain factor input amounts. A production ''cap'' is an estimate of the amount of factor input the company used to make the product in question. Huarong reported ''caps'' for steel billets, the steel scrap offset, unskilled labor, skilled labor, and unskilled packing labor.

The Department has accepted ''caps'' in the past only when the ''caps'' were found to reasonably reflect actual consumption, and has rejected them when found to be otherwise. *See Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China; Final Review Results of Antidumping Review,* 64 FR 27506 (May 20, 1999) *(Natural Bristle Paintbrushes).* In *Natural Bristle Paintbrushes,* at verification, the respondent attempted to duplicate reported ''cap'' figures, but did not succeed. The respondent asserted that the figures were derived from a standard cost system, but this system was not explained to the verifiers, and the Department finally rejected the ''caps.'' *See Natural Bristle Paintbrushes,* 64 FR at 27514. Similarly, while the Department has found reported ''caps'' reasonable in past segments of this proceeding, the Department also found that there were discrepancies between the reported ''cap'' amounts and the figures presented at verification of the information submitted during the 1997–1998 administrative review. Because the Department could not deduce how the information in the questionnaire response was derived, the Department did not consider the information verified. *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Reviews,* 64 FR 43659, 43665–43666 (August 11, 1999).

For these preliminary review results the Department has accepted Huarong's reported ''caps'' for the purpose of calculating any dumping margins, except for the ''cap'' regarding scrap steel offset. The Department allows scrap offsets, but only for the amount of the scrap actually sold or reused. *See Bulk Aspirin* and accompanying Issues and Decision Memorandum at Comment 13. It is also the Department's practice to grant offsets for recoveries/by-products which are re-entered into the production process. *See Notice of Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Steel Concrete Reinforcing Bars from The People's Republic of China,* 66 FR 33522 (June 22, 2001) and the accompanying Issues and Decision Memorandum at Comment 5.

In the January 22, 2003 supplemental questionnaire, the Department requested Huarong to calculate the scrap offset by dividing the actual amount of scrap sold during the POR by the total POR production of subject merchandise. Huarong, in its February 4, 2003 response, stated that while it did have sales of steel scrap during the POR, it did not record sales of scrap according to subject and non-subject merchandise. In addition, Huarong stated that it did not reintroduce any internally-generated scrap steel into the production of subject merchandise. *See* Huarong's October 23, 2002, section D supplemental questionnaire response at 3. Since Huarong did not report the scrap offset using its actual sales of scrap, nor attempt to do so through allocating such sales to subject merchandise or by using any other reasonable methodology, we have preliminarily determined to not grant this offset to Huarong.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average margin exists for the period February 1, 2001, through January 31, 2002:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Huarong Machinery Company Bars/Wedges	2/1/01–1/31/02	34.56

The Department will disclose to parties to this proceeding the calculations performed in reaching these preliminary results within 10 days of the date of announcement of these preliminary review results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs), in accordance with 19 CFR 351.310(c)(1)(ii), and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs in accordance with 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue subsequently a memorandum identifying the date of a hearing, if one is requested, and the deadlines for submitting case and rebuttal briefs.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by these reviews and for future deposits of estimated duties.

Duty Assessment Rates

Upon completion of this administrative review, the Department will determine, and the U.S. Customs Service (Customs) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific per-unit duty assessment rates based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total quantity of those same sales. These importer-specific rates will be assessed uniformly on all entries of each importer that were made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is *de minimis*, *i.e.*, less than 0.5 percent *ad valorem*. For all shipments of bars/wedges from the PRC exported by Huarong and imported by entities not identified by Huarong in its questionnaire response, we will instruct customs to assess antidumping duties at the cash deposit rate in effect on the date of the entry. The Department will issue appraisement instructions directly to Customs upon the completion of the final results of this administrative review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of bars and wedges from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for bars and wedges exported by Huarong will be the rate established in the final results of this administrative review; (2) for companies previously found to be entitled to a company-specific rate, the cash deposit rate for bars/wedges will continue to be the company-specific rate published for the most recent period reviewed; (3) for all other PRC exporters of bars/wedges from the PRC, the cash deposit rate will be the following PRC country-wide rate: 47.88 percent; and (4) the cash deposit rate for non-PRC exporters of bars/wedges from the PRC who do not have their own rate will be the rate applicable to the PRC supplier of the exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under § 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 28, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5299 Filed 3–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fourth New Shipper Review and Preliminary Results of Third Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial rescission of fourth new shipper review and preliminary results of third antidumping duty administrative review.

SUMMARY: The Department of Commerce is concurrently conducting the fourth new shipper review and third administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China covering the period February 1, 2001, through January 31, 2002. The new shipper review covers three exporters. We have preliminarily determined that one of those exporters has not made sales at less than normal value. For the other two exporters, we have preliminarily determined that one of them failed to demonstrate that its reported sale was a *bona fide* sale, while the other failed to demonstrate its entitlement to a new shipper review. Thus, we are preliminarily rescinding the review with respect to them. The administrative review covers four exporters. We have preliminarily determined that sales have been made below normal value with respect to all of these exporters. If these preliminary results are adopted in our final results of this review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Davina Hashmi, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–0984, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') (64 FR 8308).

On February 1, 2002, the Department published a notice advising of the opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC (67 FR 4945). On February 28, 2002, the Department received timely requests from Gerber Food (Yunnan) Co., Ltd. (''Gerber'') and Green Fresh Foods (Zhangzhou) Co., Ltd. (''Green Fresh'') for an administrative review pursuant to 19 CFR 351.213(b).

On February 27 and 28, 2002, the Department received timely requests from Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin''), Shenzhen Qunxingyuan Trading Co., Ltd. (''Shenzhen Qunxingyuan''), and Zhangzhou Jingxiang Foods Co., Ltd. (''Zhangzhou Jingxiang'') for a new shipper review in accordance with 19 CFR 351.214(c).

On February 28, 2002, the petitioner [1] requested an administrative review pursuant to 19 CFR 351.213(b) of 7 companies [2] which it claimed were producers and/or exporters of the subject merchandise. Two of these seven companies also requested a review.

From March 6 through 28, 2002, Guangxi Yulin, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang all agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On March 20, 2002, the Department initiated an administrative review covering the companies listed in the petitioner's February 28, 2002, request. (*See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 14696, 14698 (March 27, 2002).)

On March 29, 2002, the Department initiated a new shipper review of Guangxi Yulin, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang. (*See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review,* 67 FR 16088 (April 4, 2002).)

On April 16, 2002, we issued a questionnaire to each PRC company listed in the above-referenced initiation notices.

On May 2, 2002, the Department provided the parties an opportunity to submit publicly available information (''PAI'') for consideration in these preliminary results.

On May 21, 2002, the respondent Compania Envasadora del Atlantico indicated that it had no shipments of the subject merchandise to the United States during the period of review (''POR'').

From May 23 through June 7, 2002, China Processed, Gerber, Green Fresh, Shantou Hongda, Shenxian Dongxing, Guangxi Yulin, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang submitted their responses to the Department's antidumping duty questionnaire.

On June 11, 2002, the petitioner requested an extension until July 9, 2002, to withdraw any request for review of companies listed in its February 28, 2002, communication, which the Department granted on June 21, 2002.

From June 14 through August 23, 2002, the petitioner submitted comments on the questionnaire responses provided by Gerber, Green Fresh, Guangxi Yulin, and Shenzhen Qunxingyuan.

From June 28 through July 15, 2002, the Department issued China Processed, Gerber, Guangxi Yulin, and Shenzhen Qunxingyuan a supplemental questionnaire.

On July 9, 2002, the petitioner withdrew its request for an administrative review of China Processed, Compania Envasadora del Atlantico, and Raoping Xingyu. On July 10, 2002, the petitioner requested an extension of time until August 9, 2002, to submit factual information in this case, which the Department granted on July 12, 2002.

From July 23 through July 29, 2002, the Department issued Green Fresh, Shantou Hongda, Shenxian Dongxing, and Zhangzhou Jingxiang a supplemental questionnaire.

From July 23, through August 26, 2002, the respondents submitted their responses to the Department's supplemental questionnaire.

On August 16, 2002, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than February 28, 2003 (67 FR 53565).

On August 20, 2002, the Department rescinded the administrative review with respect to China Processed, Compania Envasadora del Atlantico, and Raoping Xingyu. (*See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 53914 (August 20, 2002).)

From August 20 through August 23, 2002, the Department issued Gerber, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang a second supplemental questionnaire.

From September 3 through 6, 2002, the Department issued verification outlines to Guangxi Yulin, Shenxian Dongxing, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang.

From September 4 through 11, 2002, Gerber, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang submitted their responses to the Department's second supplemental questionnaire.

On September 6, 2002, Gerber, Green Fresh, Zhangzhou Jingxiang, and the petitioner submitted PAI for use in valuing the factors of production.

The Department conducted verification of the responses of Guangxi Yulin, Shenxian Dongxing, Shenzhen Qunxingyuan, and Zhangzhou Jingxiang during the period September 16, through 25, 2002. From October 21 through November 8, 2002, the Department issued verification reports for these companies.

On November 12, 2002, the Department issued Shantou Hongda a second supplemental questionnaire and received this company's response on November 26, 2002.

On November 22, 2002, the Department issued Gerber a third supplemental questionnaire and Green Fresh a second supplemental questionnaire. Both companies submitted their responses on December 23, 2002.

From December 16, 2002, through January 2, 2003, the Department issued verification outlines to Gerber, Green Fresh, and Shantou Hongda.

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushrooms Canning Company, Southwood Farms, Sunny Dell Foods, Inc., and United Canning Corp.

[2] The petitioner's request included the following companies: (1) China Processed Food Import & Export Company (''China Processed''), (2) Shantou Hongda Industrial General Corporation (''Shantou Hongda''); (3) Shenxian Dongxing Foods Co., Ltd. (''Shenxian Dongxing''); (4) Gerber; (5) Green Fresh; (6) Raoping Xingyu Foods Co., Ltd. (''Raoping Xingyu''); and (7) Compania Envasadora Del Atlantico.

On February 5, 2003, Gerber and Green Fresh submitted comments on the petitioner's September 6, 2002, PAI submission and additional PAI. This PAI submission was untimely filed for consideration in the preliminary results. However, pursuant to 19 CFR 351.301(c)(3)(ii), we will consider the information contained in this submission in the final results.

The Department conducted verification of the responses of Gerber, Green Fresh, and Shantou Hongda during the period January 9, through 25, 2003. From February 12 through 14, 2003, the Department issued the verification reports for these companies.

In February 2003, the petitioner submitted pre-preliminary results comments on the data provided by all respondents in these reviews.

Scope of Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States[4] (''HTS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Reviews

The period of reviews (''POR'') is February 1, 2001, through January 31, 2002.

Verification

As provided in section 782(i)(2) of the Act, we verified information provided by each respondent. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification report for each company. (For further discussion, *see* October 21, 2002, Verification Report for Zhangzhou Jingxiang in the Fourth Antidumping Duty New Shipper Review (''Zhangzhou Jingxiang Verification Report''); October 24, 2002, Verification Report for Shenxian Dongxing in the Third Antidumping Duty Administrative Review (''Shenxian Dongxing Verification Report''); the November 8, 2002, Verification Reports for Guangxi Yulin and Shenzhen Qunxingyuan in the Fourth Antidumping Duty New Shipper Review (''Guangxi Yulin Verification Report'' and ''Shenzhen Qunxingyuan Verification Report''); the February 12, 2003, Verification Reports for Gerber and Green Fresh in the Third Antidumping Duty Administrative Review (''Gerber Verification Report'' and ''Green Fresh Verification Report''); and the February 14, 2003, Verification Report for Shantou Hongda in the Third Antidumping Duty Administrative Review (''Shantou Hongda Verification Report'').)

Partial Rescission of New Shipper Review

For the reasons stated below, we are preliminarily rescinding, in part, the new shipper review with respect to Zhangzhou Jingxiang and Shenzhen Qunxingyuan.

Specifically, we are preliminarily rescinding the new shipper review with respect to Zhangzhou Jingxiang because it failed to provide us with the necessary documentation for determining which entity or entities own it. Furthermore, Zhangzhou Jingxiang was unable to explain whether or not its owner was affiliated with any PRC exporters or producers of the subject merchandise. Specifically, in its Section A response, Zhangzhou Jingxiang stated that it is an entity wholly owned by a single U.S. citizen. However, our examination at verification of Zhangzhou Jingxiang's bank account records indicated that the entire investment of Zhangzhou Jingxiang's capital was provided to it by two U.S. importers of its merchandise, neither of which was the U.S. citizen which Zhangzhou Jingxiang claimed was its owner. Although Zhangzhou Jingxiang continued to maintain at verification that it was not owned by either U.S. importer, it could not substantiate with certainty which entity(ies) owned it and the affiliations of that entity(ies). Moreover, Zhangzhou Jingxiang was unable to provide documentation from either U.S. importer which showed each entity's ownership holdings, despite the Department's request for this information. (*See* Zhangzhou Jingxiang Verification Report at 3–5.)

In order to qualify for a new shipper review under 19 CFR 351.214, a company must certify, among other things, that since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation. (*See* 19 CFR 351.214(2)(iii)(A).) Given that Zhangzhou Jingxiang could not substantiate its affiliations and, thus, its certification (which it provided prior to the initiation of the new shipper review) at verification, it is not entitled to a new shipper review. Therefore, we are preliminarily rescinding this review with respect to Zhangzhou Jingxiang.

In addition, we are preliminarily rescinding the administrative review with respect to Shenzhen Qunxingyuan because we find that it did not have a *bona fide* sale during the POR, as required by 19 CFR 351.214(b)(2)(iv)(C), based on the totality of the facts on the record. Specifically, we find that the price of its single reported sale was aberrationally high relative to the average unit value of all comparable canned mushroom imports from the PRC during the POR and during the month in which the sale was made. Moreover, we find that the price for the can size included in this sale was not within the reasonable range of prices charged by other PRC exporters under

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the Antidumping Duty Order. *See* ''Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000.

[4] Prior to January 1, 2002, the HTS subheadings were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

review for the comparable goods sold during the POR.

We also find that the quantity of the sale was abnormally low when compared to the average size of shipments of comparable goods during the month in which the sale was made and to the range of shipment sizes of other PRC exporters under review for comparable merchandise. In addition, because Shenzhen Qunxingyuan had no other sales of any merchandise, subject or non-subject, during or after the POR and therefore, apparently, had no commercial income during this period, we believe the legitimacy of this company as a viable commercial entity is called into question. In addition, the conflicting information we obtained regarding the address of its U.S. customer and other information regarding another respondent relating to this customer's reported address, leads us to question the legitimacy of the U.S. customer, and as a result, the bona fides of the reported sale itself. For all of these reasons, the Department preliminarily finds Shenzhen Qunxingyuan's sole U.S. sale during the POR was not a *bona fide* commercial transaction. (See February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary for further discussion.)

Relationship Between Two Respondents

Two respondents in this review, Gerber and Green Fresh, revealed to the Department on the record that they had a business relationship during the POR. The Department finds that this relationship resulted in evasion of antidumping cash deposits during the POR. (*See* February 28, 2003, memorandum from Office Director to the Acting Deputy Assistant Secretary for further discussion.)

As stated in *Tung Mung Development* v. *United States,* 219 F. Supp. 2d 1333 (CIT August 22, 2002), *appeal entered (''Tung Mung* v. *United States''),* the Department has a duty to apply its law in a manner as to prevent the evasion of antidumping duties: ''The ITA has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, the ITA has a certain amount of discretion [to act] * * * with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law. *Mitsubishi Elec. Corp.* v. *United States,* 12 C.I.T. 1025, 1046, 700 F. Supp. 538, 555 (1988), aff'd 898 F.2d 1577 (Fed. Cir. 1990).'' The Department has preliminarily calculated an individual margin for each of these respondents based on the data reported by each of them, adjusted to reflect verification findings, which it will also use to calculate importer-specific assessment rates. However, because the Department is concerned that antidumping duty cash deposits may be evaded again in subsequent PORs, as they were in this POR, the Department has determined it appropriate to assign to each of these respondents for future cash deposit purposes the higher of the rates calculated for each of them in this review.

Facts Available

For the reasons stated below, we have preliminarily applied partial adverse facts available to Shenxian Dongxing.

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested (subject to sections 782(c)(1) and 782(e) of the Act), significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

In this review, the Department issued Shenxian Dongxing a supplemental questionnaire, requesting it to address discrepancies in data provided in its original questionnaire response and to provide secondary worksheets which demonstrated how it derived the numerical data contained in its response. As a result of conducting verification of the data submitted by Shenxian Dongxing, we discovered at verification that Shenxian Dongxing provided the Department with erroneous quantity (*i.e.*, drained weight and packed weight) data for *all* of its U.S. sales during the POR which were reported in its U.S. sales listing contained in its Section C response. At verification, Shenxian Dongxing acknowledged these errors and explained that they were data processing errors. (*See* Shenxian Dongxing Verification Report at 3, and 15 through 17.)

The sales and packed quantity figures reported for each U.S. sale are derived from data contained in the sales invoice (*i.e.*, number of cartons, number of cans, and per-unit drained weight) and packing list (*e.g.*, net per-unit weight). The sales quantity data is critical for purposes of calculating the weighted-average dumping margin, and the packed weight quantity is important for purposes of calculating the respondent's U.S. movement expenses (which are deducted from the U.S. price for margin calculation purposes). While the erroneous quantity figures at issue cannot be fixed using accurate, verified information on the record, the U.S. gross unit price data reported by this respondent is reliable and can be used for purposes of calculating sales-specific margins for the respondent. Furthermore, the errors at issue are isolated in nature and not so egregious that the Department is unable to use the rest of Shenxian Dongxing's reported U.S. sales data, after adjustments per verification findings, for purposes of calculating a margin. However, to do so, we must resort to facts available because we are unable to calculate a weighted-average margin by using this data. We therefore find that, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted in this segment of the proceeding with respect to Shenxian Dongxing.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Section 776(b) of the Act further provides that, in selecting from among the facts available, the Department may employ adverse inferences against an interested party if that party failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* ''Statement of Administrative Action'' accompanying the URAA, H. Rep. No. 103–316, 870 (1994) (''SAA''). As stated above, Shenxian Dongxing had the ability to report accurate quantity information for each of its U.S. sales reported in its response, and it admitted that it failed to do so. We therefore find that Shenxian Dongxing failed to cooperate to the best of its ability in this segment of the proceeding. As a result, pursuant to section 776(b) of the Act, we have made an adverse inference with respect to Shenxian Dongxing.

In this segment of the proceeding, in accordance with Department practice (*see, e.g., Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review,* 68 FR 1031, 1033 (January 8, 2003)), as adverse facts available, we have assigned to exports of the subject merchandise by Shenxian Dongxing a rate of 68.45 percent, which is the highest rate calculated for any of its U.S. sales transactions. The Department's

practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner.'' (*See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932, (February 23, 1998). We believe that the rate assigned is appropriate in this regard. Furthermore, we are not applying total adverse facts available because, pursuant to section 782(e) of the Act, we believe that we may derive from the record sufficient information to calculate an appropriate adverse facts available margin. Thus, we are applying as partial adverse facts available, a rate of 68.45 percent to Shenxian Dongxing.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). One respondent in these reviews, Gerber, is wholly owned by persons located outside the PRC. Thus, for Gerber, because we have no evidence indicating that it is under the control of the PRC government, a separate rates analysis is not necessary to determine whether it is independent from government control. (*See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review,* 66 FR 44331 (August 23, 2001), which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fifth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 29080 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review,* 66 FR 27063 (May 16, 2001), which cites to *Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review,* 66 FR 1303, 1306 (January 8, 2001) (where the respondent was wholly owned by a company located in Hong Kong); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong).)

Three respondents, Green Fresh, Guangxi Yulin, and Shenxian Dongxing are joint ventures of PRC entities. The other respondent, Shantou Hongda, is owned by all of the people. Thus, a separate-rates analysis is necessary to determine whether each of these four exporters is independent from government control. (*See Notice of Final Determination of Sales at Less Than Fair Value:* Bicycles From the People's Republic of China (''*Bicycles''),* 61 FR 56570 (April 30, 1996).) To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Green Fresh, Guangxi Yulin, Shantou Hongda, and Shenxian Dongxing have placed on the administrative record the following document to demonstrate absence of *de jure* control: the 1994 ''Foreign Trade Law of the People's Republic of China.'' In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988; the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC''; and the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''). (*See* February 28, 2003, memorandum to the file which places the above-referenced laws on the record of this proceeding.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by ''all of the people'' absent proof on the record to the contrary. (See, *e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China (''Furfuryl Alcohol'')* 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 29571 (June 5, 1995).)

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Silicon Carbide,* 59 FR at 22587, and *Furfuryl Alcohol,* 60 FR at 22544.) Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. (*See Silicon Carbide,* 59 at 22587 and *Furfuryl Alcohol,* 60 FR at 22545.)

Green Fresh, Guangxi Yulin, Shantou Hongda, and Shenxian Dongxing each has asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that its

pricing during the POR does not suggest coordination among exporters. Based on our verification findings, there is a sufficient basis to preliminarily determine that each of these respondents has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at less-than-fair-value (''LTFV''), we compared the export price to the normal value, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used export price methodology in accordance with section 772(a) of the Act because the subject merchandise was sold by the exporter outside the United States directly to an unaffiliated purchaser in the United States prior to importation and constructed export price was not otherwise indicated. We made the following company-specific adjustments:

A. Gerber

For Gerber, we calculated export price based on packed, delivered prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and international freight (which included ocean freight), foreign and U.S. brokerage and handling expenses, and U.S. duty expenses in accordance with section 772(c) of the Act. Because foreign inland freight, foreign brokerage, and handling charges were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* ''Surrogate Country'' section below for further discussion of our surrogate country selection). To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies. (*See Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review,* 68 FR 1031, 1035 (January 8, 2003).) To value foreign brokerage and handling expenses, we relied on public information reported in the 1998–1999 antidumping duty administrative and new shipper reviews of stainless steel bar from India. Because international freight for all U.S. sales was provided by a market-economy service provider and paid for in U.S. dollars, we used the data reported by Gerber for this charge, adjusted to reflect verification findings. Also, as a result of our verification findings, we revised the reported U.S. brokerage and handling expenses, and added an amount for harbor maintenance fees and merchandise processing fees to the reported U.S. duty expense amounts. (*See* Gerber Verification Report at 3, and 11–15.)

B. Green Fresh

For Green Fresh, we calculated export price based on packed, CNF foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling charges in the PRC, and international freight in accordance with section 772(c) of the Act. (*See* discussion above for further details.) Because foreign inland freight, foreign brokerage, and handling charges were provided by PRC service providers or paid for in a renminbi, we based those charges on surrogate rates from India. Because international freight for all U.S. sales was provided by a market-economy service provider and paid for in U.S. dollars, we used Green Fresh's reported data for this charge. Based on our verification findings, we revised the reported distance from Green Fresh's supplier factory, Zhangzhou Longhai Lu Bao Food Co., Ltd. (''Lu Bao''), to the port of exportation. (*See* Green Fresh Verification Report at 13.)

C. Guangxi Yulin

For Guangxi Yulin, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling charges in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage and, handling charges were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) Based on our verification findings, we revised the reported distance from Yulin to the port of exportation and the per-unit packed weight amount used to calculate foreign inland freight and brokerage and handling charges. (*See* Guangxi Yulin Verification Report at 11, 12.)

D. Shantou Hongda

For Shantou Hongda, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage, and handling charges were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) Because Shantou Hongda reported its U.S. prices net of ocean freight (which was separately invoiced and paid in full by its U.S. customers), we did not deduct an amount for this expense from the starting price. Based on our verification findings, we revised (1) the gross unit prices reported for certain transactions as explained further below; (2) the reported distance from Shantou Hongda's supplier factory, Lixi Cannery (''Lixi''), to the port of exportation; and (3) the reported per-unit packed weight based on data contained in the Shantou Hongda's response.

Our verification findings revealed that the gross unit prices reported for numerous sales examined at verification (*i.e.,* 15 of 43 examined sales observations) were incorrect. Therefore, we corrected these prices to reflect the actual prices verified. In so doing, we found that certain prices were under-reported and other prices were over-reported. Because Shantou Hongda did not explain at verification the nature of these price reporting errors, and given the number of transactions in our verification sample we found to be affected by price reporting errors, we determined that it is appropriate, pursuant to section 776(a)(2)(D) of the Act, to apply facts available to the prices of the remaining U.S. transactions. Without reliable price information on the record, the Department cannot accurately calculate an antidumping rate for Shantou Hongda. Thus, the Department must apply facts available. Because Shantou Hongda did not provide the Department with an accurate list of U.S. prices, it did not cooperate to the best of its ability in responding to the Department's request for information. Thus, pursuant to 776(b) of the Act, the Department is instructed to apply an inference which is adverse to the uncooperative party. Accordingly, as partial adverse facts

available, we have adjusted the reported U.S. gross prices of the sales we did not examine at verification by deducting an amount equal to the weighted-average difference between the over-reported and actual prices for the sales we did examine at verification. (*See* Shantou Hongda Verification Report at 13, 15.)

E. Shenxian Dongxing

For Shenxian Dongxing, we calculated export price based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage, and handling expenses in accordance with section 772(c) of the Act. Because foreign inland freight, brokerage, and handling expenses were provided by PRC service providers or paid for in renminbi, we based these charges on surrogate rates from India. (*See* discussion above for further details.) Because Shenxian Dongxing reported its U.S. prices net of ocean freight (which was separately invoiced and paid in full by its U.S. customers), we did not deduct an amount for this expense from the starting price. Based on our verification findings, we revised (1) the gross unit prices reported for certain U.S. sales transactions; and (2) the reported per-unit packed weight based on data contained in the record. (*See* Shenxian Dongxing Verification Report at 14–17.) The error in the reported per-unit packed weight for each U.S. sales transaction was a result of inaccurate application of Shenxian Dongxing's packed weight calculation methodology. As stated in the ''Facts Available'' section above, without reliable packing weight information on the record, the Department cannot accurately calculate actual U.S. movement expenses for each reported U.S. sales transaction. Thus, the Department, pursuant to section 776(a)(2)(D) of the Act, must apply facts available. Because Shenxian Dongxing did not provide the Department with accurate per-unit packed weights for each of its U.S. sales, it did not cooperate to the best of its ability in responding to the Department's request for information. Thus, pursuant to 776(b) of the Act, the Department is instructed to apply an inference which is adverse to the uncooperative party. Accordingly, as partial adverse facts available, we have used the highest reported per-unit packed weight figure reported for Shenxian Dongxing's smallest can size to calculate the U.S. movement expenses for all its sales of the subject merchandise . (*See* Shenxian Dongxing Verification Report at 14 through 17.)

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. (*See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003).) None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development. (*See* April 30, 2002, Memorandum from the Office of Policy to the Team Leader.) In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we selected India as the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on the factors of production which included, but were not limited to: (A) Hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by the five respondents which produced the subject merchandise they exported to the United States during the POR. To calculate normal value, we multiplied the reported unit factor quantities by publicly available Indian values.

Certain respondents failed to provide the Department with requested information. Gerber purchased its cow manure and straw from multiple suppliers, but did not report a weighted-average distance for those two inputs although such information was expressly requested by the Department. Green Fresh purchased its labels from multiple suppliers, but failed to report a weighted-average distance for those labels, again, despite the Department's request for such information. For certain inputs (*i.e.*, salt and brined mushrooms), Shantou Hongda made errors in reporting the total consumption of these inputs and failed to state any reason for those errors. In addition, Shantou Hongda did not report the distance for brined and fresh mushrooms which it purchased from suppliers during the POR.

In each of these instances, the respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, or to explain the reason for the missing information, within the meaning of section 776(b) of the Act. Without the requested information, the Department must use facts available on the record, pursuant to section 776(a)(2)(D) of the Act. Because the Department finds that these parties did not act to the best of their abilities in providing us with the necessary information, section 776(b) of the Act directs us to apply an adverse inference in these reviews. Accordingly, for Gerber, we have used the furthest distance reported for any supplier of cow manure and straw to value freight for these inputs, respectively. For Green Fresh, we used the furthest distance reported for labels to value freight. For Shantou Hongda, we increased the reported per-unit factor amounts for brined mushrooms and salt by the percentage difference between the reported and verified consumption amounts for each input. In addition, we have used the furthest distance reported for any of its suppliers of brined/fresh mushrooms to value freight.

Based on our verification findings at Gerber, we also revised the following data in Gerber's response: (1) The reported per-unit can, lid, label, and processing labor amount for 4-ounce cans; (2) the reported per-unit lid and processing labor amount for 68-ounce cans; and (3) the distances from Gerber to its coal supplier. In addition, we valued the freight for salt and citric based on the supplier distances we obtained for those inputs at verification. (*See* Gerber Verification Report at 20, 22, and 24, and February 28, 2003, Memorandum from Case Analyst to the

File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Green Fresh, we also revised the following data in Green Fresh's response: (1) The reported per-unit fresh mushroom, coal (used for growing mushrooms), salt, and processing labor amounts for all can sizes; (2) the per-unit amounts for four materials reported for one canned mushroom product code; and (3) the per-unit amounts for two materials reported for another canned mushroom product code. (*See* Green Fresh Verification Report at 3, 20, and 23, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Shantou Hongda, we also revised the following data in Shantou Hongda's response: (1) The salt, straw, and labor factors used to preserve the mushrooms at the farm; (2) the reported per-unit coal amount for 4, 8, and 16-ounce cans; (3) the reported per-unit label and can/lid amounts for 16-ounce cans; and (4) the distances from Shantou Hongda's supplier, Lixi, to its suppliers for coal, spawn, citric acid, and labels. (*See* Shantou Hongda Verification Report at 7–13, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Guangxi Yulin, we revised the following data in Guangxi Yulin's response: (1) The reported per-unit factor amounts for all material, energy, and labor inputs based on revisions to the total POR mushroom production quantity figure;[5] and (2) the distances from Guangxi Yulin to its coal, tin plate, citric acid, salt, label suppliers. (*See* Guangxi Yulin Verification Report at 1, 11, and 26, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

Based on our verification findings at Shenxian Dongxing, we also revised the following data in Shenxian Dongxing's response: (1) The reported per-unit potassium super, calcium carbonate, electricity, direct and packing labor amounts for all can sizes; (2) the reported per-unit copper wire amounts for 4- and 16-ounce cans; (3) the reported per-unit tin plate amount for 8-ounce cans; (4) the reported per-unit copper wire, tin plate, and glue amounts for 62- and 68-ounce cans; (5) the reported per-unit label amounts for 4- and 68-ounce cans; (6) the distances from Shenxian Dongxing to 10 of its suppliers situated in three locations. (*See* Shenxian Dongxing Verification Report at 21–23 and 25–26, and February 28, 2003, Memorandum from Case Analyst to the File re: Calculation Memorandum for the Preliminary Results.)

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we adjusted for inflation using wholesale price indices (''WPIs'') published in the International Monetary Fund's *International Financial Statistics.*

To value fresh mushrooms, we used an average price based on data contained in the 2000–2001 financial report of Premier Explosives Ltd. (''Premier''). For those respondents which purchased brined mushrooms, we also used the fresh mushroom price to value brined mushrooms because we were unable to obtain publicly available information which contained a price for brined mushrooms.

To value manure, spawn, and straw, we used an average price based on data contained in the 2000–2001 financial report of Flex Foods Ltd. (''Flex Foods'') and the 2001–2002 financial report of Agro Dutch Foods, Ltd. (''Agro Dutch'') (*i.e.*, two Indian producers of the subject merchandise). For those respondents which used mother spawn, we also used the average spawn price to value mother spawn because we were unable to obtain publicly available information which contained a price for mother spawn. To value grain and super phosphate, we used price data contained in Flex Foods' 2000–2001 financial report because no such data was available from the other financial reports on the record. To value tin cans and lids, we used price data from the May 21, 2001, public version response submitted by Agro Dutch in the 2nd antidumping duty administrative review of certain preserved mushrooms from India, and derived per-unit can-size-specific prices using the petitioner's methodology contained in its September 6, 2002, PAI submission. To value salt, we used price data contained in the 1998–1999 financial report of Weikfield Agro Products Ltd. (*i.e.*, another Indian producer of the subject merchandise) because no such data was available from the other financial reports on the record. To value citric acid, boric acid, magnesium sulfate, calcium carbonate, and formaldehyde, we used an average price based on April 2001–December 2001 data contained in *Monthly Statistics of the Foreign Trade of India* (*''Monthly Statistics''*) and February 2001–January 2002 data contained in *Chemical Weekly*. For those prices obtained from *Chemical Weekly*, where appropriate, we also deducted an amount for excise taxes based on the methodology applied to values from the same source in a prior review involving the subject merchandise from the PRC. (*See* page 4 of the May 31, 2001, *Preliminary Results Valuation Memorandum for the* Preliminary Results of New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China, 66 FR 30695 (June 7, 2001) which has been placed on the record of this proceeding.) To value calcium phosphate, we used a December 1999 value from *Chemical Market Reporter*. Although the value from *Chemical Market Reporter* was in U.S. dollars, it was not contemporaneous with the POR. Therefore, we inflated this value to the POR using WPIs.

To value gypsum, we used an average price based on April 2001–December 2001 data contained in *Monthly Statistics* and data contained in Flex Foods' 2000–2001 financial report. To value potassium super, we used an average price based on February 2001–January 2002 data contained in *Chemical Weekly*. To value carbamide (*i.e.*, urea), we used an average price based on February 2001–January 2002 data contained in *Chemical Weekly* and data contained in Flex Foods' 2000–2001 financial report. To value cotton, tin plate scrap, copper conducting wire, and copper wire scrap, can and lid scrap, and coal, we used April 2001–December 2001 average import values from *Monthly Statistics*. We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line.* To value tin plate, we used an average price based on April 2001–December 2001 data contained in *Monthly Statistics* and data contained in Agro Dutch's 2001–2002 financial report.

We did not value water separately because, consistent with our methodology used in prior reviews of the subject merchandise, we believe that the costs for water are included as factory overhead in the Indian financial statements used to calculate factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit. (*See Certain Preserved Mushrooms from the People's Republic*

[5] In order to derive the per-unit consumption amount for each factor of production as reported in the Section D response, the respondent divided the total POR factor consumption of that input over the total POR production weight.

of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 67 FR 46173 (July 12, 2002) and accompanying Issues and Decision Memorandum at Comment 6.)

To value electricity, we used the 2000–2001 ''revised estimate'' average rate for industrial consumption as published in the *Annual Report (2001–02) on the Working of State Electricity Boards & Electricity Departments* by the Government of India's Planning Commission (Power & Energy Division).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, we used the audited 2001–2002 financial data of Agro Dutch and the audited 2000–2001 financial data of Flex Foods and Himalya International Ltd. (''Himalya''), all Indian producers of the subject merchandise. In addition, we did not use two other Indian sources of data: the 2000–2001 fiscal data obtained for Premier or the 1999–2000 fiscal data obtained for Hindustan Lever Limited, because although each company produces the subject merchandise, the subject merchandise is but one of several products which they produce and is not the major product produced by either company.

Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For a further discussion of the adjustments made, *see* the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States*, 117 F. 3d 1401 (Fed. Cir. 1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value corrugated cartons, labels, paper, separators, tape, and glue we used April 2001–December 2001 average import values from *Monthly Statistics.*

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the following exporters under review during the period February 1, 2001, through January 31, 2002:

Manufacturer/producer/exporter	Margin percent
Gerber Food (Yunnan) Co., Ltd	*46.41
Green Fresh Foods (Zhangzhou) Co., Ltd.	*46.41
Guangxi Yulin Oriental Food Co., Ltd (''Guangxi Yulin'')	0.00
Guangxi Yulin / all others	198.63
Shantou Hongda Industrial General Corporation	118.51
Shenxian Dongxing Foods Co., Ltd	**68.45
PRC-Wide Rate	198.63

*The margin calculated for Gerber is 1.17 percent and that calculated for Green Fresh is 46.41 percent. However, for cash deposit purposes, as explained above, we have assigned to Gerber and Green Fresh the higher of the rates calculated for each of them during the POR. For assessment purposes, we intend to calculate importer-specific duty assessment rates based on the data provided by these two companies, as adjusted to reflect verification findings.

**For assessment purposes, we intend to instruct the Customs Service to apply Shenxian Dongxing's margin to the entered value of the subject merchandise from Shenxian Dongxing during the POR, irrespective of importer, because we were not able to rely on its reported quantity amounts in order to calculate importer-specific assessment rates on a per-unit basis, as indicated in the ''Assessment Rates'' section below. (*See* ''Facts Available'' section above for further discussion.)

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held 44 days after the date of publication of this notice, or the first work day thereafter.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than March 31, 2003, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than April 7, 2003, pursuant to 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of these administrative and new shipper reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we do not have the actual entered value for any respondent (with the exception of Gerber) for which we calculated a margin because they are not the importers of record for the subject merchandise. For these respondents for which we do not have entered value information, we intend to calculate individual customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined.

Although Gerber was the importer of record, it did not provide entered value data for each of its reported U.S. sales. Therefore, because we do not have entered value information for all of its U.S. sales, we will also calculate for this respondent importer-specific duty assessment rates for the subject merchandise by aggregating the dumping margins calculated for the examined sales and dividing this amount by the total entered quantity of the sales examined. To determine whether the duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-or customer-specific *ad valorem* ratios based on export prices.

The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews. We will instruct the Customs Service to assess antidumping duties on all appropriate

entries covered by this review if any importer- or customer-specific assessment rate calculated in the final results of these reviews is above *de minimis* (*i.e.*, at or above 0.50 percent). See 19 CFR 351.106(c)(1). For entries of the subject merchandise during the POR from companies not subject to these reviews, we will instruct the Customs Service to liquidate them at the cash deposit rate in effect at the time of entry. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of these reviews and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Guangxi Yulin of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Guangxi Yulin of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured and exported by Guangxi Yulin, we will require a cash deposit at the rate established in the final results; and (2) for subject merchandise exported by Guangxi Yulin but not manufactured by it, the cash deposit will be the PRC countrywide rate (*i.e.*, 198.63 percent).

The following deposit requirements will be effective upon publication of the final results of the antidumping administrative review for all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each respondent listed above will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding and for whom there was no request for administrative review (*e.g.*, China Processed and Raoping Xingyu) will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (including Shenzhen Qunxingyuan and Zhangzhou Jingxiang) will continue to be 198.63 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act and 19 CFR 351.221(b).

Dated: February 28, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–5301 Filed 3–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022603D]

Marine Mammals; Notice of Intent to Prepare an Environmental Impact Statement for Issuing Annual Gray Whale Subsistence Quotas to the Makah Indian Tribe for the years 2003 through 2007

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

ACTION: Notice of intent to prepare an Environmental Impact Statement(EIS); request for written comments.

SUMMARY: NMFS announces its intention to prepare an EIS, in accordance with the National Environmental Policy Act, to assess the impacts of issuing annual subsistence quotas for gray whales to the Makah Tribe for the years 2003 through 2007. NMFS solicits comments and information to facilitate this analysis.

DATES: Comments and information must be postmarked by April 21, 2003.

ADDRESSES: Written comments should be sent to Chief, Marine Mammal Division (F/PR2), Office of Protected Resources, National Marine Fisheries Service, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Please mark the outside of the envelope with ''Comments on Gray Whale Analysis.'' Comments will not be accepted if submitted via e-mail or internet.

FOR FURTHER INFORMATION CONTACT: Chris Yates, 301–713–2322.

SUPPLEMENTARY INFORMATION: At its 2002 annual meeting, the International Whaling Commission (IWC) approved a quota of 620 gray whales for an aboriginal subsistence harvest for the years 2003 through 2007. The basis for the quota was a joint request by the Russian Federation (for a total of 600 whales) and the United States (for a total of 20 whales). The subsistence and ceremonial needs of the Makah Indian Tribe were the foundation of the United States' request to the IWC.

On December 20, 2002, the Ninth Circuit Court of Appeals reversed a district court ruling that upheld NMFS' issuance of a quota to the Makah Tribe to hunt a limited number of gray whales for aboriginal subsistence purposes in 2001 and 2002. See Anderson v. Evans, 314 F.3d 1006 (9th Cir. 2002). The Federal Government is currently considering whether to request rehearing of Anderson v. Evans. Subject to the outcome of a possible rehearing, NMFS is preparing an EIS on the issuance of annual quotas to the Makah Tribe for a subsistence hunt on gray whales for the years 2003 through 2007. NMFS is evaluating the following four alternatives:

Alternative 1 - Grant the Makah Tribe a quota of 5 whales per year over 5 years though annual quotas with restrictions that would allow a limited hunt on the gray whale summer feeding aggregation and limit the harvest to 20 landed whales over 5 years.

Alternative 2 - Grant the Makah Tribe a quota of 5 whales per year over 5 years through annual quotas with restrictions to target the hunt on migrating whales and limit the harvest to 20 landed whales over 5 years.

Alternative 3 - Grant the Makah Tribe a quota of 5 whales per year over 5 years through annual quotas without time or area restrictions. The hunt would be limited to 20 landed whales over 5 years.

Alternative 4 - (No Action) - Do not grant the Makah Tribe a quota.

Information Solicited

To ensure that the review is comprehensive and based on the best available information, NMFS is soliciting information and comments from any interested party concerning

the issuance of annual gray whale quotas of 5 whales per year over 5 years to the Makah Tribe for the years 2003 through 2007. NMFS is particularly interested in any new information on the affected environment or environmental consequences that has become available since the last analysis was completed. It is requested that data, information, and comments be accompanied by (1) supporting documentation, and (2) the name, address, andaffiliation of person submitting data. Following the issuance of the draft EIS NMFS will solicit additional public input.

Dated: February 28, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources,National Marine Fisheries Service.

[FR Doc. 03–5285 Filed 3–5–03; 8:45am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by April 7, 2003.

Title, Form Number, and OMB Number: Department of Defense (DoD) Statement of Intent; AMC Form 207; OMB Number 0701–0137.

Type of Request: Extension.

Number of Respondents: 15.

Responses Per Respondent: 1.

Annual Responses: 15.

Average Burden Per Response: 20 hours.

Annual Burden Hours: 300.

Needs and Uses: The Department of Defense Air Carrier Survey and Analysis Office (HQ AMC/DOB) is responsible for the assessment of a commercial air carrier's ability to provide quality, safe, and reliable airlift to the Department of Defense. HQ AMC/DOB uses Air Mobility Command (AMC) Form 207 to acquire information needed to make a determination if the commercial carriers can support the Department of Defense. Information is evaluated and used in the approval process. Failure to respond renders the commercial air carrier ineligible for contracts to provide air carriers service to the Department of Defense.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235. New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5264 Filed 3–5–03; 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 Meetings.

SUMMARY: The Defense Science Board Task Force on Enabling Joint Force Capabilities will tentatively meet in closed session on March 17, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA; April 17, 2003, at the U.S. Joint Forces Command, Norfolk, VA; and May 20, 2003, at U.S. Strategic Command, Offutt AFB, NE. This Task Force will review the current state of assigned responsibilities and accountability for joint capabilities to quickly bring combat forces together and focus them on joint objectives across a wide spectrum of possible contingencies and will help identify unfilled needs and areas where assigned responsibility and accountability calls for further clarification and/or organizational arrangements.

This mission of the Defense Science Board 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 identify specific characteristics and examples of organizations that could be capable of accepting responsibility and accountability for delivering the capability with needed responsiveness, and will recommend further steps to strengthen the joint structure ability to quickly integrate service-provided force capabilities into effective joint forces.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 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: February 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–5263 Filed 3–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on April 7, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on February 25, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal

Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF SAFPA D

SYSTEM NAME:

Your Guardians of Freedom User Database.

SYSTEM LOCATION:

Doe Anderson Interactive, 620 W. Main Street, Louisville, KY 40202–2933.

Subsystems of the main system may be located at the Public Affairs Offices at Air Force Bases, Air National Guard or Air Force Reserve or similar installations to which an individual is assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force personnel, Air Force Reserve Command personnel, and Air National Guard personnel who voluntarily submit information into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes, but is not limited to, to name, current grade, marital status, local address, name and address of spouse, parents or guardians, photographs, name and address of civilian employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and E.O. 9397 (SSN).

PURPOSE(S):

To provide an outreach program for commanders to communicate with families, civilian employers, educators, news media, and political and community leaders about the extensive role of airmen in the war on terrorism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To civilian employers of Air Reserve Component personnel for purposes of providing information regarding employer and employee rights, benefits, and obligations under the Uniformed Services Employment and Reemployment Rights Act; to accord appropriate public recognition to the employer for his or her support of Air Force programs and employee participation therein; and to provide information regarding Air Force and Air Reserve Component issues, plans, and operations and/or the involvement of employees in such activities.

To family members, political and community leaders, and the news media for purposes of providing information regarding Air Force and Air Reserve Component issues, plans, and operations and/or the involvement of Air Force personnel, active or reserve, in such activities.

The DoD Blanket Routine Uses' that appear at the beginning of the Air Force's compilation of systems of records apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

Retrieved by individual's name, unit and address.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration disposition is approved, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Your Guardians of Freedom, Office of the Secretary of the Air Force, Public Affairs, SAF/PA, 1690 AF Pentagon, Washington, DC 20330–1690.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should use the web-based login screen to contact system administrators by e-mail, or should address written requests to Your Guardians of Freedom, SAF/PA, 1690 AF Pentagon, Washington, DC 20330–1690.

Inquiries about a subsystem should be addressed to the Public Affairs Officer at the base or installation of the individual's assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should log into the system using the username and password they received when they initially registered. The web-based login screen provides information to retrieve forgotten passwords.

Individuals can also address written inquiries to Your Guardians of Freedom, SAF/PA, 1690 AF Pentagon, Washington, DC 20330–1690, or the installation Public Affairs Officer. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

Individuals may log into the system using the username and password they received when they initially registered and alter the information about them contained in the system.

Otherwise, the Air Force rules for accessing records and contesting contents and appealing initial determinations are published in Air Force Instruction 37–132, 32 CFR part 806b, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–5268 Filed 3–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD)—Destruction of Chemical Warfare Material at Blue Grass Army Depot, Kentucky

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: This announces the availability of the ROD to employ chemical neutralization followed by supercritical water oxidation (SCWO) at the Blue Grass Army Depot. The ROD documents the environmental analysis of the Defense Acquisition Executive decision to employ chemical neutralization followed by SCWO. A variety of factors were considered in making the technology selection decision including, but not limited to, mission needs, cost, schedule, environmental considerations, public concerns, and compliance with Chemical Weapons Convention.

ADDRESSES: To obtain a copy of the ROD, contact the Program Manger for Chemical Demilitarization, Public Outreach and Information Office (*Attn:* Mr. Mahall), Aberdeen Proving Ground, Maryland 21010–4005.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Mahall at (410) 436–1093, by far at (410) 436–5122, by mail at the above listed address or by electronic mail at *gregory.mahall@pmcd.apgea.army.mil.*

SUPPLEMENTARY INFORMATION: In its ROD of February 1988 (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement (EIS) on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites located within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent in the **Federal Register** (65 FR 75677–78, December 4, 2000) which provided notice that, pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, it was preparing a draft site-specific EIS for the Blue Grass Army Depot. On May 30, 2002, the Army published a Draft EIS to assess the site-specific health and environmental impacts of demilitarization of the chemical warfare material stored at the Blue Grass Army Depot. The Final EIS was published on December 27, 2002. All public comments received during the NEPA process have been considered in making this decision.

Dated: February 28, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 03–5252 Filed 3–5–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 7, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, Attn: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137 / DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0870–5 DAMH

SYSTEM NAME:

Army History Files (June 12, 2002, 67 FR 40280).

CHANGES:

* * * * *

SYSTEM LOCATION:

Replace the current '22 Ashburn Drive' address with 'U.S. Army Heritage and Education Center, 22 Ashburn Drive, Carlisle, PA 17013–5008.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete second address and replace with 'Director, U.S. Army Heritage and Education Center, 22 Ashburn Drive, Carlisle, PA 17013–5008.'

* * * * *

A0870–5 DAMH

SYSTEM NAME:

Army History Files.

SYSTEM LOCATION:

U.S. Army Center of Military History, Headquarters, Department of the Army, Washington, DC 20310–0200. Decentralized segments exist at historical offices at Headquarters, Department of the Army and field operating agencies, major commands, and the U.S. Army Military Historical Research Collection, Carlisle Barracks, PA 17013–5000; U.S. Army Center of Military History, 103 3rd Street, Fort McNair Washington, DC 20318–5058; U.S. Army Heritage and Education Center, 22 Ashburn Drive, Carlisle, PA 17013–5008. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel associated with the Army; individuals who offer historically significant items or gifts of money to the Army Museum System; and individuals who respond to the Army's Vietnam War Era Service Survey Questionnaire.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical resumes and personal working files of U.S. Army personnel; personal papers donated by individuals for historical research; photographs of Army personages; requests for historical documents regarding U.S. Army activities and responses thereto; copy of donor's proffer of gift agreement and correspondence with donor regarding status and/or location of donation(s).

Questionnaires and associated historical items received by the U.S. Army Military History Institute under its Veteran Survey Program. Associated historical items may include, but not limited to, audiotapes, books, camp/unit newspapers, diaries, documents, films, memoirs, and artifacts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 870–5, Military History: Responsibilities, Policies and Procedures; and 16 U.S.C. 470, National Historic Preservation Act.

PURPOSE(S):

To provide a record of donations and contributions of historical property to U.S. Army Museums and historical holdings; to enable Army museums and historical holdings to provide upon request by the donor or donor's heirs, information concerning the status/location of his/her donation; to enable the Army to establish title to the property.

Vietnam War Era Service Survey Questionnaires will be used to document recollections and opinions of veterans for historical studies of the U.S. Army.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally

permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be disclosed to a municipal corporation, a soldier's monument association, a State museum, an incorporated museum or exhibition operated and maintained for educational purposes only, a post of the Veterans of Foreign Wars or the American Legion, or other Federal museums upon donation or transfer of the historical property to one of those organizations.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders, photographs, and on electronic media. Artifacts will be stored in a secure area.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to persons having need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Permanent. Some historical material and photographs are retired to the Washington National Records Center when no longer needed; other such material is transferred to the Military History Research Collection at Carlisle Barracks, PA for preservation. Inquiries about historical events or persons, and responses thereto, are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Director, U.S. Army Heritage and Education Center, 22 Ashburn Drive, Carlisle, PA 17013–5008.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair, Washington, DC 20318–5058.

Individual should provide their full name, address and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the U.S. Army Center of Military History, 103 3rd Street, Fort McNair Washington, DC 20318–5058.

Individual should provide their full name, address and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her Army record, official Army documents, public records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–5266 Filed 3–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration consists of expanding the category of individuals and records covered, adding a new purpose, and adding two new routine uses. The new routine uses being added are below:

''To former spouses, who receive payments under 10 U.S.C. 1408, for purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.''

''To Federal, State, or local child support agencies, in response to their written requests for information regarding the gross and disposable pay of civilian employees, for purposes of assisting the agencies in the discharge of their responsibilities under Federal and State law.''

DATES: This proposed action will be effective without further notice on April 7, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Army Systems of Records Notices Manager, Department of Army Freedom of Information and Privacy Acts Office, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 25, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0703.07

SYSTEM NAME:

AAFES Employee Pay System Records (August 9, 1996, 61 FR 41588).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals paid by the Army and Air Force Exchange System (AAFES). These include, but are not limited to, civilian employees, contractors, family members, and spouse or former spouse.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry ''leave accrual date; retirement participation data; job code and title; employment category; pay plan; wage schedule; and base hourly rate; court orders affecting pay; and similar related documents.''

* * * * *

PURPOSE(S):

Revise the first paragraph by adding ''to process payment in compliance with court orders (*i.e.* Qualifying Domestic Relations Order).''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add two new paragraphs to entry ''To former spouses, who receive payments under 10 U.S.C. 1408, for purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.''

''To Federal, State, or local child support agencies, in response to their written requests for information regarding the gross and disposable pay of civilian employees, for purposes of assisting the agencies in the discharge of their responsibilities under Federal and State law.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Destroy after 6 years following termination of AAFES' involvement. Payroll Registers and Qualifying Domestic Relations Order records are permanent records.''

* * * * *

AAFES 0703.07

SYSTEM NAME:

AAFES Employee Pay System Records.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598;

Commander, Army and Air Force Exchange Service-Pacific Rim Region, Unit 35163, APO AP 96378–0163; and

Commander, Army and Air Force Exchange Service-Europe, Unit 24580, APO AE 09245–4580.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals paid by the Army and Air Force Exchange System (AAFES). These include, but are not limited to, civilian employees, contractors, family members, and spouse or former spouse.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name; Social Security Number; AAFES facility number; individual's pay, leave, and retirement records, withholding/deduction authorization for allotments, health benefits, life insurance, savings bonds, financial institutions, etc.; tax exemption certificates; personal exception and indebtedness papers; subsistence and quarters records; statements of charges, claims; roster and signature cards of designated timekeepers; payroll and retirement control and working paper files; unemployment compensation data requests and responses; reports of retirement fund deductions; management narrative and statistical reports relating to pay, leave, and retirement, leave accrual date; retirement participation data; job code and title; employment category; pay plan; wage schedule; and base hourly rate; court orders affecting pay; and similar related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Air Force; 42 U.S.C. 659, Consent by United States to income withholding, garnishment, and similar proceeding for enforcement of child support and alimony obligations; 31 CFR 285.11, Administrative Wage Garnishment; DoD Directive 7000.14–R, DoD Financial Management Regulation; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To provide basis for computing civilian pay entitlements; to record history of pay transactions, leave accrued and taken, bonds due and issued, taxes paid; to process payment in compliance with court orders (*i.e.* Qualifying Domestic Relations Order), and to answer inquiries and process claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Treasury Department to record checks and bonds issued.

To the Internal Revenue Service for the purpose of reporting taxable earnings, taxes withheld, and to locate delinquent debtors.

To States and cities/counties to provide taxable earnings of civilian employees to those States and cities or counties which have entered into an agreement with the Department of Defense and the Department of the Treasury.

To State Employment Offices to provide information relevant to the State's determination of individual's entitlement to unemployment compensation.

To the U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of debt claims against the Army and Air Force Exchange Service.

To former spouses, who receive payments under 10 U.S.C. 1408, for purposes of providing information on how their payment was calculated to include what items were deducted from the member's gross pay and the dollar amount for each deduction.

To Federal, State, or local child support agencies, in response to their written requests for information regarding the gross and disposable pay of civilian employees, for purposes of assisting the agencies in the discharge of their responsibilities under Federal and State law.

To private collection agencies for collection action when the Army and Air Force Exchange Service has exhausted its internal collection efforts.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to ''consumer reporting agencies'' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage medium.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are restricted to personnel who are properly cleared and trained and have an official need therefore. In

addition, integrity of automated data is ensured by internal audit procedures, data base access accounting reports and controls to preclude unauthorized disclosure.

RETENTION AND DISPOSAL:

Destroy after 6 years following termination of AAFES'' involvement. Payroll Registers and Qualifying Domestic Relations Order records are permanent records.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Headquarters, Army and Air Force Exchange Service, Attn: FA, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number; if terminated, include date and place of separation.

RECORD ACCESS POCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Headquarters, Army and Air Force Exchange Service, Attn: FA, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide their full name, Social Security Number, current address and telephone number; if terminated, include date and place of separation.

CONTESTING RECORD RROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; personnel actions; other agency records and reports, and from court orders; and similar documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–5267 Filed 3–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Defense Information Systems Agency is deleting three systems of records notices from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 7, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 681–2066.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

KNCS.01

SYSTEM NAME:

National Communications System Continuity of Operations Plan (NCS COOP) Automated Support (February 22, 1993, 58 FR 10562).

REASON:

There is no evidence that the system was ever implemented by DISA.

KNCS.02

SYSTEM NAME:

National Communications System (NCS) Plan for Emergencies and Major Disasters (February 22, 1993, 58 FR 10562).

REASON:

There is no evidence that the system was ever implemented by DISA.

KNCS.03

SYSTEM NAME:

National Communications System Emergency Action Group (NEAG) (February 22, 1993, 58 FR 10562).

REASON:

There is no evidence that the system was ever implemented by DISA.

[FR Doc. 03–5265 Filed 3–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2004–2005 year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended, (title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2004–2005 FAFSA.

DATES: Interested persons are invited to submit comments on or before May 5, 2003.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Joseph Schubart, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at *http://ifap.ed.gov;*
(2) Scroll down to ''Publications'';
(3) Click on ''FAFSAs and Renewal FAFSAs'';
(4) Click on ''By 2004–2005 Award Year'';
(5) Click on ''Draft FAFSA Form/Instructions''.

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's website: *http://www.adobe.com.*

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, ''in cooperation with agencies and organizations involved in providing student financial assistance,'' to ''produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under'' the title IV, HEA Programs. This form is the FAFSA. In addition, section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

The draft 2004–2005 FAFSA (posted to the IFAP website) incorporates suggestions from the community to simplify the FAFSA form, reducing the number of questions from 104 to 97. These suggestions included: Reducing the five enrollment status questions to one question; combining the two questions regarding the highest school the applicant's parents completed into one question, and removing the two questions asking if the applicant is interested in loans or work-study. The Secretary requests comments on ways to further simplify the application for students, parents, and schools.

In particular, the Secretary seeks comments on simplifying the FAFSA through use of the FAFSA on the Web product. The Secretary is considering adding capability to FAFSA on the Web to permit applicants to skip questions not required by their state of residence or for EFC determination. For example, if an applicant's state does not require question 18, enrollment status, FAFSA on the Web would not present question 18 to the applicant. The Secretary is also considering removing the early analysis option from the web application.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (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: February 28, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision of a currently approved collection.

Title: Free Application for Federal Student Aid (FAFSA) (JS).

Frequency: Annually.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 13,985,297.

Burden Hours: 7,770,355.

Abstract: The FAFSA collects identifying and financial information about a student applies for title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

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 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. 03–5207 Filed 3–5–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.364A]

Office of Elementary and Secondary Education; Improving Literacy Through School Libraries Program (LSL); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of this program is to improve student literacy skills and academic achievement by providing students with increased access to up-to-date school library materials; a well-equipped, technologically advanced school library media center; and well-trained, professionally certified school library media specialists.

Eligible Applicants: Local Educational Agencies (LEAs) in which at least 20 percent of the students served by the LEA are from families with incomes below the poverty line. (20 U.S.C. 6383). A list of LEAs with their family poverty rates is posted on the web at: *http://www.ed.gov/offices/OESE/LSL.*

Deadline for Notification of Intent to Apply for Funding: We strongly encourage each potential applicant to notify us by March 28, 2003, of your intent to submit an application for funding. We will be able to develop a more efficient process for reviewing grant applications if we have an estimate of the number of entities that intend to apply for funding under this competition. Notifications should be sent by e-mail to the following Internet address: *LSL@ed.gov.*

Please put ''Notice of Intent'' in the subject line. Applicants that fail to provide this e-mail notification may still apply for funding.

Applications Available: March 6, 2003.

Deadline for Transmittal of Applications: April 28, 2003.

Deadline for Intergovernmental Review: June 27, 2003.

Estimated Available Funds: $12,000,000.

Estimated Range of Awards: $20,000 to $350,000.

Estimated Average Size of Awards: $75,000.

Note: The size of the awards will be commensurate with the nature and scope of the work proposed and the number of schools to be served.

Estimated Number of Awards: 75–100.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Page Limit: The application must include the following sections: title page form (ED 424), one-page abstract, program narrative, budget summary form (ED 524) with budget narrative, individual resumes (up to 3 pages each) for project directors and other key personnel, statement of equitable access (GEPA 427), and other required forms and assurances as described in the application package. Please note that this program is a competitive discretionary grant program, so it is essential that your program narrative address the selection criteria that

reviewers use to evaluate your application.

Applicants are strongly encouraged to limit the program narrative (text plus all figures, charts, tables, and diagrams) to the equivalent of 15 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the program narrative.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Include all critical information in the program narrative, eliminating the need for appendices.
- The page limit does not apply to the title page form (ED 424), the one-page abstract, the budget summary form and narrative budget justification, the resumes, or the assurances and certifications.

We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read, with pages consecutively numbered.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 97, 98 and 99.

Description of Program: The Improving Literacy Through School Libraries (LSL) program, Subpart 4 of Part B of Title I of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act promotes comprehensive local strategies to improve student reading achievement by improving school library services and resources. The LSL program is one component of the Department's commitment to dramatically improving student reading achievement by focusing available resources, including those of school library media centers, on ensuring that no child is left behind. School library media centers contribute to the improvement of student reading achievement when there is increased collaboration among instructional and school library media center staff, provision of additional instructional materials and resources, and the extension of hours of operation to include non-school hours.

Invitational Priority

We are particularly interested in applications that meet the following invitational priority.

The Secretary strongly encourages applicants to focus on comprehensive and collaborative reading efforts that maximize the impact of the project on improving student reading achievement. Applicants are encouraged to demonstrate the direct link between the proposed activities and improved reading achievement.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Selection Criteria

We use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

We evaluate an application by determining how well the proposed project meets the following provisions:

(a) *Meeting the purpose of the statute* (10 points).

How well the proposed project addresses the intended outcome of the statute to improve student literacy skills and academic achievement by providing students with increased access to up-to-date school library materials; a well-equipped, technologically advanced school library media center; and well-trained, professionally certified school library media specialists.

(b) *Need for school library resources* (10 points). How well the applicant demonstrates the need for school library media improvement, based on the age and condition of school library media resources, including: Book collections; access of school library media centers to advanced technology; and the availability of well-trained, professionally certified school library media specialists, in schools served by the applicant.

(c) *Use of funds* (35 points). How well the applicant will use the funds made available through the grant to carry out those of the following activities that meet its demonstrated needs—

(1) Acquiring up-to-date school library media resources, including books.

(2) Acquiring and using advanced technology, incorporated into the curricula of the school, to develop and enhance the information literacy, information retrieval, and critical thinking skills of students.

(3) Facilitating Internet links and other resource-sharing networks among schools and school library media centers, and public and academic libraries, where possible.

(4) Providing professional development, as described in section 1222(d)(2) of the ESEA, for school library media specialists, and providing activities that foster increased collaboration between school library media specialists, teachers, and administrators.

(5) Providing students with access to school libraries during non-school hours, including the hours before and after school, during weekends, and during summer vacation periods.

(d) *Use of scientifically based research* (10 points). How well the applicant will use programs and materials that are grounded in scientifically based research, as defined in section 9101(37) of the ESEA, in carrying out one or more of the activities described under criterion(c) above.

(e) *Broad-based involvement and coordination* (15 points). How well the applicant will extensively involve school library media specialists, teachers, administrators, and parents in the proposed project activities and effectively coordinate the funds and activities provided under this program with other literacy, library, technology, and professional development funds and activities.

(f) *Evaluation of quality and impact* (20 points). How well the applicant will collect and analyze data on the quality and impact of the proposed project activities, including the extent to which the availability of, the access to, and the use of up-to-date school library media resources in the elementary schools and secondary schools served by the applicant were increased; and the impact on improving the reading skills of students.

Geographic Distribution

In making funding decisions we will also consider the equitable distribution of grants across geographic regions and among local educational agencies serving urban and rural areas.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of

applications to include additional formula grant programs and additional discretionary grant competitions. The Improving Literacy Through School Libraries Program, CFDA #84.364A, is one of the programs included in the pilot project. If you are an applicant under the Improving Literacy Through School Libraries Program you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget InformationNon-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Improving Literacy Through School Libraries Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and (2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date. The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Improving Literacy Through School Libraries Program at: *http://e-grants.ed.gov.*

FOR APPLICATIONS CONTACT: Applications will be available on the World Wide Web at the following sites: *http://www.ed.gov/offices/OESE/LSL; http://www.ed.gov/GrantApps.*

Hard Copies will be available after March 6, 2003, from the Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free) 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: 84.364A.

FOR FURTHER INFORMATION CONTACT: Margaret McNeely or Beth Fine, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C130, FOB–6, Washington, DC 20202–6200. Telephone: (202) 260–1335 (Margaret McNeely) or (202) 260–1091 (Beth Fine) or via Internet: *LSL@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document

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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.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 6383.

Dated: March 3, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–5284 Filed 3–5–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.344]

Office of Postsecondary Education; TRIO Dissemination Partnership (TRIO Dissemination) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The TRIO Dissemination Program provides grants to TRIO Program grantees to enable them to work with institutions and organizations that are serving low-income and first-generation college students, but do not have TRIO Program grants. The purpose of the TRIO Dissemination Program is to promote the replication or adaptation of successful TRIO Program components, practices, strategies, and activities by institutions and organizations that are not TRIO Program grantees. The TRIO Programs consist of Talent Search, Educational Opportunity Centers, Upward Bound, Student Support Services, Ronald E. McNair

Postbaccalaureate Achievement Programs, and the Training Program for Federal TRIO Programs.

For FY 2003, we encourage applicants to design projects that focus on the invitational priorities in the Priorities section of this application notice.

Eligible Applicants: Institutions of higher education and private and public institutions and organizations that were carrying out a Federal TRIO grant before October 7, 1998, the date of enactment of the Higher Education Amendments of 1998.

Applications Available: March 6, 2003.

Deadline for Transmittal of Applications: April 7, 2003.

Deadline for Intergovernmental Review: June 9, 2003.

Estimated Available Funds: $5,500,000.

SUPPLEMENTARY INFORMATION: All previously funded grantees under this program are eligible to apply under this competition. However, no prior experience points will be awarded. In addition, as the purpose of the Dissemination Program is to increase the impact of the TRIO Programs in order to reach more TRIO-eligible students, previously funded grantees must identify new partners and, as appropriate, select a new component or strategy.

Estimated Range of Awards: $150,000–$200,000 for Year 1 of the project period.

Estimated Average Size of Awards: $179,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for Year 1 of the project period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 25–30.

Note: The Department is not bound by any of the estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A ''page'' is 8.5″ by 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Priorities

Invitational Priorities: We are particularly interested in applications that meet one or more of the following invitational priorities.

Invitational Priority 1—Advance the Awareness of Underserved Groups in the Benefits of TRIO Programs

Projects that have developed successful partnerships with institutions and organizations serving significant numbers or percentages of TRIO-eligible students in economically depressed areas for the purposes of increasing access, retention and completion rates of these students in secondary and postsecondary education. TRIO institutions and organizations that have been successful in making the TRIO programs more visible and accessible to these potential participants are encouraged to assist other institutions in adopting successful intervention models.

Invitational Priority 2—Effective Use of Educational Technology

Projects designed to share effective strategies for using technology in a variety of ways, including innovative technology-based instructional programs; use of technology to provide better access to educational opportunities; and technology-based programs to equip disadvantaged students with the knowledge and skills to compete for jobs in the emerging world economy that require the use of new and sophisticated technologies.

Invitational Priority 3—Business and Community Partnerships and K–12 Collaborations

Projects to assist communities with large numbers of low-income, first-generation college students to develop effective business and community partnerships and K–12 collaborations.

Invitational Priority 4—Increased Participation of Underrepresented Groups in Graduate Study

Projects designed to share successful TRIO strategies for increasing the access, retention, and completion rates of low-income, first generation college students and students from the following ethnic and racial groups that are currently underrepresented in graduate education: Black (non-Hispanic), Hispanic, American Indian, and Alaska Native.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priorities a competitive or absolute preference over other applications.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Eileen S. Bland or Virginia Mason, Office of Federal TRIO Programs, U.S. Department of Education, 1990 K Street, NW., Suite 7000, Washington, DC 20006–8510. Telephone: (202) 502–7600 or via Internet: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities also may obtain a copy of the application package in an alternative format by contacting those persons. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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Program Authority: 20 U.S.C. 1070a–11 and 1070a–18.

Dated: March 3, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–5283 Filed 3–5–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Basic Energy Sciences Advisory Committee Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41, Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a two-year period beginning in February 2003. The Committee will provide advice to the Director, Office of Science, on the basic energy sciences program.

The Secretary has determined that the renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory committee can be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on February 25, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–5262 Filed 3–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, April 3, 2003, 9 a.m.–5 p.m., Friday, April 4, 2003, 8:30 a.m.–4 p.m.

ADDRESSES: West Coast Ridpath Hotel, 515 Sprague Avenue, Spokane, WA. Phone: (509) 838–2711, Fax: (509) 747–6970.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, April 3, 2003

- Presentation on the Hanford Systems Assessment Capability (SAC) Tool;
- Discussion and introduction of draft advice on the Proposed Elimination of Technetium-99 (Tc-99) Removal from Tank Waste Pretreatment;
- Presentation and discussion of the DOE–HQ draft policy and guidance on the risk-based end state vision;
- Discussion and introduction of draft advice on FY03, FY04 and FY05 budget;
- Discussion and draft advice on the Disposition of Transuranic Waste in the Tanks;
- Introduction of draft advice on the Hanford Groundwater Strategic Plan (tentative);
- Public comment.

Friday, April 4, 2003.

- Adoption of draft advice:
- Elimination of Technetium-99 (Tc-99) Removal from Tank Waste Pretreatment, FY03, FY04, FY05 budgets, Disposition of Transuranic Waste in the Tanks, Hanford Groundwater Strategic Plan (tentative).
- Update on the Hanford Solid Waste Environmental Impact Statement (HSW EIS)—second draft.
- Status of M–91 Tri-Party Agreement negotiations. (These negotiations focused on the cleanup of DOE Transuranic and Mixed Transuranic Wastes and associated low-level and mixed low-level wastes.)
- Introduction of a letter to the Tri-Party Agreement Agencies on the recent state of the site meetings;
- Additional ground rules;
- Public comment.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling her at (509) 376–1563.

Issued in Washington, DC on February 28, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–5259 Filed 3–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: March 28–29, 2003.

ADDRESSES: Adams Mark Hotel, 1550 Court Place, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky

Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80031; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, March 28, 2003
- 8 a.m. Registration
- 8:30 a.m. Opening business, Welcoming remarks; Victor Holm, RFCAB Chair; Eugene Schmitt, DOE RF Manager; others, Introductions, Meeting ground rules and agenda review, Meeting objectives and expectations
- 9 a.m. Roundtable presentations from each site focusing on intersite shipment of wastes and materials (5 min. per site)
- 9:45 a.m. Chairs discussion of intersite shipment issues
- 10:30 a.m. Break
- 10:45 a.m. Presentation and discussion on DOE–EM 2003–2004 budget with Deputy Assistant Secretary for Policy, Planning and Budget, Roger Butler
- 11:45 a.m. Lunch
- 1 p.m. Presentation and discussion on long-term stewardship with Dave Geiser, DOE Office of Long-Term Stewardship and Mike Owen, Director of Worker and Community Transition and the Secretary of Energy's Designee to Lead the Legacy Management Transition Team
- 3 p.m. Break
- 3:15 p.m. Discussion and approval of TRU Waste Workshop Recommendations
- 4:15 p.m. Public comment period
- 4:30 p.m. Day 1 wrap-up and review of Day 2
- 4:45 p.m. Adjourn

Saturday, March 29, 2003
- 8:30 a.m. Review agenda
- 8:35 a.m. Planning for future EMSSAB events, Next Chairs meeting(s): Discussion question on how often chairs should meet; location and date for next meeting, Next workshop
- 9:30 a.m. Discussion with new EMSSAB Designated Federal Officer Sandra Waisley and Deputy Assistant Secretary Roger Butler
- 10:15 a.m. Break
- 10:30 a.m. Roundtable discussion with each board sharing success stories or outlining concerns
- 11:30 a.m. Public comment period
- 11:45 a.m. Meeting wrap-up, Review of expectations/objectives, Meeting evaluation
- 12 noon Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing or calling Ken Korkia at the address or telephone number listed above.

Issued in Washington, DC on February 28, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–5260 Filed 3–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Friday, May 16, 2003, 9 a.m.

ADDRESSES: The St. Regis Hotel, Crystal Ballroom, 923 Sixteenth & K Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kristen Palasciano, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–9768.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda

—Call to order and introductory remarks by William A. Wise, Chair of the NPC
—Remarks by the Honorable Spencer Abraham, Secretary of Energy (invited)
—Administrative matters
—New business
—Public comment (10-minute rule)
—Adjournment

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Kristen Palasciano at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 28, 2003.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 03–5261 Filed 3–5–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0014; FRL–7457–4]

Agency Information Collection Activities; Submission of EPA ICR No. 1900.02 (OMB No. 2060–0423) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Title: NSPS: Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA) (OMB Control No. 2060–0423, EPA ICR No. 1900.02) The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 7, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joyce Chandler, Compliance Assistance and Sector Program, Office of Enforcement & Compliance Assurance, Mailcode 2224A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7073; fax number: (202) 564–0009; e-mail address: *chandler.joyce@epa.gov.* Refer to EPA ICR Number 1900.02.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0014, which is available for public viewing at the Enforcement & Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ECDIC Docket is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to ECDIC at *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS: Small Municipal Waste Combustors (40 CFR part 60, subpart AAAA) (OMB Control No. 2060–0423, EPA ICR Number 1900.02). This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This addresses information collection activities that would be imposed by the NSPS: Small Municipal Waste Combustors, 40 CFR part 60, subpart AAAA. This information collection is required as a result of the implementation of the NSPS that are being developed under the authority of sections 111 and 129 of the Clean Air Act (CAA). Reporting and recordkeeping requirements would apply to MWC units that have the capacity to combust greater than 35 tons per day (tpd) but less than 250 tpd of municipal solid waste.

This ICR will enable EPA to monitor compliance with emission standards for regulated pollutants. Owners and operators of small MWCs are required to measure, record, and report emission rates and operating parameters, follow good combustion practices (GCP), and submit a siting analysis. The responses to this NSPS are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,100 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Small MWCs that combust greater than 35 tons per day (tpd) but less than 250 tpd of municipal solid waste.

Estimated Number of Respondents: 6 plants with 2 small MWC units each.

Frequency of Response: Initial, Quarterly, Semi-annual, Annual.

Estimated Total Annual Hour Burden: 25,201 hours.

Estimated Total Annual Cost: $806,474, includes $200,000 annualized capital and $77,000 O&M costs.

Changes in the Estimates: There is a increase of 16,642 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the new small municipal waste combustors that have begun operating.

Dated: February 28, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–5311 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0004; FRL–7457–9]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y), ICR Number 1062.08, OMB Number 2060–0122

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Coal Preparation Plants (40 CFR part 60, subpart Y), OMB Control Number 2060–0122, EPA ICR Number 1062.08. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 7, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–7054; fax number (202) 564–0050; e-mail address *chadwick.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 9, 2002 (67 FR 72942), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0004, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comment, whether submitted electronically or on paper, will be available for public viewing in EDOCKET, as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Coal Preparation Plants (40 CFR part 60, subpart Y), OMB Control Number 2060–0122, EPA ICR Number 1062.08. This is a request to renew an existing, approved collection that is scheduled to expire on February 28, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Owners or operators of coal preparation plants must make certain one-time-only notifications including: Notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test; including information necessary to determine the conditions of the performance test; performance test measurements and results, and notification of demonstration of the continuous monitoring system (CMS). Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the CMS is inoperative. CMS requirements specific to coal preparation plants provide information on the operation of the emissions control device and compliance with the opacity standard. Semiannual reports of excess emissions are also required. Any owner or operator subject to the rule shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, Subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of coal preparation plants which process more than 200 tons of coal per day.

Estimated Number of Respondents: 616.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 17,162 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $21,700 which includes $0 annualized capital/startup costs and $21,700 annual O&M costs.

Changes in the Estimates: There is increase of 1,699 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to more accurate accounting of existing sources subject to NSPS Subpart Y and an adjustment in the reporting frequency.

Dated: February 25, 2003

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–5312 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2002–0017; FRL–7458–1]

Agency Information Collection Activities: Submission for OMB Review and Approval; Comment Request; NSPS for Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Db), ICR No. 1088.10, OMB No. 2060–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for Industrial-Commercial-Institutional Steam Generating Units (40 CFR part 60, subpart Db), OMB Control Number 2060–0072, EPA ICR No. 1088.10. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before April 7, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 564–7054; fax number (202) 564–0050; e-mail address *chadwick.dan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 FR 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2002–0017, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2223A, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Industrial-Commercial-Institutional Steam Generating Units (40 CFR part 60, subpart Db), OMB Control Number 2060–0072, EPA ICR Number 1088.10. This is a request to renew an existing approved collection that is scheduled to expire on February 28, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Owners or operators of steam generating units subject to Subpart Db must make one-time-only notifications of construction/reconstruction, anticipated and actual startup, initial performance test, physical or operational changes, and demonstration of a continuous monitoring system. They must also submit reports on initial performance test results, monitoring results, and excess emissions. Records must be maintained of startups, shutdowns, malfunctions, and periods when the continuous monitoring system is inoperative, and of various fuel combustion and pollutant emission parameters.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports are used for problem identification, as a

check on source operation and maintenance, and for compliance determinations. The information collected from recordkeeping and reporting requirements are used for targeting inspections, and for other uses in compliance and enforcement programs. The frequency of electronic reporting is quarterly. Otherwise, reporting frequency is semiannual.

Responses to this information collection are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 200 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of fossil-fuel-fired steam generating units subject to Subpart Db.

Estimated Number of Respondents: 1,230.

Frequency of Response: Semi-annually, Quarterly for electronic.

Estimated Total Annual Hour Burden: 591,389.

Estimated Total Annual Cost: $59,384,435, includes $9,000,000 annualized capital and $17,775,000 O&M costs.

Changes in the Estimates: There is an increase of 16,356 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the size of the regulated universe.

Dated: February 26, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–5313 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0001; FRL–7458–2]

Agency Information Collection Activities; Submission for EPA ICR No. 1847.03, OMB No. 2060–0390 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR part 62, subpart FFF). This ICR describes the nature of the information collection and its estimated burden and cost burden and cost.

DATES: Additional comments may be submitted on or before April 7, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jonathan Binder, Compliance Assistance and Sector Programs Division, Office of Compliance, Mail Code 2224A, 202–564–2516 Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; fax number: 202–564–0009; e-mail address: *binder.jonathan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 20, 2002 (67 *FR* 41981), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0001, which is available for public viewing at the Enforcement and Compliance Docket and Information Center (ECDIC) in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center (ECDIC) is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket identification number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as

CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's Federal Register notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or before September 20, 1994 (40 CFR part 62, subpart FFF) (OMB Control No. 2060–0390, EPA ICR No. 1847.03). This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2003. Under the OMB regulations, EPA may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Municipal Solid Waste Combustors (MWC) with a capacity to combust greater than 250 tons per day if construction was commenced on or before September 20, 1994 and that are not located in areas covered by an EPA-approved and currently effective State or Tribal Plan are subject to specific reporting and recordingkeeping requirements. Notification reports are required for one-time-only reports related to initial performance test data and continuous measurements of site-specific operating parameters. Quarterly, semi-annual and annual compliance reports are required related to a variety of site-specific operating parameters, including exceedances of applicable limits. Semi-annual compliance reports are required related to emission rate or operating parameter data that were not obtained when exceedances of applicable limits occurred. Affected entities must retain records for five years that are required under 40 CFR part 62, §§ 62.14109(a), 62.39b(a) and 40 CFR part 60, § 60.59b.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 399 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and Operators of Large Municipal Waste Combustors.

Estimated Average Number of Respondents: 14.

Frequency of Response: Quarterly, semi-annually, and annually.

Estimated Total Annual Hour Burden: 39,067.

Estimated Total Annual Operations and Maintenance Cost: $402,617.

Changes in the Estimates: There is a decrease of 19,848 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to a reduction in the number of affected respondents as indicted by a recent source inventory analysis and the expectation that EPA-approved and effective State Plans will cover additional respondents.

Dated: February 23, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–5314 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0069; FRL–7459–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; (OMB Control No. 2040–0164, EPA ICR No. 1654.04)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program . The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 7, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Valerie Martin, Municipal Support Division, Office of Wastewater Management, Mailcode 4204M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0623; fax number: (202) 501–2396; e-mail address: *martin.valerie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60679), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a docket for this ICR under Docket ID No. OW–2002–0069, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public

viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Reporting Requirements Under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program (OMB Control No. 2040–0164, EPA ICR No. 1654.04). This is a request to renew an existing approved collection that is scheduled to expire on March 31, 2003. Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: EPA initially collects facility information and thereafter annually collects water, energy, and cost savings information from participants in the WAVE program. WAVE Partners are commercial businesses or institutions that voluntarily agree to implement cost-effective water efficiency measures in their facilities. Initially the WAVE Program targeted the lodging industry, but now includes office buildings, educational institutions and medical facilities. Another type of participant, ''Supporters,'' works with EPA to promote water efficiency. Supporters are equipment manufacturers, water management companies, utilities, state and local governments, and the like.

The purpose of the WAVE Program is pollution prevention. EPA and the Pollution Prevention Act define pollution prevention as ''source reduction,'' and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or through protection of natural resources by conservation. By promoting water efficiency, WAVE prevents pollution in two basic ways. First, wastewater flows are reduced which can increase treatment efficiency at wastewater treatment plants resulting in reduced pollutant loads. Second, less water used means that less energy will be used to treat, transport, and heat drinking water and to transport and treat wastewater. To the extent that the reduced energy use so achieved is electrical energy, power plant emissions are reduced. Water efficiency also causes less water to be withdrawn and helps preserve streamflow to maintain a healthy aquatic environment; in addition, less pumping of groundwater lowers the chance that pollutants that may be in the groundwater will be drained into a water supply well.

EPA uses the information to maintain a profile of program membership and to monitor the success of the program, demonstrate that pollution prevention can be accomplished with a non-regulatory approach, and to promote the program to potential partners. Participation in the WAVE Program is voluntary; however, a participant joins the program by signing and submitting a Membership Agreement and an annual Results Report to EPA to receive and retain program benefits, such as software and publicity. No participant is required to submit confidential business information. EPA maintains and distributes a list of program participants, and presents aggregated data only in its program progress reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 3 hours per Membership Agreement response, a one-time submission, and 6 hours per Results Report response, an annual submission. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Commercial businesses or institutions.

Estimated Number of Respondents: 136.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 389 hours.

Estimated Total Annual Cost: $28,974, includes $0 of capital startup and O&M costs.

Changes in the Estimates: There is a decrease of 2,167 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to simplification of the reporting process and more accurate projections of new participants.

Dated: February 26, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–5323 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2003–0003, FRL–7459–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322)

AGENCY: Environmental Protection Agency, EPA.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322), EPA ICR No. 1428.06, OMB Control No. 2050–0078, Expiration date September 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 5, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office,

Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–8233; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number SFUND–2003–0003, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 60 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are both manufacturing and non-manufacturing sectors for claims under sections 303, 311 and 312 of EPCRA. Section 313 claims are submitted by covered sectors, which, as of reporting year 2002, include, metal mining ((SIC code 10 (except 1011, 1081, and 1094)); coal mining ((SIC code 12 (except 1241)); manufacturers (SIC codes 20–39); electric utilities (SIC codes 4911 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), 4931 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), and 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)); commercial hazardous waste treatment (SIC code 4953 (limited to facilities regulated under the RCRA Subtitle C, 42 U.S.C. section 6921 *et seq.*)); chemical and allied products-wholesale (SIC code 5169); petroleum bulk terminals and plants (also known as stations)-wholesale (SIC code 5171); and, solvent recovery services (SIC code 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)). In addition, federal facilities were added to the respondent community by Executive Order 12856, and were required to report beginning calendar year 1994.

Title: Trade Secret Claims for Community Right-to-Know and Emergency Planning (EPCRA Section 322), OMB Control Number 2050–0078, EPA ICR Number 1428.06, expiring 09/30/03.

Abstract: This information collection request pertains to trade secrecy claims submitted under Section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). EPCRA contains provisions requiring facilities to report to State and local authorities, and EPA, the presence of extremely hazardous substances (described in Section 302), inventory of hazardous chemicals (described in Sections 311 and 312) and manufacture, process and use of toxic chemicals (described in Section 313). Section 322 of EPCRA allows a facility to withhold the specific chemical identity from these EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the ''sufficiency'' of trade secrecy claims.

Trade secrecy protection is provided for specific chemical identities contained in reports submitted under each of the following EPCRA sections: (1) 303 (d)(2)—Facility notification of changes that have or are about to occur, (2) 303 (d)(3)—Local Emergency Planning Committee (LEPC) requests for facility information to develop or implement emergency plans, (3) 311—Material Safety Data Sheets (MSDSs) submitted by facilities, or lists of those chemicals submitted in place of the MSDSs, (4) 312—Tier II emergency and hazardous chemical inventory forms, and (5) 313 Toxic chemical release inventory forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.9 hours per claim. The total annual burden for the respondents is 3,483 hours at a cost of $147,543. 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.

Dated: February 26, 2003.

Deborah Y. Dietrich,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 03–5327 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7459–3]

Draft Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD) is announcing the extension of the public comment period for the external review draft (ERD) document, Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster (EPA/600/P–02/002A, October 2002). This draft document was prepared by ORD's National Center for Environmental Assessment (NCEA) within the Office of Research and Development.

DATES: In the December 27, 2002, **Federal Register** (67 FR 79089), EPA announced a limited comment period through February 25, 2003. The Agency is now extending the public comment period to April 7, 2003. Technical comments should be in writing and must be postmarked by April 7, 2003.

ADDRESSES: The primary distribution method for the ERD will be via ORD's Web site at *http://www.epa.gov/ncea/wtc.htm.* This draft report, in PDF format, can be viewed and downloaded from the Internet for review and comment. In addition, a limited number of CD-ROM and paper copies of the ERD are available by contacting the Technical Information Staff, NCEA-W (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (202) 564–3261; facsimile: (202) 565–0050; e-mail: *nceadc.comment@epa.gov.* Please provide your name and mailing address, and the title and EPA number of the requested publication.

Comment Submission: Comments on the ERD may be mailed to the Technical Information Staff, NCEA–W (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (202) 564–3261; facsimile: (202) 565–0050. Comments should be in writing. Please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be e-mailed to: *nceadc.comment@epa.gov.*

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Technical Information Staff of the National Center for Environmental Assessment-Washington, telephone: (202) 564–3261; facsimile: (202) 565–0050; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency issues. EPA, other federal agencies, New York City, and New York State public health and environmental authorities focused on numerous air monitoring activities to better understand the ongoing human health impact of the disaster. Many EPA offices and programs quickly became involved with these activities, providing scientific, engineering, public health, and management expertise to help cope with the aftereffects of the collapse of the World Trade Center.

As part of these activities, a human health evaluation of exposure to air pollutants resulting from the World Trade Center disaster was initiated. The primary purpose and scope of this draft report were to evaluate the environmental levels of various air pollutants to which the public could potentially be exposed as a result of the collapse of the towers. The draft report evaluates the measured outdoor levels of various air pollutants to which the public potentially had been exposed. These data were evaluated in terms of available health benchmarks and typical background concentrations for New York City or other urban areas. The draft evaluation concludes that, with the exception of those exposed immediately following the collapse and perhaps during the next few days, people in the surrounding community are not likely to suffer from serious long-or short-term health effects.

While the primary focus of EPA's draft evaluation is on outdoor levels of various air pollutants to which the public could potentially be exposed as a result of the collapse of the towers, some information on indoor and occupational exposures is summarized. The incursion of dust and other contaminants into residences and buildings is being addressed via a number of other studies initiated in conjunction with the plans by EPA and its federal, state, and city partners to clean up residences impacted by the collapse of the World Trade Center.

The draft report also includes a discussion of rodent respiratory toxicology studies, conducted by EPA scientists, that exposed mice to fallen dust samples collected at or near Ground Zero on September 12 and 13, 2001. The purpose of these studies was to evaluate the toxicity of fine particulate matter dust on the respiratory tract of mice and to compare well-studied particulate matter reference samples, ranging from essentially inert to quite toxic, to those collected at the World Trade Center site. These studies found that fine particles were dominated by calcium containing compounds derived from World Trade Center building materials, and that a high exposure to World Trade Center fine particulate matter could cause mild lung inflammation and airflow obstruction in mice. These findings suggest that a similarly high exposure in people could cause short-term respiratory effects such as inflammation and cough.

Further, it is important to note that while this ERD is undergoing public review and comment, a process of external independent expert scientific peer review also is underway. These review processes are the usual steps that EPA takes to ensure full and open participation by interested parties. These steps also help EPA identify areas where a draft document could be improved to strengthen both clarity and completeness of the draft. Comments from the public and from the expert peer reviewers will be used to improve the draft report before it is finalized.

Finally, EPA scientists, in collaboration with other Federal and State environmental health

professionals, as well as colleagues in academia and medical institutions, will continue to analyze available data on human exposures to environmental contaminants resulting from the World Trade Center disaster. This continuing work will help us to better understand the potential human health impacts.

Dated: February 27, 2003.

Art Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 03–5322 Filed 3–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170, NSD File No. L–00–72; FCC 03–31]

Commission Seeks Comment on Staff Study Regarding Alternative Contribution Methodologies

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Commission seeks comment on a staff study relating to alternative methodologies for calculating contributions to the federal universal service support mechanisms. We urge commenters to comment on the staff analysis of assessment levels under each approach and on the assumptions underlying these projections. Commenters are encouraged to provide their own estimates, projections, and data supporting or refuting the projections.

DATES: Comments are due on or before March 31, 2003. Reply comments are due on or before April 18, 2003.

ADDRESSES: All filings must be sent to the Commission's Secretary: Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Suite TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu, Deputy Division Chief, or Paul Garnett, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98-170, and NSD File No. L–00–72 released February 26, 2003. In this Public Notice, the Commission seeks comment on a staff study relating to alternative methodologies for calculating contributions to the federal universal service support mechanisms. We urge commenters to comment on the staff analysis of assessment levels under each approach and on the assumptions underlying these projections. Commenters are encouraged to provide their own estimates, projections, and data supporting or refuting the projections.

In the *Report and Order and Second Further Notice,* 67 FR 79525, December 30, 2002, the Commission adopted interim measures to maintain the viability of universal service in the near term. In addition to seeking comment on whether to retain a revenue-based system, the Commission invited comment on specific aspects of three connection-based proposals. The Commission first asked for comment on a proposed contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers and a flat charge for each end-user connection depending on the nature or capacity of the connection. Next, the Commission sought comment on a proposal to assess all connections based purely on capacity. Under this proposal, contribution obligations for each switched end-user connection would be shared between access and transport providers. Finally, the Commission sought comment on a proposal to assess providers of switched connections based on their working telephone numbers.

To facilitate discussion and analysis of the various alternatives discussed in the *Second Further Notice,* Commission staff has developed a working paper that estimates potential assessment levels under the newly modified revenue-based system and three connection-based proposals. The assumptions underlying the study are described in the staff paper. The study, and its underlying assumptions were created for the sole purpose of developing a more detailed record addressing these issues in the docket, and do not represent the policies or preferences of the Commission, Commissioners, or the staff.

We seek comment on the study, as well as its underlying assumptions. We specifically ask commenters to analyze the modeled assessment levels, burdens on residential and business customers, and projected industry shares under each approach. To further assist commenters in analyzing the study, the staff spreadsheet that generated the study is available on the Commission's Web site for downloading at *http://www.fcc.gov/wcb/universal_service/welcome.html.* This spreadsheet will provide access to the formulas utilized in the study and allow commenters to observe how changes to assumptions impact assessment levels and burdens. We recognize that estimates could differ significantly if different assumptions are utilized. We invite commenters to submit their own data and reasoning supporting or disagreeing with the various projections and assumptions. Comments submitted in response to this Public Notice shall be incorporated into the record for the *Second Further Notice.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before March 31, 2003, and reply comments on or before April 18, 2003. 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 comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment 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 e-mail address>.'' A sample form and directions will be sent in reply.

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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–5240 Filed 3–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Establishment of the Diabetes Detection Program and Solicitation of Partnering Organizations

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) announces the establishment of the nationwide Diabetes Detection Program, an initiative to be carried out at the local level. HHS seeks both public and private sector partnering organizations to assist in implementation of the project. Potential partners include, but are not limited to: Professional organizations representing medicine, nursing, pharmacy, and other health related professions; diabetes-related nongovernmental organizations; large employers and employer associations; retail pharmacy and/or related pharmacy associations; pharmaceutical and medical device manufacturers and/or related associations; and other health-related organizations such as, hospitals and hospital associations, managed care plans, insurance companies providing coverage for health care, and benefit management organizations. Components of HHS that will be involved in this initiative include the Office of Public Health and Science; the Office of the Assistant Secretary for Public Affairs; the Centers for Disease Control and Prevention; the National Institutes of Health; the Health Resources and Services Administration; the Office of the Surgeon General; and the U.S. Public Health Service Commissioned Corps.

DATES: Organizations and other entities interested in partnering with HHS in furtherance of this initiative should submit notification of their intent by close of business on April 21, 2003.

ADDRESSES: Notifications of interest in partnering should be sent to Elizabeth Majestic, M.P.H., Acting Director, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW., Washington, DC 20201; (202) 401–6295 (telephone), 202–690–7054 (fax). Notifications may also be submitted by electronic mail to *emajestic@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Ellis Davis, Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738-G, 200 Independence Ave., SW, Washington, DC 20201; (202) 260–2873 (telephone), 202–690–7054 (fax), *edavis@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: To further implementation of the Diabetes Detection Program, HHS is seeking partners to participate in the initiative in accordance with their particular interests. For example, state governors, their health departments, and community health centers could initiate detection-based programs to reach those at highest risk for diabetes. Where appropriate, other organizations and entities could collaborate with these state health department and community health center programs, as in the following examples:

- Partnering organizations could participate in a nationwide advertising campaign that would alert the American public to the opportunity for diabetes detection;
- Partnering organizations could participate in the production or distribution of printed materials that will be used by state programs and community health centers responsible for implementing the initiative;
- Employers could adopt the project and conduct detection clinics where people at high risk of diabetes could be identified, then referred for specific diagnosis and followup if warranted;
- Hospitals could provide professional resources to conduct detection clinics;
- Managed care plans could adopt the project and encourage their enrollees to have themselves assessed for risk and alter their lifestyles if the risk warrants;
- Colleges and universities could conduct detection events for their student populations;
- Area agencies on aging could form a component of a statewide program.

Where a statewide program is not in place, partnering organizations such as these could proceed on their own.

Dated: February 28, 2003.

Elizabeth Majestic,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), Department of Health and Human Services.

[FR Doc. 03–5269 Filed 3–5–03; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: ''Needs Assessment of Primary Care Practice-Based Research Networks (PBRNs).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

The proposed information collection was previously published in the **Federal Register** on January 7, 2003 allowed 60 Days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 Days for public comment.

DATES: Comments on this notice must be received by April 7, 2003.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ Reports Clearance Officer, (301) 594–3132.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Needs Assessment of Primary Care Practice-Based Research Networks (PBRNs)''

The project is being conducted in response to an AHRQ RFP entitled ''Resource Center for Primary Care Practice-Based Research Networks (PBRNs)'' (issued under Contract 290–02–0008). The Healthcare Research and Quality Act of 1999, amending section 911(b) of Title IX of the Public Health Service Act (42 U.S.C. 299 *et seq.*), states that Agency for Healthcare Research and Quality will ''employ research strategies and mechanisms that will link research directly with clinical practice in geographically diverse locations * * * including provider-based research networks''.

In order to assist the Agency for Healthcare Research and Quality (AHRQ), in meeting this goal, the Agency created an RFP that specifically requires a resource center to ''assess the specific needs, if any, of each PBRN awarded (by AHRQ)'' by determining ''the stage of development of networks funded under the PBRN initiatives [AHRQ RFA–HS–02–003] and the specific resource needs of each network.''

The PBRNs are groups of primary care practices working together with academic researchers to address community-based health care research questions and to translate research findings into practice to improve health care. AHRQ funded 36 PBRNs in September, 2002, as well as a Resource Center intended to provide technical assistance and support to the PBRNs in their efforts to design and implement research projects. It is expected that an additional 24 PBRNs will be funded in 2003. In the proposed activities the PBRN Resource Center will collect data directly from each PBRN and their affiliated practices. The collection is a needs assessment of each of the AHRQ funded PBRNs. The collection will identify how the Resource Center can best support these networks through the development and use of information technology, and by linking the PBRN's with appropriate technical experts.

The in-depth needs assessment of each PBRN will use written and web surveys and telephone interviews. Each need assessment will ascertain the current capabilities of an individual PBRN in several respects, including:

- the ability to design and implement appropriately rigorous and complex research plans, including their access to key resources such as validated instruments and competence conducting advanced data analysis;
- the technical capacity for conducting data management tasks such as aggregating research data across networks, developing data files, and warehousing data;
- the ability to use information technology to foster effective communication with affiliated practices and with other research networks;
- the ability to address HHS priorities such as research involving populations of diverse race or ethnicity, socioeconomic status, age, gender and geography as well as preparedness for bioterrorism and other emerging public health threats;
- the ability to engage the network's practicing clinicians and community representatives in the design, conduct and dissemination of research studies;
- the ability to design and implement data collection instruments in clinician settings;
- the mechanisms for supporting AHRQ's central goal of assuring new research findings are translated into everyday practice; and
- their capacity for long-term sustainability.

To obtain the necessary information, surveys and interviews will be conducted with PERN staff and staff members in each network's participating practices.

Method of Collection

Due to the relatively small number of organizations in the respondent universe of AHRQ funded PBRNs, and the expected diversity of needs, we will survey all of the AHRQ funded PBRNs (including those to be funded in 2003)≤

The method of data collection for the needs assessments consists of web-based and paper-based surveys and telephone interviews. We expect to involve multiple individuals from each PBRN in the data collection, including the PBRN administrator, information technology personnel, and the PBRN's lead clinician as well as individuals with similar roles at the affiliated practice level.

All individuals or networks unable to complete the survey via the Web will be sent a paper-based survey to complete and return by mail. The Resource Center will data enter any surveys completed by hand so that these responses can be included in the analyses. Non-respondents will receive a telephone reminder and, if necessary, sent an additional survey.

Estimated Annual Respondent Burden

Data collection effort	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Estimated annual cost
Needs assessment	180 (maximum of three individuals from each of 60 PBRNs).	1	180	*40.26	$7,246.80
Needs assessment	720 (maximum of two individuals at member practices PBRNs)***.	0.5	360	**45.77	16,477.20
Total	900	0.6	540		

* Based on the means of the average wages for manager in medicine and health, physicians, and computer systems analyst/scientist, National Comprehension Survey: Occupational Wages in the United States, 2000, ''U.S. Department of Labor, Bureau of Labor Statistics, September 2001.''

** Based on the mean of the average wages for manager in medicine and health and physicians, ''National Compensation Survey: Occupational Wages in the United States 2000'', U.S. Department of Labor, Bureau of Labor Statistics, September 2001''.

*** This estimate assumes that variation exists in the number of member practices that comprise each PBRN. Consequently, we will survey two individuals (the lead clinician and the administrator) at each of three member practices in 20 PBRNs, in 20 PBRNs we survey two individuals at each of six member practices, and in 20 PBRNs we survey two individuals at each of nine member practices.

Estimated Annual Costs to the Federal Government

The total cost to the government for activities directly related to this collection is $432,451.000.

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection proposal are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of the burden (including hours and costs) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 27, 2003.

Carolyn M. Clancy,

Director

[FR Doc. 03–5298 Filed 3–5–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Time and Date: 8:30 a.m.–5:30 p.m., March 18, 2003.

Place: Hilton—Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202, telephone 703/418–6800.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 55 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Updates on Primary Prevention issues, Medicaid Targeted Screening, Review of Evidence for Effects at Blood Lead Levels <10 μg/dL issues, Screening of Immigrant/Adopted Children, and Study of Relationship of Environmental Tobacco Smoke and Blood Lead Levels.

Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Crystal M. Gresham, Program Analyst, Lead Poisoning Prevention Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 1600 Clifton Road, NE., M/S F–30, Atlanta, Georgia 30333, telephone 770/488–7490, fax 770/488–4178.

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: February 28, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–5247 Filed 3–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Vaccine Information Materials for Measles, Mumps and Rubella Vaccines; Revised Instructions for Use of Vaccine Information Statements

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa-26), the CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. Since the recommended interval between receiving rubella-containing vaccine and becoming pregnant has been amended from 3 months to 4 weeks, the vaccine information materials covering measles, mumps and rubella vaccine needed to be revised. On October 10, 2002, CDC published a notice in the **Federal Register** (67 FR 63106) seeking public comments on the proposed revised vaccine information materials for measles, mumps and rubella vaccines. The 60 day comment period ended on December 9, 2002. Following review of the comments submitted and consultation as required under the law, CDC has finalized these vaccine information materials. The final materials, and revised instructions for their use and for use of materials for other covered vaccines, are contained in this notice.

DATES: Beginning as soon as practicable, each health care provider who administers any vaccine that contains measles, mumps or rubella vaccine shall, prior to administration of each dose of the vaccine, provide a copy of the vaccine information materials contained in this notice, dated January 15, 2003, to the parent or legal representative of any child to whom such provider intends to administer the vaccine and to any adult to whom such provider intends to administer the vaccine, in lieu of providing earlier versions of these materials.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on

Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials, also known as Vaccine Information Statements (VIS), prior to administration of any of these vaccines. As new vaccines have been added to the National Vaccine Injury Compensation Program, materials for those vaccines have also been developed. Since June 1, 1999, health care providers are required to provide copies of vaccine information materials for the following vaccines: hepatitis B, haemophilus influenzae type b (Hib), and varicella (chickenpox) vaccines. And, effective December 15, 2002, use of vaccine information materials for pneumococcal conjugate vaccine was mandated.

Revised Vaccine Information Materials for Measles, Mumps & Rubella (MMR) Vaccines

The Advisory Committee on Immunization Practices revised its recommendations for administration of rubella-containing vaccines to change the recommended interval between receiving MMR vaccine and becoming pregnant from 3 months to 4 weeks (''Revised ACIP Recommendations for Avoiding Pregnancy After Receiving a Rubella-Containing Vaccine'' MMWR 50/49, Dec 14, 2001). Interim vaccine information materials reflecting this change were posted on the CDC Web site on June 13, 2002. We proposed slightly different language to further clarify this recommendation when the proposed revised MMR vaccine information materials were published for public comment in the **Federal Register** on October 10, 2002 (67 FR 63106).

Following consultation and review of comments submitted, these vaccine information materials have been finalized and are contained in this notice. They are entitled ''Measles, Mumps & Rubella Vaccines: What You Need to Know,'' and are dated January 15, 2003. CDC has also revised the Instructions for the Use of Vaccine Information Statements. The revised instructions, dated January 15, 2003, are included in this notice. These instructions and copies of the materials for all covered vaccines can also be found on the CDC Web site at: *http://www.cdc.gov/nip/publications/VIS/*. In addition, single camera-ready copies of the materials, and the instructions for their use, are available from State health departments. A list of State health department contacts for obtaining copies of these materials is included in a December 17, 1999 **Federal Register** notice (64 FR 70914).

* * * * *

Instructions for the Use of Vaccine Information Statements

Required Use

1. Provide VIS When Vaccination Is Given

As required under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa-26), all health care providers in the United States who administer any vaccine containing diphtheria, tetanus, pertussis, measles, mumps, rubella, polio, hepatitis B, *Haemophilus influenzae* type b (Hib), varicella (chickenpox), or pneumococcal conjugate vaccine shall, prior to administration of each dose of the vaccine, provide a copy to keep of the relevant current edition vaccine information materials that have been produced by the Centers for Disease Control and Prevention (CDC):

—To the parent or legal representative* of any child to whom the provider intends to administer such vaccine, or

—To any adult to whom the provider intends to administer such vaccine.

The materials shall be supplemented with visual presentations or oral explanations, as appropriate.

If there is not a single VIS for a combination vaccine (*e.g.*, hepatitis A/Hepatitis B), use the VISs for both component vaccines.

* ''Legal representative'' is defined as a parent or other individual who is qualified under State law to consent to the immunization of a minor.

2. Record Information for Each VIS Provided

Health care providers shall make a notation in each patient's permanent medical record at the time vaccine information materials are provided indicating:

(1) The edition date of the materials, and

(2) The date these materials were provided.

This recordkeeping requirement supplements the requirement of 42 U.S.C. 300aa–25 that all health care providers administering these vaccines must record in the patient's permanent medical record or in a permanent office log:

(3) The name, address and title of the individual who administers the vaccine,

(4) The date of administration, and

(5) The vaccine manufacturer and lot number of the vaccine used.

Additional Recommended Use

Health care providers may also want to give parents copies of all vaccine information materials prior to the first immunization visit, such as at the first well baby visit.

Applicability of State Law

Health care providers should consult their legal counsel to determine additional State requirements pertaining to immunization. The Federal requirements to provide the vaccine information materials supplement any applicable State laws.

Availability of Copies

Single camera-ready copies of the vaccine information materials are available from State health departments. Copies are also available on the Centers for Disease Control and Prevention's Web site at *http://www.cdc.gov/nip/publications/VIS*. Copies are available in English and in other languages.

Current Editions of VISs

Diphtheria, Tetanus, Pertussis (DTaP/DT): 7/30/01
Tetanus Diphtheria (Td): 6/10/94
Measles, Mumps, Rubella (MMR): 1/15/03
Hepatitis B: 7/11/01
Polio: 1/1/00
Haemophilus influenzae type b: 12/16/98
Varicella (chickenpox): 12/16/98
Pneumococcal conjugate: 9/30/02

Reference 42 U.S.C. 300aa–26
1/15/03

* * * * *

Measles, Mumps & Rubella Vaccines: What You Need to Know

1. Why Get Vaccinated?

Measles, mumps, and rubella are serious diseases.

Measles

• Measles virus causes rash, cough, runny nose, eye irritation, and fever.
• It can lead to ear infection, pneumonia, seizures (jerking and staring), brain damage, and death.

Mumps

• Mumps virus causes fever, headache, and swollen glands.
• It can lead to deafness, meningitis (infection of the brain and spinal cord covering), painful swelling of the testicles or ovaries, and, rarely, death.

Rubella (German Measles)

• Rubella virus causes rash, mild fever, and arthritis (mostly in women).
• If a woman gets rubella while she is pregnant, she could have a miscarriage or her baby could be born with serious birth defects.

You or your child could catch these diseases by being around someone who has them. They spread from person to person through the air.

Measles, mumps, and rubella (MMR) vaccine can prevent these diseases.

Most children who get their MMR shots will not get these diseases. Many more children would get them if we stopped vaccinating.

2. Who Should Get MMR Vaccine and When?

Children should get 2 doses of MMR vaccine:

—The first at 12–15 months of age.
—And the second at 4–6 years of age.

These are the recommended ages. But children can get the second dose at any age, as long as it is at least 28 days after the first dose.

Some adults should also get MMR vaccine:

Generally, anyone 18 years of age or older, who was born after 1956, should get at least one dose of MMR vaccine, unless they can show that they have had either the vaccines or the diseases.

Ask your doctor or nurse for more information.

MMR vaccine may be given at the same time as other vaccines.

3. Some People Should Not Get MMR Vaccine or Should Wait

• People should not get MMR vaccine who have ever had a life-threatening allergic reaction to gelatin, the antibiotic neomycin, or a previous dose of MMR vaccine.
• People who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting MMR vaccine.
• Pregnant women should wait to get MMR vaccine until after they have given birth. Women should avoid getting pregnant for 4 weeks after getting MMR vaccine.
• Some people should check with their doctor about whether they should get MMR vaccine, including anyone who:

—Has HIV/AIDS, or another disease that affects the immune system.
—Is being treated with drugs that affect the immune system, such as steroids, for 2 weeks or longer.
—Has any kind of cancer.
—Is taking cancer treatment with x-rays or drugs.
—Has ever had a low platelet count (a blood disorder).

• People who recently had a transfusion or were given other blood products should ask their doctor when they may get MMR vaccine.

Ask your doctor or nurse for more information.

4. What Are the Risks From MMR Vaccine?

A vaccine, like any medicine, is capable of causing serious problems, such as severe allergic reactions. The risk of MMR vaccine causing serious harm, or death, is extremely small.

Getting MMR vaccine is much safer than getting any of these three diseases.

Most people who get MMR vaccine do not have any problems with it.

Mild Problems

Fever (up to 1 person out of 6).

Mild rash (about 1 person out of 20).

Swelling of glands in the cheeks or neck (rare).

If these problems occur, it is usually within 7–12 days after the shot. They occur less often after the second dose.

Moderate Problems

Seizure (jerking or staring) caused by fever (about 1 out of 3,000 doses).

Temporary pain and stiffness in the joints, mostly in teenage or adult women (up to 1 out of 4).

Temporary low platelet count, which can cause a bleeding disorder (about 1 out of 30,000 doses).

Severe Problems (Very Rare).

Serious allergic reaction (less than 1 out of a million doses).

Several other severe problems have been known to occur after a child gets MMR vaccine.

But this happens so rarely, experts cannot be sure whether they are caused by the vaccine or not. These include:

—Deafness.
—Long-term seizures, coma, or lowered consciousness.
—Permanent brain damage.

5. What if There Is a Moderate or Severe Reaction?

What Should I Look For?

Any unusual conditions, such as a serious allergic reaction, high fever or behavior changes. Signs of a serious allergic reaction include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness within a few minutes to a few hours after the shot. A high fever or seizure, if it occurs, would happen 1 or 2 weeks after the shot.

What Should I do?

• Call a doctor, or get the person to a doctor right away.
• Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
• Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Reporting System (VAERS) form. Or call VAERS yourself at 1–800–822–7967 or visit their Web site at *http://www.vaers.org.*

6. The National Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, a federal program has been created to help you pay for the care of those who have been harmed. For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit the program's Web site at *http://www.hrsa.gov/osp/vicp.*

7. How Can I Learn More?

Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.

Call your local or state health department's immunization program.

Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–2522 (English).
—Call 1–800–232–0233 (Español).
—Visit the National Immunization Program's Web site at *http://www.cdc.gov/nip.*

U.S. Department of Health & Human Services
Centers for Disease Control and Prevention
National Immunization Program
Vaccine Information Statement
MMR (1/15/03)
42 U.S.C. 300aa–26

* * * * *

Dated: February 28, 2003.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–5248 Filed 3–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0053]

Agency Information Collection Activities; Proposed Collection; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA Form 3038, Interstate Shellfish Dealers Certificate.

DATES: Submit written or electronic comments on the collection of information by May 5, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Interstate Shellfish Dealers Certificate (OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

The NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, ''Interstate Shellfish Dealer's Certificate.'' FDA uses this information to publish the ''Interstate Certified Shellfish Shippers List,'' a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, the NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3038	34	62	2,108	.10	211

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the numbers of certificates received in the past 3 years.

Dated: February 21, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–5202 Filed 3–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program (OMB No. 0915–0034)—Extension

This clearance request is for the extension of approval for two HEAL forms and two electronic data collection activities: The Lender's Application for Contract of Federal Loan Insurance form (used by lenders to make application to the HEAL insurance program); the Borrower's Deferment Request form (used by borrowers to request deferments on HEAL loans and used by lenders to determine borrower's eligibility for deferment); the Borrower Loan Status update electronic submission (submitted monthly by lenders to the Secretary on the status of each loan); and the Loan Purchase/Consolidation electronic submission (submitted by lenders to the Secretary to report sales, purchases, and consolidation of HEAL loans). The estimate of burden for the forms are as follows:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Lender's Application for Contract of Federal Loan Insurance	28	1	28	8 min.	4
Borrower's Deferment Request:					
Borrowers	4,642	1	4,642	10 min.	774
Employers	2,780	1,669	4,642	5 min.	387
Borrower Loan Status Update Electronic Submission	8	18	144	10 min.	24
Loan Purchase/Consolidation Electronic Submission	28	248	6,950	4 min.	463
Total	7,486	.....	16,406	.....	1,652

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 26, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–5200 Filed 3–5–03; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; An Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. The proposed information collection was previously published in the **Federal Register** on December 5, 2002, pages 72422–72423 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: An Evaluation of the NCI Science Enrichment Program (SEP): Follow-up Survey. *Type of Information Collection Request:* Revision of a currently approved collection. (OMB No. 0925–0510, Expiration 2/28/2003). Need and Use of Information Collection: This follow-up survey is part of an evaluation designed to assess the effectiveness of the NCI SEP in meeting its goals of: (1) Encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program was a five- to six-week residential program taking place on two university campuses—University of Kentucky, Lexington and San Diego State University—in summers 1998–2002. The 5-year evaluation was designed as a controlled, longitudinal study, consisting of the five SEP cohorts and two cohorts of control group students who did not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promoted or limited the program's effectiveness, the extent to which the program was implemented as planned, how much the two regional programs varied, and how the program can be improved or made

more effective. NCI will use this information to make decisions regarding continuation and expansion of the program. *Frequency of Response:* One time. *Affected Public:* Individuals or households. *Type of Respondents:* High School and college students. *Cost to Respondents:* $9,600. the annual reporting burden is as follows:

ESTIMATES OF HOUR BURDEN: BURDEN NOT PREVIOUSLY APPROVED (1998–2002)

Type of respondents	Average number of respondents/yr.	Frequency of response	Average time per response	Average annual hour burden
SEP Participants	200	1	0.5	100
Control Group Students	200	1	0.5	100
Control Group Students	100	2 (pre and post).	1.00	100
Total	500			300

ESTIMATES OF HOUR BURDEN: BURDEN REQUESTED

Type of respondents	Average number of respondents/yr.	Frequency of response	Average time per response	Average annual hour burden
SEP Participants	500	1 (follow up)	0.5	250
Control Group Students	300	1 (follow up)	0.5	150
Total	800			400

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503. Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the date collection plans and instruments, contact: Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, Center to Reduce Cancer Health Disparities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: *fj12i@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of this publication.

Dated: February 21, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–5213 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* (301) 496–7057; *fax:* (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Immunogenic Epitopes for Fibroblast Growth Factor–5 (FGF–5) Presented by HLA–A3 and HLA–A2

James Yang *et al.* (NCI).
DHHS Reference No. E–031–2003/0–US–01 filed 19 Nov 2002.
Licensing Contact: Jonathan Dixon; (301) 435–5559; *dixonj@od.nih.gov.*

Approximately 30,000 patients are diagnosed with renal cell carcinoma (RCC) each year in the United States, and an estimated 12,000 patients die of this disease. Most patients are diagnosed with advanced local disease or metastatic disease. Current therapies include removal of the kidney (nephrectomy) or high dose immunotherapy with IL–2, which has been able to achieve success in only part (15–20%) of the patient population. Even with a successful nephrectomy, it is likely that patients with advanced local diseases will develop metastases. Therefore, new methods are needed to

improve on IL–2 therapy and expand the curative potential of therapies for patients with RCC.

The present invention discloses peptides for use in immunotherapy of tumors. The peptides, both an HLA–A2 and an HLA–A3 epitope, are derived from the amino acid sequence of an RCC-associated antigen, fibroblast growth factor–5 (FGF–5). Plans are underway to investigate both peptides in clinical trials of peptide vaccination in patients with advanced renal cancer. In addition, FGF–5 also appears to be over-expressed in other common adenocarcinomas such as breast, prostate and bladder cancer and very few antigens suitable for vaccine therapies exist for those cancers.

Modified Oligonucleotides and Methods of Use Thereof

Dr. Seidman *et al.* (NIA).
DHHS Reference No. E–176–2002/0 filed May 13, 2002.
Licensing Contact: Catherine Joyce; (301) 435–5031; e-mail: *joycec@od.nih.gov.*

Triple helix forming oligonucleotides (TFOs) that bind chromosomal targets in living cells may be used as tools for genome manipulation, including gene knockout, conversion, or recombination. The instant invention relates to the discovery that TFOs containing a particular pattern of certain ribose substitutions resulted in a knock-out frequency of the hamster HPRT gene that was 300–400 fold above background. Aspects of this work have been published in Puri *et al.*, 2002, Biochemistry 41(24):7716–7724.

The above-mentioned invention is available for licensing on a non-exclusive basis.

Quantitative Assay of the Angiogenic and Antiangiogenic Activity of a Test Molecule

Steven Libutti (NCI).
DHHS Reference No. E–152–2002/0 filed 09 Apr 2002.
Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov.*

The invention provides a method of measuring the angiogenic or antiangiogenic activity of a test molecule. The method comprises obtaining an embryonated fowl egg, creating a window in the shell of the fowl egg, such that the CAM membrane is exposed, providing to a test region of interest on the CAM a substrate, administering to a vessel located in the CAM a test molecule, administering to a vessel located in the CAM a fluorescent-labeled particle, such that the fluorescent-labeled particle travels through each vessel contained in the test region of interest, removing the substrate and the test region of interest from the fowl egg, capturing a three-dimensional image of the test region of interest, wherein the three-dimensional image comprises a plurality of pixels, such that a fluorescent vascular density (FVD) value can be assigned to the test region of interest, and comparing the FVD value of the test region of interest with the FVD value of a control region of interest that was prepared in the same manner as the test region of interest but without the administration of a test molecule, such that the angiogenic or antiangiogenic activity of the test molecule is measured. A lower FVD value of the test region of interest as compared to the FVD value of the control region of interest is indicative of the test molecule being useful as an inhibitor of angiogenesis. Conversely, a higher FVD value of the test region of interest as compared to the FVD value of the control region of interest is indicative of the test molecule being useful as a stimulator of angiogenesis.

Use of Semenogelin in the Diagnosis, Prognosis, and Treatment of Cancer

David Roberts and Henry Krutzsch (NCI).
DHHS Reference No. E–138–2001/0–US–01 filed 06 Apr 2001 and DHHS Reference No.
E–138–2001/0–PCT–02 filed 03 Apr 2002 (PCT/US02/10535).
Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov.*

The invention provides a method of diagnosing cancer in a male mammal wherein the cancer is other than prostate cancer. The method comprises: (a) Obtaining a test sample from the male mammal, and (b) assaying the test sample for an increased level of semenogelin, wherein the increased level of semenogelin in the test sample is diagnostic for the cancer. The test sample can be assayed for an increased level of semenogelin in (b) by comparing the level of semenogelin in the test sample to the level of semenogelin in a control sample obtained from one or more cancer-free male mammals of the same species, wherein an increase in the level of semenogelin in the test sample as compared to the control sample obtained is diagnostic for the cancer. Alternatively, the level of semenogelin in the test sample can be compared to an already determined range of semenogelin for cancer-free male mammals of the same species.

In addition, the invention provides a method of diagnosing cancer in a female mammal. The method comprises: (a) Obtaining a test sample from the female mammal, and (b) assaying the test sample for the presence of semenogelin, wherein the presence of semenogelin in the test sample is diagnostic for the cancer.

Dated: February 24, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–5211 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: March 23–25, 2003.

Time: 6:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Deborah R. Jaffe, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8038, MSC 8328, Bethesda, MD 20892, (301) 496–7721, *dj86k@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5214 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: March 17–18, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5216 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Special Emphasis Panel for 3 R25 Applications.

Date: March 13, 2003.

Time: 7:30 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5217 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Preclinical in Vitro and In Vivo Screening Assays.

Date: April 1, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5220 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Business Initiatives Research Topics 182, 183, 184, 190, 191, 192, 194.

Date: March 18–19, 2003.

Time: 4 p.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5221 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Special Emphasis Panel Accelerated Peer Review.

Date: March 25, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6116 Executive Boulevard, Room 8131, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Wirth, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, (301) 496–7565, *pw21q@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394 Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5222 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: March 17, 2003.

Open: 2 p.m. to 4 p.m.

Agenda: The agenda includes Introductory Remarks by the Executive Secretary, Opening Remarks by the Director, NCCAM and the report of the Ephedra Working Group, and other business of the Council.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms A1–2, Rockville, MD 20852.

Contact Person: Jane F. Kinsel, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 496–6701.

Copies of the meeting agenda and the roster of members is available at *nccam@nih.gov* or will be furnished upon request by Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–496–6701, Fax 301–480–0087, or via e-mail at *naccames@mail.nih.gov*.

The meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5219 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. (SCOR) Neurobiology of Sleep and Sleep Apnea and Airway Biology and Pathogenesis of Cystic Fibrosis.

Date: March 6–7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William J. Johnson, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, room 7184, MSC 7924, Bethesda, MD 20892, 301/435–0275.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Disease Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5228 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel. International Research Registry, Network for Sjogren's Syndrome.

Date: March 27, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, MSC 7924, Bethesda, MD 20892 301/435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5229 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: March 4, 2003.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Building 31, 31 Center Drive, Room B2B32, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Ken D. Nakamura, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5237 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Weight Gain Side Effects.

Date: 2:30 p.m to 4:30 p.m.

Agenda: To review and evlauate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Michael J. Kozak, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room, 6138, MSC 9608, Bethesda, MD 20892–9608, 301–443–6471, *kozakm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5215 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, February 19, 2003, 11 a.m. to February 19, 2003, 1 p.m., which was published in the **Federal Register** on February 5, 2003, 68 FR 5904.

The telephone conference call meeting will be held on March 19, 2003 at 2 p.m., instead of February 19, 2003, as previously advertised. The meeting is closed to the public.

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5218 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of General Medical Sciences Special Emphasis Panel, ZGM1 BRT–6 EB.

Date: March 13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Carole H. Latker, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5223 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: March 20–21, 2003.

Open: March 20, 2003, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 20, 2003, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: March 21, 2003, 8 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutritional Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5224 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Chronic Prostatitis Collaborative Research.

Date: March 17, 2003.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review

Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Interstitial Cystitis Clinical Treatment Group.

Date: March 18, 2003.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, AASK Cohort Study.

Date: April 2, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematogloy Research, National Institutes of Health, HHS)

Dated: February 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5225 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro Antiviral Screening Program PART B: Hepatitis B and C Viruses.

Date: March 24–25, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Washington Center (RIO), 9751 Washingtonian Blvd., Gaitherburg, MD 20878.

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, *vg8q@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5227 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel. RFA: State Implementation of EBPs.

Date: March 10–11, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5230 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Research Center.

Date: March 20–21, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608. 301–443–1178. *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research

Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5231 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Disease Special Emphasis Panel, Mentored Clinical Scientist Development Award.

Date: March 20, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone conference call.)

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, NIAID/DEA, Scientific Review Program, Room 2220, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892. (301) 435–3564. *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5232 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of PO1s.

Date: April 9, 2003.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Building 4401, 79 T. W. Alexander Drive, Conference Room 122, Research Triangle Park, NC 27709. (Telephone conference call.)

Contact Person: Sally Eckert-Tilotta, PhD, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. 919/541–1446. *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5233 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro Antiviral Screening Program PART A: Human Papilloma Virus.

Date: March 21, 2003.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health/NIAID, Fernwood Building, 10401 Fernwood Building, 2C–07, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610. 301-496-2550. *vg8q@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5234 Filed 3–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS 7 ES SEP.

Date: March 24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200. (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support, 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5235 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MARC 7 PR SEP.

Date: March 17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institute of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200. (301) 594–2849.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5236 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, MH Research Education Grants.

Date: March 12, 2003.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606. 301–443–1225. *rweise@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 21, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5238 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SNEM 3 Member Application.

Date: March 10, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NURS Member Applications.
Date: March 11, 2003.
Time: 3:30 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnosis and Treatment of Cancer.
Date: March 13–14, 2003.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Shen K. Yang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 435–1213, *yangsh@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Parasite Vectors.
Date: March 13–14, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR.
Date: March 13–14, 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Jefferson Hotel, 1200 16th Street NW., Washington, DC 20036.
Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BISTI pre-Centers of Excellence in Biomedical Computing.
Date: March 13–14, 2003.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Peter Lyster, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7806, Bethesda, MD 20892, (301) 435–1256, *lysterp@mail.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Antileukemic Agents.
Date: March 13, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychopathology and Adult Disorders.
Date: March 14, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1856; *pluded@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transporter.
Date: March 14, 2003.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis and Biodefense.
Date: March 17–18, 2003.
Time: 8 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Potomac Room, Bethesda, MD 20814.
Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 3206, Bethesda, MD 20892, (301) 435–0903.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coupled folding in Ikappa B/NF Kappa B.
Date: March 17, 2003.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Arnold Revzin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7824, Bethesda, MD 20892, (301) 435–1153.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 03: Vaccine Innovation Grant Applications.
Date: March 17, 2003.
Time: 8:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR–10.
Date: March 17, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Golden Tulip, 7740 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178,

MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative Projects.

Date: March 17, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892–7890, (301) 435–1159, *ameros@csr.nih.gov.*

This is notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure Based Anticancer Drug Design.

Date: March 17, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB 03(M):CR protein.

Date: March 17, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 9 (40) Site Visit.

Date: March 17–19, 2003.

Time: 4 p.m. to 11 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Westin Bonaventure Hotel and Suites, 404 South Figueroa Street, Los Angeles, CA 90071.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, *bunnagb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7(40): Small Business Application on Imaging Technologies.

Date: March 17–19, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 222 South Cayuga Street, Ithaca, NY 14850.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hematology Subcommittee 2.

Date: March 18–19, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892–7802, (301) 435–1177, *friedj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–C (05) Members Reviews in Developmental Disabilities.

Date: March 18, 2003.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902, *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome.

Date: March 18, 2003.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 824 25th Street, 105, Washington, DC 20037.

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *the88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHB 02.

Date: March 18, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biology of Melanoma.

Date: March 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, (301) 435–3504, *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CVB 02(M): Cardiac mapping.

Date: March 18, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome SBIR/STRR Panel.

Date: March 18, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781 *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Disabilities: Austism and Fragile-X.

Date: March 18, 2003.

Time: 12 p.m. to 3 p.m.,

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7184, Bethesda, MD 20892, 301–435–1260, *sosteka@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BECM 40 P: Program Project.

Date: March 19–21, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Research Partnerships: Genetics.

Date: March 19, 2003.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael R. Schaefer, PhD, Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7890, Bethesda, MD 20892, (301) 435–2477, *schaefem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biology of Trypanosomes.

Date: March 19, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, 301–435–1050,*freundr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Genomics.

Date: March 19, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, 301–435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pediatric Oncology Database.

Date: March 19, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779. *riverase@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93–306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–5226 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 67 FR 54441, August 22, 2002, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the transfer of the budget function from the Office of the Director, NIH, to the Office of Management, Office of the Director, NIH.

Section N–B, Organization and Functions, under the heading Office of the Director (NA, formerly HNA) is amended as follows:

(1) Immediately following the statement for the Office of Science Policy (NA6, formerly HNA6), the title and functional statement of the Office of Budget (NA7, formerly HNA7) are deleted in their entirety.

(2) Under the heading Office of Management (NAM, formerly HNAM), insert the following:

Office of Budget (NAM8, formerly HNAM8). (1) Exercises primary responsibility for NIH-wide budget policy, including planning, analysis, formulation, and presentation; (2) administers and coordinates budget management after appropriations have been made, including reprogramming and coordination of the use of the Director's Discretionary Fund and transfer authority; and (3) provides budget advice to the Director, NIH, and senior OD and Institute and Center (IC) officials.

Budget Analysis and Modeling Staff (NAM8–2, formerly HNAM8–2). (1) Performs modeling of grant and other budget data for projecting major resources as part of the NIH budget development and formulation process; (2) conducts budget analysis and designs and presents a variety of electronically generated tables and visuals to support budget submissions to HHS, OMB, and Congress; (3) completes special analysis projects for the NIH Director; (4) plans, develops, and evaluates budget automation and provides recommendations on the selection and/or design of software that provides trend analyses; and (5) manages the Office of Budget Web page.

Budget Formulation, Presentation, and Execution Branch (NAM82, formerly HNAM82). (1) Provides guidance to and coordinates with ICs on budget policy, planning, formulation, justification, and execution of appropriated and nonappropriated funds; (2) serves as the focal point at NIH for the interpretation, preparation, dissemination, and implementation of HHS, OMB, and congressional financial policies and procedures; (3) advises NIH organizations on the preparation, receipt, and review of budgetary data required for formulation and presentation of the budget; (4) administers all assessments of ICs from appropriated funds; (5) coordinates and consolidates NIH budget execution, administration, and financial reporting, which includes development of apportionments, allotments, allowances, reprogramming, transfers, reserves, and similar matters; (6) implements fiscal controls; and (7) develops, coordinates, and monitors all functions related to the management of full-time equivalent (FTE) resources and makes recommendations on the allocation of FTEs/positions for NIH.

Budget Reporting and Legislative Branch (NAM83, formerly HNAM83). (1) Reviews, interprets, and assesses the impact of new and proposed legislation on the formulation and execution of the NIH budget; (2) collects and reports disease and other areas of special interest expenditure data and responds to requests from the public and Congress on funding of research in these areas; (3) tracks and analyzes

appropriations bills through House and Senate passage and conference; (4) manages the process of identifying reports and significant items requested by congressional appropriations committees and assigns responsibility for drafting responses; and (5) manages the production of materials for the appropriations hearings, including instructions and clearances for opening statements, production of questions and answers, and clearances for transcripts.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this establishment and are consistent with this amendment shall continue in effect, pending further redelegation.

Dated: February 11, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 03–5212 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human Monoclonal Antibody Biotherapeutics for the Treatment of Hepatitis C (HCV) Infections

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in United States Patent Application 60/250,561 filed December 1, 2000 and its foreign equivalents, entitled ''Monoclonal Antibodies Specific for the E2 Glycoprotein of Hepatitis C Virus and Their Use in the Diagnosis, Treatment, and Prevention of HCV,'' to Virosys Pharmaceuticals, Inc., having a place of business in Redwood Shores, CA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 5, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Ano, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *anos@od.nih.gov;* Telephone: (301) 435–5515; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: This invention relates to human monoclonal antibodies that exhibit immunological binding affinity for the hepatitis C virus E2 glycoprotein and are cross-reactive against different hepatitis C virus (HCV) strains. These antibodies may be used in passive immunoprophylaxis for the prevention of hepatitis C virus infection and/or in passive immunotherapy for the treatment of hepatitis C.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to development of human monoclonal antibody biotherapeutics for the treatment of HCV infections.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 24, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–5209 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Protein Biopharmaceuticals for Treatment of HIV Infections

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in United States Patent Application 60/339,751 filed December 17, 2001 and its foreign equivalents, entitled ''GP41 Inhibitor,'' to Virosys Pharmaceuticals, Inc., having a place of business in Redwood Shores, CA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before May 5, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Ano, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *anos@od.nih.gov;* Telephone: (301) 435–5515; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: This invention relates to a chimeric molecule, NCCG–gp41, in which the internal trimeric helical coiled-coil of the ectodomain of gp41 is fully exposed and stabilized by both fusion to a minimal ectodomain core of gp41 and by engineered intersubunit disulfide bonds. NCCG–gp41 inhibits HIV envelope mediated cell fusion at nanomolar concentrations with an IC50 of 16 nM. It is proposed that NCCG–gp41 targets the exposed C-terminal region of the gp41 ectodomain in its pre-hairpin intermediate state, thereby preventing the formation of the fusogenic form of the gp41 ectodomain that comprises a highly stable trimer of hairpins arranged in a six-helix bundle. NCCG–gp41 has potential as (a) An HIV therapeutic agent that inhibits cell entry; (b) as an AIDS vaccine and; (c) as a component of a high throughput screening assay for small molecule inhibitors of HIV envelope mediated cell fusion. Antibodies have been raised against NCCG–gp41 that inhibit HIV envelope mediated cell fusion.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to development of protein

biopharmaceuticals for the treatment of HIV infections.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 25, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–5210 Filed 3–5–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at the following Web sites: *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, (615) 255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, (513) 585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, (702) 733–7866/(800) 433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, (800) 445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, (800) 876–3652/(417) 269–3093, (Formerly: Cox Medical Centers)

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, (239) 561–8200/(800) 735–5416

Doctors Laboratory, Inc., PO Box 2658, 2906 Julia Dr., Valdosta, GA 31602, (912) 244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, (206) 386–2661/(800) 898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., PO Box 2969, 1119 Mearns Rd., Warminster, PA 18974, (215) 674–9310

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada TJ5 5E2, (780) 451–3702/(800) 661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, (662) 236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, (319) 377–0500

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, Ontario, Canada N6A 1P4, (519) 679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, (608) 267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, (504) 361–8989/(800) 433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927/(800) 873–8845 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, (713) 856–8288/(800) 800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, (908) 526–2400/(800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, (919) 572–6900/(800) 833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle Street, San Diego, CA 92121, (800) 882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Road West,

Southaven, MS 38671, (866) 827–8042/(800) 233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, (715) 389–3734/(800) 331–3734

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, (905) 890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699, (419) 383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, (651) 636–7466/(800) 832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295/(800) 950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, (612) 725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250/(800) 350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, (801) 293–2300/(800) 322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, (713) 920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, PO Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, (541) 687–2134

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, (818) 598–3110/(800) 328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 110 West Cliff Drive, Spokane, WA 99204, (509) 755–8991/(800) 541–7891x8991

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, (817) 605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, (913) 339–0372/(800) 821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, (770) 452–1590/(800) 729–6432, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, (800) 824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, (610) 631–4600/(877) 642–2216, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, (800) 669–6995/(847) 885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, (818) 989–2520/(800) 877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)

Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300/(800) 999–5227

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176x276

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, (602) 438–8507/(800) 279–0027

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, (517) 377–0520, (Formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052

Sure-Test Laboratories, Inc., 2900 Broad Avenue, Memphis, Tennessee 38112, (901) 474–6028

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, (573) 882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, (305) 593–2260

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson Street, Fort George G. Meade, MD 20755–5235, (301) 677–3714

The following laboratory will be voluntarily withdrawing from the National Laboratory Certification Program (NLCP) effective February 28, 2003:

DrugProof, Divison of Dynacare, 543 South Hull St., Montgomery, AL 36103, (888) 777–9497/(334) 241–0522, (Formerly: Alabama Reference Laboratories, Inc.)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the ''Mandatory Guidelines for Workplace Drug Testing'' (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–5391 Filed 3–5–03; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) Drug Testing Advisory Board to be held in March 2003.

A portion of the meeting will be open and will include a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, a discussion of performance testing sample results for alternative specimens, and a discussion of the

proposed guidelines for alternative specimen testing and on-site testing. If anyone needs special accommodations for persons with disabilities, please notify the Contact listed below.

The meeting will include an evaluation of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator in accordance with title 5 U.S.C. 552b(c)(9)(B) and 5 U.S.C. App. 2, section 10(d).

A roster of the board members may be obtained from: Mrs. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014. The transcript for the open session will be available on the following Web site: *http://workplace.samhsa.gov.* Additional information for this meeting may be obtained by contacting the individual listed below.

Committee Name: Center for Substance Abuse Prevention, Drug Testing Advisory Board.

Meeting Date: March 11, 2003; 8:30 a.m.–4:30 p.m., March 12, 2003; 8:30 a.m.–noon.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Type: Open: March 11, 2003; 8:30 a.m.–noon.

Closed: March 11, 2003; noon–4:30 p.m.

Closed: March 12, 2003; 8:30 a.m.–noon.

Contact: Donna M. Bush, Ph.D., Executive Secretary, telephone: (301) 443–6014, and FAX: (301) 443–3031.

Dated: February 26, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–5201 Filed 3–5–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4529–N–04]

Notice of Proposed Information Collection: Comment Request; Notice of Application for Designation as a Single Family Foreclosure Commissioner

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: May 5, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Patricia A. Wash, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 10245, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Bruce Albright, Assistant General Counsel, Single Family Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9240, Washington, DC 20410 telephone (202 708–0080) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Notice of Application for Designation As a Single Family Foreclosure Commissioner (SF Mortgage Foreclosure Act of 1994).

OMB Control Number, if applicable: 2510–0012.

Description of the need for the information and proposed use: Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial Power of Sale of single family HUD-held mortgages and may appoint Foreclosure Commissioners to do this. HUD needs the notice and resulting applications for compliance with the Act's requirements that commissioners be qualified. Most respondents will be attorneys, but anyone may apply.

Agency form numbers, if applicable: None.

Members of affected public: Business or other for-profit and individuals or households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Frequency of response	Hours per response	Total burden hours
30	1	.5	15

Status of the proposed information collection: Reinstatement of collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: February 28, 2003.

Camille Acevedo,

Associate General Counsel.

[FR Doc. 03–5255 Filed 3–5–03; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–11]

Notice of Submission of Proposed Information Collection to OMB: Inventory of Housing Units Designated for the Elderly/Persons With Disabilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0550) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren__Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne__Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Inventory of Housing Units Designated for the Elderly/Persons with Disabilities.

OMB Approval Number: 2502–0550.

Form Numbers: HUD–90059.

Description of the Need for the Information and Its Proposed Use: Owners of federally assisted multifamily housing provide data with respect to the number of apartments in buildings designated for occupancy only by elderly families, disabled families and apartments with special features designed to accommodate disabled persons. HUD will publish an annual inventory of this information.

Respondents: Individuals or households, business or other for-profit.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	30,000	1		0.5		15,000

Total Estimated Burden Hours: 15,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 27, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–5297 Filed 3–5–03; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4826–N–01]

Notice of Availability of Alternative Fuel Vehicle Reports

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of availability of reports.

SUMMARY: Through this notice, HUD is making available on its website, copies of HUD's Alternative Fuel Vehicles reports for Fiscal Years 1999, 2000, and 2001, that were prepared in accordance with the Energy Policy Act of 1992.

FOR FURTHER INFORMATION CONTACT: Robert E. Byrd, Jr., Director, Facilities Management Division, Office of Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, at (202) 708–1955. (This is not a toll-free number.) Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: The Energy Policy Act (42 U.S.C. 13201 *et seq.*) (the Act) establishes a comprehensive plan to achieve economic, energy and environmental benefits by promoting the use of alternative fuels. A major goal of the Act is to have the federal government exercise leadership in the use of alternative fuel vehicles. To that end, the Act established alternative fuel vehicle purchasing requirements for the federal fleets of government agencies, and requires federal agencies to report on their compliance with the requirements of the Act. A copy of HUD's Alternative Fuel Vehicle reports can be obtained via the World Wide Web at *http://www.hud.gov/offices/adm/reports/admreports.cfm.*

Dated: January 31, 2003.

Vickers B. Meadows,

Assistant Secretary for Administration.

[FR Doc. 03–5296 Filed 3–5–03; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Coteau Coal Lease Application

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement for coal lease application and notice of scoping.

SUMMARY: The Coteau Properties Company applied for a lease of Federal coal reserves at the Freedom Mine, Mercer County, North Dakota. The Bureau of Land Management (BLM) will analyze the proposed action in accordance with the National Environmental Policy Act (NEPA). At least two alternatives will be considered: (a) A no-action alternative in which federal coal reserves would not be available for lease, and (b) an alternative in which all or portions of the federal coal reserves would be made available for lease.

After an initial review, BLM has determined that an environmental impact statement (EIS) will be prepared to disclose effects that may result from strip mining. A public scoping period will be held to allow interested parties to submit comments or information relevant to preparation of the EIS.

DATES: Publication of this notice will initiate the public scoping comment process, which will end after 30 days. Comments on issues may be submitted in writing to BLM at the address listed below.

Public Participation: A goal of public involvement is to identify issues pertinent to the proposal. The BLM invites written comments and suggestions on this action, particularly in terms of issues and development of alternatives. People may visit with BLM officials at any time during the analysis.

ADDRESSES: Please send comments, concerns or questions to Field Office Manager, North Dakota Field Office, Bureau of Land Management, 2933 3rd Avenue West, Dickinson, ND 58601. For further information and/or to have your name added to our mailing list, please write to the address above, or contact Lee Jefferis (701–227–7713), or Mary Ramsey (701–227–7706) by telephone.

SUPPLEMENTARY INFORMATION: On January 18, 2002, The Coteau Properties Company filed an application with BLM to lease 5, 571 acres of Federal coal at the following locations:

T. 144 N., R. 88 W., 5th P.M.

Sec. 2: Lots 3, 4, S½NW¼
Sec. 4: Lots 1, 2, S½NE¼, S½
Sec. 6: All
Sec. 8: N½NE¼, SE¼NE¼, NW¼, N½SW¼

T. 144 N., R 89 W., 5th P.M.

Sec. 12: E½

T. 145 N., R. 88 W., 5th P.M.

Sec. 4: Lots 1, 2, 3, 4, S½N½, SE¼, S½SW¼
Sec. 10: N½
Sec. 14: All
Sec. 22: All
Sec. 26: N½NE¼, SW¼NE¼, NW¼SE¼,W½
Sec. 28: E½NE¼, SW¼NE¼, SE¼NW¼, S½
Sec. 34: N½N½, SE¼NE¼, E½SE¼, SW¼SE¼, SW¼.

The tracts include an estimated 90 million tons of recoverable coal.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the EIS. If Federal lands are leased, they must be incorporated into the existing mine plan before Federal coal reserves can be mined. OSM is responsible for recommending approval, approval with conditions, or disapproval of the revised mine plan to the Secretary of the Interior.

The primary issue raised during our initial review of the application involves American Indian Traditional/Cultural features. Mining will result in impacts to cultural resources. Based on cultural resource inventories, 200 archeological sites with 1,700 stone features have been identified. Forty of these sites have been determined eligible for listing in the National Register of Historic Places. Native American tribes have voiced concerns about the cumulative effects of mining on these cultural resources.

Comments, including names and street addresses of respondents, will be available for public inspection at the BLM North Dakota Field Office. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this at the beginning of your written comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: February 28, 2003.

Douglas Burger,

Field Manager.

[FR Doc. 03–5251 Filed 3–5–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–489]

Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 29, 2003 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pfizer, Inc. of New York, New York. A supplement to the complaint was filed on February 27, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sildenafil or any pharmaceutically acceptable salt thereof, such as sildenafil citrate, and products containing same by reason of infringement of claims 1–5 of U.S. Patent No. 5,250,534. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair

Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 27, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain sildenafil or any pharmaceutically acceptable salt thereof, such as sildenafil citrate, or products containing same by reason of infringement of claim 1, 2, 3, 4, or 5 of U.S. Patent No. 5,250,534, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Pfizer, Inc., 235 East 42nd Street, New York, New York 10017.

(b) The respondents are the following companies upon which the complaint is to be served:

Planet Pharmacy, 13.5 Miles Northern Highway, Burrell Boom Cutoff, Ladyville, Belize

LTMC, Ltd., Tumkin 9, Tel Aviv, Israel 99999

Investment and Future Development Corp. SA, Calle Las Acacias, Regina, Diriamba, Nicaragua

Aleppo Pharmaceutical Industries, Baron Street, P.O. Box 517, Aleppo, Syria

Biovea, 56 Gloucester Road, Suite 524, Kensington, London SW7 4UB, England

#1 Aabaaca Viagra LLC, 350 South Center, Reno, NV 99502

Ezee Soulnature Healthcare Pvt. Ltd., J–195 Saket, New Delhi 110017, India

Zhejiang Medicines & Health Products Import & Export Co. Ltd., ZMC Building, 101–2 N. Zhongsan Road, Hangzhou, 310003, China

Jiangxi Jilin Chemical Corp. Ltd., Jingxi Dingfen Street 346 fl., Nanchang, Fujian 2564892, China

Tianjin Shuaike Chemical Co. Ltd., PO Box 4618, Yangliuqing, Xiqing District, Tianjin 300380, China

Lianyungang Foreign Trade Corp., Foreign Trade Bldg., No. 9 East Hailan Rd., Xinpu, Lianyungang, Jiangsu, China

Sino Health Care Company of Sichuan, 2–5# 10th Building, Qingyang Dong 1 lu., Chengdu, Sichuan 610072, China

China Jingsu International, 37 Hua Qiao Road, Nanjing 210029, China

Yiho Export & Import Co. Ltd., Nanjing Office, Rm. 302, No. 43–1 Qingliang Xincum, Nanjing, 210029, China

EBC Corporation, 701 Renner Road, Wilmington, DE 19810

(c) Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–E, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: March 3, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–5332 Filed 3–5–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 00–12]

Jeffrey Martin Ford, D.D.S. Grant of Restricted Registration

On October 29, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jeffrey Martin Ford, D.D.S. (Respondent), proposing to deny his application for a DEA Certificate of Registration pursuant to 21 U.S.C. 823(f) and 824(a).

By letter dated November 22, 1999, the Respondent requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held on June 15, 2000, in Boston, Massachusetts. At the hearing, the Government called two witnesses to testify and the Respondent testified on his behalf. Both parties also introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument. On February 6, 2001, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Bittner's opinion, and on March 6, 2001, Judge Bittner transmitted the record of these proceedings to the then-Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the recommended rulings of fact, conclusions of law and decision of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues, or conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent graduated from dentistry school in 1972, and following 24-month residency in orthodontics at Case Western Reserve University School of Dentistry, he established an orthodontic practice in Boston Massachusetts in 1974. In 1983, the Respondent relocated to Phoenix, Arizona, where he became licensed to practice dentistry, and then established

a solo practice in Tempe, Arizona the following year.

On May 13, 1986, an Arizona State trooper stopped the Respondent's vehicle when he was apparently observed operating an automobile in an erratic fashion.Upon a search of the vehicle, the state trooper discovered what laboratory tests later revealed as 1.6 grains of cocaine and various marijuana cigarettes. The Respondent was arrested and charged with possession of a narcotic drug. On cross-examination during the hearing, the Respondent testified that the Arizona trooper was not justified in making the initial traffic stop of his vehicle, and made up a reason for stopping him.

On January 23, 1987, the Respondent pled guilty to solicitation to possess a narcotic drug, a class 6 undesignated felony offense under Arizona law. During the administrative hearing, the Respondent acknowledged that the cocaine was his, and that the drug was for his personal use. The Respondent further testified that he regretted the incident, and admitted that he squandered his opportunities in Arizona ''due to [his] own stupidity with drugs.''

The Government introduced a copy of a Presentence Investigation Report (PSIR). The PSIR was compiled in conjunction with the Arizona criminal proceeding, to assist the state court judge in sentencing the Respondent following his conviction for possession of a narcotic drug. The PSIR revealed that the Respondent had used marijuana, LSD, mescaline and cocaine prior to the arrest that led to his conviction. The Respondent was also quoted in the PSIR as commenting that his sentence should be a ''slap on the wrist'' and that he should be sent back to work.

At the hearing, the Respondent testified that he did not use cocaine until after his May 1986 arrest in Arizona. However, when confronted with his PSIR statement about his past drug use, he admitted that he used cocaine three or four times, but had not developed a ''taste'' for it until after his May 1986 arrest.

On February 19, 1987, the Respondent was sentenced to three years probation and 100 hours of community service, however that sentence was modified in June 1987 to allow the Respondent to pay a fine. The Respondent subsequently petitioned the court to modify the terms and conditions of his probation, and his probation was terminated. The court also designated the charged offense as a misdemeanor. The Respondent testified during the hearing, however, that following his release from probation, his application for reinstatement of his dental license was denied.

On March 16, 1987, the Arizona State Board of Dental Examiners (Arizona Dental Board) summarily suspended the Respondent's dental license in that state, based upon his criminal conviction. On that same day, the Respondent provided a urine sample to the Arizona Board, which tested positive for cocaine. The Respondent did not deny the use of cocaine, and subsequently entered the St. Luke's Substance Abuse Program. On June 17, 1987, the Arizona Dental Board revoked the Respondent's dental license on grounds that he continued to practice dentistry notwithstanding the suspension of his license and had tested positive for cocaine on March 16, 1987.

On September 23, 1987, the Respondent was notified by the DEA Phoenix office that his DEA Certificate of Registration was subject to revocation because of the revocation of his state dental license, and because he lacked state authorization to handle controlled substances. As a result, on February 10, 1988, the Respondent surrendered his previous DEA Certificate of Registration.

In or around January 1990, the Respondent relocated to Fall River, Massachusetts where he worked temporarily in a dental clinic, before purchasing a dental practice in Springfield and renting a house in South Hadley in September of that year. At that time, the Respondent resumed his use of cocaine, and in March 1991, he resumed using marijuana.

In February 1991, the United States Postal Service became aware that the Respondent had purchased $18,000 in money orders, and sent them via Express Mail to an individual by the name of Marty Shatz (Mr. Shatz) in Scottsdale, Arizona. On March 1, 1991, an Express Mail package weighing 5 ounces was mailed from Los Angeles, California to the Respondent at his residence in South Hadley. The U.S. Postal Service believed that the package contained controlled substances, and on July 24, 1991, requested and obtained a search warrant to inspect the contents of the package. The package was later opened and its contents tested positive for methamphetamine. The package was then returned to the mail stream, and the post office notified the Respondent that it has arrived. The Respondent, under the surveillance of law enforcement officers, was observed picking up the package and returning to this home with it.

The Respondent was subsequently arrested by United States Postal Inspectors outside of his home. At the time of his arrest, the Respondent requested permission to re-enter his home. When the Respondent was accompanied into his home, arresting officers observed $13,000 in cash in the Respondent's bedroom, and a marijuana growing operation. The Respondent also replied in the negative when asked whether there were any weapons in his home.

During the subsequent execution of a search warrant at the Respondent's home, U.S. Postal Inspectors located growing marijuana plants, packaged marijuana, items used to cultivate marijuana such as an electronic scale and a timer, and several postal receipts for Express Mail packages from the Respondent to Arizona. The search also revealed a loaded .357 Magnum handgun and two loaded speed loaders in a bedroom closet.

The Respondent testified during the hearing that he received four packages of cocaine through the mail from Mr. Shatz, a long time acquaintance. The Respondent testified that Mr. Shatz acted as a broker, and that other money orders sent by the Respondent to Mr. Shatz were loans to allow the latter to purchase cocaine for himself. The Respondent also testified that he ended his relationship with Mr. Shatz after his 1991 arrest, and has not spoken to Mr. Shatz since the end of that year. The Respondent further testified that while in Arizona in the summer of 1983, he purchased as part of a self-defense course the .357 Magnum handgun that was subsequently found during the search of his home in Massachusetts. Nevertheless, the record in this proceeding demonstrated, and the Deputy Administrator finds, that the Respondent did not comply with the requirement under Massachusetts's law that a firearm be registered with the state.

On February 13, 1992, the Respondent was indicted in the United States District Court for the District of Massachusetts on four felony counts: Conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. 846; possession with intent to distribute cocaine and possession with intent to distribute marijuana, in violation of 21 U.S.C. 841(a)(1); and use of the mail to facilitate a narcotics transaction, aiding and abetting, in violation of 21 U.S.C. 843 and 18 U.S.C. 2.

Following a jury trial, the Respondent was found guilty on all four counts. On June 14, 1993, the Respondent was sentenced to 51 months imprisonment and three years probation following his release. On November 30, 1995, the sentence was reduced to a term of 39 months due to retroactive changes to the

sentencing guidelines for the offenses which the Respondent was convicted.

The Respondent subsequently appealed his convictions to the United States Court of Appeals for the First Circuit. The Respondent alleged in his appeal that the district court erred in denying a motion to suppress evidence seized during a warrantless search, that the district court erred in admitting into evidence a book entitled *The Secrets of Methamphetamine Manufacture,* and that there was insufficient evidence to support the conviction of possession of cocaine with intent to distribute since the drug was for his personal use. The Court of Appeals rejected each of the above arguments, and the Respondent's convictions were affirmed.

On July 17, 1992, the Respondent entered into a consent agreement with the Commonwealth of Massachusetts, Board of Registration in Dentistry (Massachusetts Dental Board), which placed his state dental license on probation for five years. The Respondent however voluntarily surrendered his dental license on January 14, 1993, while he was incarcerated. Based on the surrender of his dental license, the Massachusetts Department of Public Health, Division of Food and Drug revoked the Respondent's state controlled substance registration on April 26, 1993.

The record before the Deputy Administrator further reveals that shortly after his July 24, 1991, arrest, the Respondent began attending the Gosnold Drug Rehabilitation Treatment Center in Falmouth, Massachusetts, where he spent approximately 300 hours in group and individuals therapy and counseling over a two year period. In addition, during approximately nine of the 39 months the Respondent spent incarcerated at the Allenwood Federal Prison Camp, he participated in and graduated from the residential treatment program there. The Respondent testified that while at the Allenwood facility, he as well as the other inmates were exposed to comprehensive ''twenty-four hour a day'' drug treatment program.

The Respondent then spent time at a halfway house in Boston, and in May 1996, he began a three-year period of probation. The Respondent testified that from the date of his arrest in July 1991 until his release from probation in May 1999, he was randomly drug tested ''close to a hundred times'' and never tested positive for drug use.

In 1996, the Respondent requested the reinstatement of his Massachusetts dental license. In response to his request, the Massachusetts Dental Board required that the Respondent attend remedial education courses at one of the dental schools in Boston, and pass the Northeast Regional Dental Examination. The Respondent satisfied these requirements. As a result, the Massachusetts Dental Board reinstated the Respondent's dental license on a probationary basis pursuant to a December 3, 1997, consent agreement. The consent agreement required that the Respondent attend Massachusetts Dental Society Committee on Drug and Alcohol Dependency (C–DAD) meetings twice a month, undergo random urinalysis, and refrain from the use of alcohol or drugs of any kind, except those prescribed for a legitimate medical or dental purpose. The Respondent attended the required C–DAD meetings, and also attended on a monthly basis the non-mandatory meetings of C–DAD since the summer of 1999. On November 12, 1998, the Respondent was issued a Massachusetts Controlled Substance Registration, which was current as of the date of the administrative hearing.

In October 1999, the Respondent successfully completed the board-imposed probationary period. A December 8, 1999, letter from the chairman of the Massachusetts Dental Board, which was admitted as evidence during the hearing, revealed that the Respondent remained in full compliance with the terms of the consent agreement. In a separate letter dated March 22, 1999, the Dental Board chairman advised that no complaints had ever been filed against the Respondent regarding dental treatment or his relationship with his patients. The letter further revealed that the Respondent had passed the Northeast Regional Dental Exam with an outstanding score and had served as a mentor to young dental students who were preparing for the exam.

The Deputy Administrator also finds that in January 1998, the Respondent began part-time work in an orthodontic practice in Marshfield, Massachusetts, where he assumed the responsibility for treating approximately 55 orthodontic patients. The Respondent was employed in this capacity as of the hearing date. From November 1998 to March 2000, the Respondent was employed full-time at the Health First Clinic in Fall River, Massachusetts, where his primary responsibilities included general dentistry, oral surgery and urgent care. The Respondent presented written testimony from several of his colleagues who attested to his high degree of competence and care in the field of dentistry, as well as a favorable letter from one of his patients.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry T. Schwartz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the Deputy Administrator finds that the Massachusetts Dental Board has fully reinstated the Respondent's dental license with no restrictions, and the Commonwealth of Massachusetts has also issued Respondent a controlled substance registration. As noted by Judge Bittner, the chairman of the Massachusetts Dental Board has advised that that body supports the Respondent's application for a DEA registration. The Deputy Administrator agrees with Judge Bittner's finding that while Respondent's licensures to practice dentistry and to handle controlled substances in Massachusetts are not determinative in this proceeding, the positive recommendation of the Massachusetts Dental Board, and the reinstatement of his state controlled substance registration weigh in favor of granting the Respondent's application.

As to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, are clearly relevant in determining the public interest in this matter. While there is no contention that Respondent has ever inappropriately prescribed, administered, or otherwise dispensed controlled substances to any patient, Respondent admitted that he purchased and/or used cocaine, marijuana, LSD and mescaline. The

Respondent was also arrested while in possession of marijuana in May 1986 and on June 17, 1987, he tested positive for cocaine pursuant to an Arizona Dental Board Drug test. In addition, the Respondent testified that he procured a small amount of cocaine for his wife while living in Arizona, and admitted to sharing home grown marijuana with his girlfriend while living in South Hadley, Massachusetts. Therefore, the government has established that factors two and four should be weighed in favor of a finding that Respondent's registration would be inconsistent with the public interest.

As to factor three, Respondent's conviction under Federal or State laws relating to controlled substances, it is undisputed that Respondent pled guilty in 1986 to solicitation to possess a narcotic drug in Arizona, and was convicted in 1993 of the felonies of conspiracy to possess with intent to distribute cocaine, possession with intent to distribute cocaine and marijuana, and the use of mail to facilitate a narcotics transaction in Massachusetts.

With respect to favor five, other conduct that may threaten the public health and safety; the Deputy Administrator share the concern of the government regarding the Respondent's inconsistent and evasive testimony during the administrative hearing. The Deputy Administrator further shares the concerns of Judge Bittner and the government regarding the Respondent's apparent lack of respect for laws regulating the use of controlled substances, as reflected by his comments to a probation officer in Arizona that he deserved ''no more than a slap on the wrist'' and his insistent that ''sharing'' controlled substances does not constitute ''distribution.''

Despite the Deputy Administrator's finding regarding evasive and inconsistent testimony by the Respondent, and in particular his testimony during cross-examination by government counsel, in fairness to the Respondent, several of the topics that he was asked about covered statements made, and events that occurred more than ten years prior to testimony at the hearing (*i.e.,* the circumstances involving his 1986 arrest in Arizona, statements attributed to him in the 1987 Presentence Investigative Report, etc.). While this finding does not necessarily mitigate the Respondent's apparent lack of candor, the passage of time between some of the events in question and the Respondent's testimony at the hearing regarding these events should be given some consideration when assessing the depth and clarity of his responses.

The Deputy Administrator is concerned with the Respondent's fairly extensive history of substance abuse. As noted above, the Respondent has used on various occasions, marijuana, LSD, mescaline and cocaine. He not only used drugs in an illicit fashion, but also shared them with friends and at least one family member.

The Deputy Administrator also finds disturbing the Respondent's maintenance of an unregistered firearm in his home in violation of Massachusetts law, his use of the United States mail service to facilitate drug transactions, and the fact that he provided money to Mr. Shatz so the latter could purchase cocaine. In addition, the Deputy Administrator is perplexed by the Respondent's apparent willingness to accept responsibility for past actions on the one hand (*i.e.,* his statement in the PSIR that he learned ''the biggest lesson of his life'' following his 1986 conviction), and his seeming refusal to acknowledge wrong doing in other respects (*i.e.,* asserting during the hearing that an Arizona law enforcement officer lied about the basis for a traffic stop which led to the Respondent's arrest).

The Deputy Administrator also shares the concern of the Administrative Law Judge and the government that the Respondent has apparently failed to learn from the negative experiences surrounding his drug use. This apparent failure was reflected by the respondent's continued use of drugs following his 1986 arrest, as well as upon his return to Massachusetts. Therefore, the Deputy Administrator finds that the government has presented a *prima facie* case for the denial of the Respondent's application for registration.

Having concluded that there is a lawful basis upon which to deny the Respondent's application, the question remains as to whether the Deputy Administrator should, in the exercise of his discretion, grant or deny the application. Ray Roya, 46 FR 45842 (1981). Like Judge Bitter, the Deputy Administrator concludes that it would be in the public interest to deny the Respondent's pending application.

The Deputy Administrator also agrees with Judge Bittner's finding that the Respondent is now prepared to comply with laws regulating the use of controlled substances. The Respondent begin attending drug rehabilitation following his July 24, 1991, arrest, and has not abused controlled substances since that time, the Respondent satisfied all of the conditions for reinstatement of his Massachusetts dental license, including his participation in C–DAD meetings; on November 12, 1998, the Respondent was issued a Massachusetts Controlled Substance Registration, which was current as of the date of the administrative hearing; and, the Respondent presented letters of support from practitioners, colleagues and a patient attesting to his professionalism, and recommending that his DEA application be granted.

However, given the Deputy Administrator's concerns about the Respondent's past mishandling of controlled substances, a restricted registration is warranted. This will allow the Respondent to demonstrate that he can responsibly handle controlled substances. Accordingly, the Deputy Administrator adopts the following restrictions upon the Respondent's DEA registration as recommended by Judge Bittner:

1. Respondent's controlled substance handling authority shall be limited to the administering of controlled substances in his office and the writing of prescriptions only;

2. Respondent shall not possess or store any controlled substance in his home except by prescribed pursuant to paragraph three below, and shall not dispense, other than by prescribing or administering, any controlled substances from his office;

3. Respondent shall not write any prescription for himself, and shall not obtain or possess for his use any controlled substance except upon the written prescription of another licensed medical professional. In the event that another licensed medical professional prescribes a controlled substance for Respondent, Respondent shall immediately notify the Special Agent in Charge of the DEA's nearest office, or his designee; (a) that he plans to obtain a specified controlled substance for his personal use, and (b) the reasons the controlled substance is being prescribed;

4. For at least two years from the date of the entry of a final order in this proceeding, Respondent shall continue to submit to random drug testing under the auspices of the Massachusetts Dental Board, or of the appropriate state dental board in another state where he practices; he shall continue to participate in Committee on Drug and Alcohol Dependency (C–DAD) meetings if he remains in Massachusetts; and he shall submit to the Special Agent in Charge of the DEA's nearest office or his designee every calendar quarter a log listing all the controlled substances Respondent has prescribed or administered during the previous quarter.

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for DEA Certificate of Registration submitted by Jeffrey Martin Ford, D.D.S. be, and it hereby is, granted, subject to the above described restrictions. This order is effective April 7, 2003.

Dated: February 24, 2003.

John B. Brown III,

Deputy Administrator.

[FR Doc. 03–5279 Filed 3–5–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 25, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or e-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for MSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration (MSHA).

Type of Review: Extension of a currently approved collection.

Title: Notification of Commencement of Operations and Closing of Mines.

OMB Number: 1219–0092.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 2,300.

Annual Responses: 2,300.

Average Response Time: 3 minutes by telephone or 30 minutes for a written response.

Total Burden Hours: 259 hours.

Total Annualized Capital/Startup Costs: $0.

Total Annual (operating/maintaining systems or purchasing services): $1,445.

Description: Under 30 CFR 56.1000 and 57.1000, operators of metal and nonmetal mines must notify the MSHA when the operation of a mine will commence or when a mine is closed. These notifications help MSHA effectively plan mine inspections.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–5272 Filed 3–5–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a 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 Employment Administration is soliciting comments concerning the proposed extension with change of the Standard Job Corps Center Request for Proposal and Related Contracting Information Reporting Requirements. A copy of the proposed information request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 5, 2003.

ADDRESSES: Renee Evans, Office of Job Corps, 200 Constitution Avenue, Room N–4464, Washington, DC 20210. E-mail address: *raevans@doleta.gov;* Telephone number: (202) 693–3091 (This is not a toll-free number); Fax number: (202) 693–2767.

SUPPLEMENTARY INFORMATION: I. *Background:* The Job Corps is an intensive, residential training program for economically challenged young people aged 16 to 24 who are out of school and out of work. Job Corps is authorized by Title I, Subtitle C, of the Workforce Investment Act (WIA) of 1998. WIA provides that up to 20 percent of the individuals enrolled in the Job Corps may be nonresidential participants. The program is principally carried out through a nationwide network of 118 Job Corps centers. The centers are located at facilities either owned or leased by the Federal Government. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program. It is the Department's responsibility to establish Job Corps centers and to select operators for them. Of the 118 current centers, 28 are operated through interagency agreements by the Departments of Agriculture and Interior. These centers are located on Federal lands controlled by these two agencies. The remaining 90 centers are managed and operated by large and small corporations and nonprofit organizations selected by the Department in accordance with the Federal Acquisition Regulations, and in most cases through a competitive procurement process. Many of the current contractors manage and operate more than one center.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The Request for Proposal (RFP) provides potential offerors with the Government's expectations for the development of proposals to operate Job Corps Centers. The proposals developed by offerors in response to the RFP are evaluated in terms of technical factors and costs. These proposals serve the principal basis for selection of a successful offeror. The operation of the Job Corps program is such that many activities required of contractors must be coordinated with organizations, both Federal and nonfederal. Most of the information collection requirements of Job Corps Center operators stem directly from operational needs or are necessary to ensure compliance with Federal requirements and the terms of the contract. Statistical reports are normally generated from source documents directly by the Federal Government, not contractors. During the last two years, several paper forms have been automated, and in many instances, eliminated. Data is entered directly into a database and reports are generated as a result of the data. Examples of these are ETA Forms 2110 (Center Financial Report), 2181 & 2181A (Center Operations Budget), 6–127 (Job Corps Utilization Summary), 6–131A (Disciplinary Discharge), 6–131B (Review Board Hearings), 6–131C (Rights to Appeal), 6–40 (Student Profile), 6–61 (Notice of Termination) and 3–38 (Property Inventory Transcription). In addition, several forms are now provided in Portable Data File (PDF) format. These forms are the 6–125 (Job Corps Health Staff Activity), 6–128 (Job Corps Health Annual Service Costs), 6–112 (Immunization Record), 6–135 (CM Health Record Envelope), 6–136 (CM Health Record Folder), 6–37 (Inspection Residential & Educational Facilities), 6–38 (Inspection Water Supply Facilities), and 6–39 (Inspection of Waste Treatment Facilities Costs.)

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Standard Center Job Corps Request for Proposal and Related Contractor Information Gathering Reporting Requirements.

OMB Number: 1205–0219.

Recordkeeping: Center operators are required to keep accurate records on each Job Corps student. All records are required to be maintained on Center for five years.

Affected Public: Business, for profit and not-for-profit institutions, and Tribal Governments.

Burden Summary: I. The annual burden hours estimated for the preparation of the Standard Center Job Corps Request for Proposal submitted by new and experienced contractors is 15,300 hours.

II. Data collection for the Center Financial and the Center Operations Budget Reports is made more than quarterly, and is essential to ensure contractor financial compliance with contractual requirements and to ensure orderly operations of the program (1,462 hours).

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Financial Report	2110	118	90 at 12/year 28 at 4/year	1192	1	1192
Center Operations Budget	2181/–2181/A	90	3	270	1	270
Total						1,462

III. Data previously collected on the forms listed below is now being collected in an electronic information system (347 hours). Data is entered utilizing a personal computer that transmits the data electronically to a centralized database. From this database many management and performance reports are created. Previously the burden for preparing these forms manually was approximately 8,181 hours.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Utilization Summary	6–127	118	12	1416	0.01875 (1 minute)	27
Disciplinary Discharge	6–131A	1500	1	1500	0.01875	28
Review Board Hearings	6–131B	1500	1	1500	0.01875	28
Rights to Appeal	6–131C	1500	1	1500	0.01875	28
Student Profile	6–40	1500	1	1500	0.01875	28
Notice of Termination	6–61	1500	1	1500	0.01875	28
Property Inventory Transcription	3–28	126	52	6552	0.0275 (3 minutes)	180
Total						347

Student personnel requirements such as: Student payroll information, student training and education courses received, student leave, disciplinary actions and medical information is also being collected in an electronic information system. The total burden hours last reported for processing these requirements were 46,720 burden hours. However, due to the fact that identical information is being collected for multiple purposes, the burden for additional data entry has been reduced. The initial data entry is maintained in the national database and used for multiple reporting purposes, therefore reducing the need to enter the data more than once. As a result, the burden hours

have been reduced from 46,720 to a total of 20,000 hours. The total burden associated with the input of data to data screens is 20,347 hours.

IV. Major record keeping and operational forms listed below that pertain to student and facility administrative matters are not provided in Portable Data Files or PDF forms. The total burden for processing these forms is 22,300 hours.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Job Corps Health Staff Activity	6–125	118	1	118	0.25 (25 min)	29.5
Job Corps Health Annual Service Costs	6–128	118	1	118	0.25	29.5
Immunization Record	6–112	71000	1	71000	0.05 (5 min)	3550
CM Health Record Envelope	6–135	71000	1	71000	0.125 (13 min)	8875
CM Health Record Folder	6–136	71000	1	71000	0.125	8875
Inspection of Residential & Educational Facilities.	6–37	118	4	472	0.5	236
Inspection of Waste Treatment Facilities Costs.	6–39	23	4	92	1.25 (1 hr. 25 min)	115
Inspection Water Supply Facilities	6–38	118	4	472	1.25	590
Total						22,300

V. A total of 7,302 burden hours are estimated for the preparation of the Center Operating Plans listed below that are required for the operation of a Job Corps center.

Required activity	ETA form No.	Number of respondents	Submissions per year	Total annual submissions	Hours per submission	Total burden hours
Center Operation Plan		90	1	90	30	2700
Maintenance		118	1	118	5	590
C/M Welfare		118	1	118	2	236
Annual VST		118	1	118	24	2832
Annual Staff Training		118	1	118	1	118
Energy Conservation		118	1	118	5	590
Outreach		118	1	118	2	236
Total						7,302

Total Estimated Burden: 66,711 hours.

Total Burden Cost (Capital/Startup): The Office of Job Corps has automated the data collection process for its Centers. The Center Information System allows all centers to directly input data into a national database. As a result, the burden hours associated with the preparation of forms has decreased significantly. The maintenance cost associated with the system is estimated to be $2.7 million a year for hardware and software.

Total Burden Cost (Operating/Maintaining): The costs to contractors for accomplishing record keeping requirements is contracted and computed by the Federal government annually. While precise costs cannot be identified, at the present time and based on past experience, the annual and related costs for contractor staff are estimated to be $955,458, which represents an average cost of $14.00 per hour.

Comments submitted in response to this comment request 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: February 27, 2003.

Richard C. Trigg,

Administrator, Office of Job Corps.

[FR Doc. 03–5270 Filed 3–5–03; 8:45 am]

BILLING CODE 4510–30–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY: Mississippi River Commission.

TIME AND DATE: 9 a.m., April 7, 2003.

PLACE: On board MISSISSIPPI V at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 8, 2003.

PLACE: On board MISSISSIPPI V at Mud Island, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects

of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 9, 2003.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., April 11, 2003.

PLACE: On board MISSISSIPPI V at New Orleans District Dock, Foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Richard B. Jenkins,

Colonel, Corps of Engineers, Secretary, Mississippi River Commission.

[FR Doc. 03–5469 Filed 3–4–03; 2:18 pm]

BILLING CODE 3710–GX–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–9

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–9, Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, informs former disability annuitants of their right to request restoration under title 5, U.S.C. 8337. It also specifies the conditions to be met and the documentation required for a person to request reinstatement.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 200 forms are completed annually. The form takes approximately 60 minutes to respond, including a medical examination. The annual estimated burden is 200 hours. Burden may vary depending on the time required for a medical examination.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–5197 Filed 3–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 25–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–7, Marital Status Certification Survey, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Approximately 2,500 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 625 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Jackson, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2336, Washington, DC 20415–3560; and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–5198 Filed 3–5–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25949]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 28, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of February, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Cathay Securities Fund, Inc. [File No. 811–10013]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 14, 2003, applicant made a liquidating distribution to its sole shareholder, based on net asset value. Expenses of $16,000 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on January 27, 2003, and amended on February 18, 2003.

Applicant's Address: 777 North Broadway, Los Angeles, CA 90012.

The Cornerstone Strategic Return Fund, Inc. [File No. 811–8878]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 31, 2002, applicant transferred its assets to Cornerstone Total Return Fund, Inc. (f/k/a EIS Fund, Inc.), based on net asset value. Expenses of $144,293 incurred in connection with the reorganization were paid by applicant and the acquiring fund.

Filing Dates: The application was filed on November 25, 2002, and amended on February 14, 2003.

Applicant's Address: 383 Madison Ave., New York, NY 10179.

The Lipper Funds, Inc. [File No. 811–9108]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 31, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $34,000 incurred in connection with the liquidation were paid by Lipper & Company L.L.C. and Prime Lipper Asset Management, applicant's investment advisers.

Filing Dates: The application was filed on December 17, 2002, and amended on February 6, 2003.

Applicant's Address: 101 Park Ave., 6th Floor, New York, NY 10178.

Morgan Stanley Dean Witter Mid-Cap Dividend Growth Securities [File No. 811–8577]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 21, 2000, applicant transferred its assets to Morgan Stanley Capital Opportunities Trust (formerly known as Morgan Stanley Dean Witter Mid-Cap Equity Trust), based on net asset value. Expenses of approximately $206,000 incurred in connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on November 12, 2002, and amended on February 6, 2003.

Applicant's Address: 1221 Avenue of the Americas, New York, NY 10020.

Morgan Stanley Dean Witter Municipal Income Trust [File No. 811–5214]

Morgan Stanley Dean Witter Municipal Income Trust II [File No. 811–5509]

Morgan Stanley Dean Witter Municipal Income Trust III [File No. 811–5842]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 2, 2001, each applicant transferred its assets to Morgan Stanley Tax-Exempt Securities Trust (formerly known as Morgan Stanley Dean Witter Tax-Exempt Securities Trust), based on net asset value. Expenses of approximately, $134,000, $129,000 and $101,000, respectively, incurred in connection with the reorganizations were paid by each applicant.

Filing Dates: The applications were filed on November 12, 2002, and amended on January 31, 2003.

Applicant's Address: 1221 Avenue of the Americas, New York, NY 10020.

TCW/DW Term Trust 2000 [File No. 811–7808]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 18, 2000, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Dates: The application was filed on November 12, 2002, and amended on January 31, 2003.

Applicants' Address: 1221 Avenue of the Americas, New York, NY 10020.

Federated Fund for U.S. Government Securities, Inc. [File No. 811–1890]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 7, 2002, applicant transferred its assets to Federated Fund for U.S. Government Securities, based on net asset value. Applicant incurred no expenses in connection with the reorganization.

Filing Dates: The application was filed on December 6, 2002, and amended on February 6, 2003.

Applicant's Address: 1001 Liberty Ave., Pittsburgh, PA 15222–3779.

Pauze Funds [File No. 811–8148]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 28, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant's custodian has retained $10,213 to pay outstanding debts and liabilities. Expenses of $198 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on December 30, 2002, and amended on January 31, 2003.

Applicant's Address: 14340 Torrey Chase Blvd., Suite 170, Houston, TX 77014.

PW Technology Partners, L.P. [File No. 811–9181]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On October 15, 2002, applicant transferred its assets to

UBS PW Technology Partners, L.L.C., based on net asset value. Expenses of $100,000 incurred in connection with the reorganization were paid by UBS PaineWebber Inc., affiliate of the applicant's general partner.

Filing Dates: The application was filed on December 2, 2002, and amended on January 31, 2003.

Applicant's Address: c/o UBS PaineWebber Inc., 1285 Avenue of the Americas, New York, NY 10019.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–5281 Filed 3–5–03; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region VIII Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region VIII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, March 27, 2003, at 1:30 p.m. at the Denver Public Library, Central Branch, 10 West 14th Avenue Parkway, Denver, CO 80204, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Joseph Edwards in writing or by fax, in order to be put on the agenda. Joseph Edwards, U.S. Small Business Administration, Colorado District Office, 721 19th Street, Suite 426, Denver, CO 80202, phone (303) 844–2607 Ext 231, fax (303) 844–6468, e-mail *Joseph.Edwards@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: February 26, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–5257 Filed 3–5–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IX Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Tuesday, March 25, 2003, at 1 p.m. at the Pima Community College, 4905 East Broadway Boulevard, Tucson, AZ, 85709, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Janet Dunipace in writing or by fax, in order to be put on the agenda. Janet Dunipace, U.S. Small Business Administration, Arizona District Office, 2828 North Central Avenue, Suite 800, Phoenix, AZ 85004, phone (602) 745–7207, fax (602) 745–7210, e-mail *janet.dunipace@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: February 26, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–5258 Filed 3–5–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4261]

U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission; Notice of Renewal

The Department of State has renewed the Charter of the U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) for another two years, effective September 5, 2002.

The NPAFC is a venue for consultation and coordination of cooperative high seas fishery enforcement among Convention parties.

The NPAFC was established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed on February 12, 1992, by Canada, Japan, the Russian Federation, and the United States, and entered into force on February 16, 1993. The U.S. Advisory Panel will continue to work with the U.S. Section to promote the conservation of anadromous fish stocks, particularly salmon, throughout their migratory range in the North Pacific Ocean, as well as ecologically related species.

The U.S. Section of the Commission is composed of three Commissioners who are appointed by the President. Each Commissioner is appointed for a term not to exceed 4 years, but is eligible for reappointment. The Secretary of State, in consultation with the Secretary of Commerce, may designate alternate commissioners. The Advisory Panel to the U.S. Section is composed of 14 members, 11 of whom are appointed by the Secretary, in consultation with the Secretary of Commerce. Advisory Panel members serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

The Advisory Panel will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with section 10 of the FACA, 5 U.S.C. 552b(c)(l) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will continue to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Panel, please contact Dorothy Zbicz, Office of Marine Conservation in the Department of State, (202) 647–3073.

Dated: February 11, 2003.

Mary Beth West,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–5286 Filed 3–5–03; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4290]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: U.S./Ukraine Policy Dialog Exchange

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the U.S./Ukraine Policy Dialog Exchange. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to support a program that will facilitate an on-going exchange of views among policymakers and other leading experts from both countries. The program will focus on issues that affect U.S./Ukrainian relations.

Program Information

Overview: The Bureau of Educational and Cultural Affairs (The Bureau) invites applicants to submit a proposal for a two-year project that will initiate and support dialog among policymakers and leading experts from both countries. The purpose of the program is to

advance constructive dialog and enhance relationships among experts in the two countries by providing an on-going forum through which they can freely exchange ideas and discuss issues and concerns of mutual interest in the context of the bilateral relationship between the two nations. Of particular interest are key issues that impact Ukraine's democratic and market-oriented development and its eventual integration into the Euro-Atlantic community. Participants should be from a range of organizations and sectors such as business, media, research institutes, as well as government.

Guidelines: Applicants should propose four, one-week working sessions over the two-year grant period. Two should take place in the U.S. and two in Ukraine. They should not be held in the same country two times in a row, but alternate between the U.S. and Ukraine. Up to 30 participants may take part in each working session. Each country should be as equally represented as possible with no more than 15 in attendance from each country. During U.S.-based working sessions, participants will take part in roundtable discussions. Where appropriate, informative lecture-style sessions on U.S.-style think tanks, media outlets, advocacy organizations, and non-governmental organizations may be provided for Ukrainian participants, with an emphasis on the role of these institutions in U.S. civil society, their relationship with the U.S. federal government, and their influence on policy formation. Further, consultative visits to these institutions may also be provided. Ukraine-based working sessions will be composed of roundtable discussions and other exchange activities, as appropriate. The proposal should provide a draft schedule with agenda for each working session. For participant recruitment and selection, a detailed plan should be provided. The Public Affairs Section at the U.S. Embassy in Kiev and the program office at the Bureau reserve the right to approve or disapprove nominated participants. Grantees will be required to provide a list of proposed Ukrainian participants at least eight weeks in advance of travel to the U.S. In the proposal, applicants should describe mechanisms that will be developed to disseminate the findings and recommendations of the participants to a broad audience in the U.S. and Ukraine. Competitive proposals will include a vision for the continuation of this exchange when U.S. government funding is exhausted. Pending availability of funds, programs should begin in June 2003.

The Executive Summary and Narrative of the proposal should be no more than twenty pages in length, double-spaced, single-sided, and unbound. Lettered tabs should be used to divide proposal sections. Applicants should describe a comprehensive strategy for managing all logistical and substantive aspects of this program. Programs must comply with J–1 visa regulations. In the Solicitation Package, forms required by Federal regulations and Bureau policies are provided for applicants to complete. Please follow the guidelines; complete and return the necessary forms with the submission. Please refer to the *Technical Format and Instructions* page in the Proposal Submission Instructions (PSI) for guidance.

Involvement of the Public Affairs Section (PAS) in Kiev: Though project administration and implementation are the responsibility of the grantee, PAS at the U.S. Embassy in Kiev will provide significant project oversight. As soon as a grant is awarded, the grantee must contact PAS for guidance on moving forward with the project. In addition to evaluating project proposals (for the purpose of awarding the grant) and approving proposed Ukrainian participants, PAS must be consulted on the planning and implementation of both U.S.-based and in-country activities (including identification and selection of participants). PAS will also observe in-country activities, debrief participants, and work with the grantee to evaluate project impact.

Program Data Requirement: The grantee will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with PAS and the program office at the Bureau, as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant.

(2) Itineraries of international and domestic travel of all participants, including dates, location, and contact information.

Bureau Acknowledgement: Applicants are required to acknowledge the Bureau of Educational and Cultural Affairs and the U.S. Department of State as the funder of the program in all published and broadcast materials, including public announcements and program schedules. Please note that this will be a formal requirement in all final grant awards.

Budget Guidelines

The Bureau anticipates awarding one grant not exceeding $231,000, to support program and administrative costs required to implement this program. Bureau grant guidelines state that organizations with less than four years of experience in conducting international exchange programs are limited to $60,000 in Bureau support. Therefore, organizations with less than four years of experience in conducting international exchanges would not be eligible to apply under this competition. Competitive proposals will provide maximum levels of cost-sharing and funding from private sources in support of this program. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. ECA funding may support the following costs:

(1) *Travel Costs.* International and domestic airfares (per the ''Fly America Act''), transit costs, ground transportation costs, and visas for U.S. participants. (Ukrainian participants will be issued J–1 at no charge to the grantee organization.)

(2) *Per Diem.* For U.S.-and Ukraine-based programming, organizations should not exceed the published Federal per diem rates for individual U.S. cities.

(3) *Interpreters.* Salary costs for local interpreters in Ukraine should be included in the budget. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. U.S. Department of State Interpreters should be used for U.S.-based working sessions. Applicants should budget $400 per interpreters' r/t transportation from their home base to the program site, for reimbursements for taxi fares, plus any other transportation expenses during the program. Interpreters' per diem should exceed the maximum allowable USG rate. Salary expenses are covered centrally and should not be part of an applicant's proposed budget.

(4) *Book and cultural allowance.* Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff, trainers or participants are not eligible to receive these benefits.

(5) *Consultants.* Consultants may be used to provide specialized expertise or

to make presentations. Daily honoraria cannot exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

(6) *Room rental.* Room rental should not exceed $250 per day. Applicants should cost-share higher room rental costs for rates above $250 per day.

(7) *Materials development and publication.* Proposals may contain costs to purchase, develop, translate, and/or distribute findings and recommendations that are a result of the four working sessions. Grantee organizations should expect to submit a copy of all program materials to the Bureau.

(8) *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. The allowance may be used for incidental expenses incurred during international travel.

(9) *Health Insurance.* Foreign participants will be covered under the terms of a Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

(10) *Wire transfer fees.* When necessary, applicants may include costs to transfer funds to partner organizations overseas.

(11) *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/EUR–03–37.

FOR FURTHER INFORMATION CONTACT: Interested organizations should contact the Office of Citizen Exchanges, ECA/PE/C/EUR, Room 224, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–5327, fax number 202–619–4350, e-mail *hscott@pd.state.gov* to request a Solicitation Package. Please specify Bureau Program Officer Henry Scott on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet:

The entire Solicitation Package may be downloaded from the Bureau's 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 April 30, 2003. Faxed documents will not be accepted at any time. Documents postmarked on the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/EUR–03–37, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy in Ukraine for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.* The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If the applicant has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of

forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of 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 at the Bureau, as well as PAS/Kiev. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content.

5. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Applicants must demonstrate significant expertise with Ukrainian contemporary issues, experience working with high-level Ukrainian and U.S. policymakers and experts, and experience and ability to conduct all required logistics in Ukraine.

6. *Follow-on Activities:* Proposals should show what mechanisms will be put in place to ensure that communication and dialog among participants continue after the grant has expired.

7. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique, plus a description of a methodology used to link outcomes to the original project objectives, are recommended.

8. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through FREEDOM Support Act legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 26, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–5009 Filed 3–5–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4289]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: FY2004 Vietnam Fulbright Foreign Student Exchange Program

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the Vietnam Fulbright Foreign Student Exchange Program. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the program.

The Vietnam Fulbright Foreign Student Exchange Program was established by act of Congress in FY1992. The program aims to offer the highest quality training to Vietnamese professionals and potential leaders who have at least three to five years of work experience and are employed in areas critical to Vietnam's national development. The Vietnamese Fulbright students pursue master's degrees at U.S. universities in academic fields critical to Vietnam's national development and consistent with the primary goal of the Vietnam Fulbright program, which is to foster mutual understanding between the people of the United States and Vietnam through educational exchanges.

Program Information

Overview

The Vietnam Fulbright Foreign Student Exchange Program is designed

to bring approximately twenty to twenty-five Vietnamese students per year to study in the United States. The students will pursue one- to two-year graduate degrees in a wide range of academic fields such as American studies, business, economics, environmental policy/studies, higher education, international relations, journalism, law, women's studies (*e.g.*, gender and development), public health, public policy/administration, and rural development. Your proposal should include program costs for two years, but administrative costs for only the first year. Your proposal narrative should provide detailed information on major program activities to be undertaken.

The Office of Academic Exchange Programs, Department of State, works in partnership with the Public Affairs Section of the U.S. Embassy in Hanoi to administer the Fulbright Program in Vietnam. The grantee must collaborate with both offices to carry out the programs and activities of the grant.

Guidelines

Pending availability of funds, program administration activities should cover the time period from approximately October 1, 2003 to September 30, 2005. The projected grantee caseload is expected to be approximately 25 students. Program activities will include recruitment, selection, and placement of students in graduate programs, as well as arrangement of pre-academic English language training, enrichment seminars, and monitoring of students while on their grants. Orientations should also be provided for the students prior to their departure from Vietnam and by the host institutions upon arrival at the institutions. Applicants should plan to hold reentry seminars either before students leave the U.S. or after their return to Vietnam. When possible, alumni activities should be facilitated and supported.

The grantee organization will be responsible for:

- Tuition payment, monitoring, and supervision for students who begin programs in Summer 2003 (who were selected by the incumbent grantee organization);
- Testing, interviewing, and final selection of a cohort to begin programs in Summer 2004 (who will have been recruited and initially screened by the incumbent organization); and
- Recruitment and screening for a cohort of students to begin in Summer 2005.

The incumbent organization will be responsible for monitoring and supervision during the second year of study for grantees who began programs in Summer 2002.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

The Bureau anticipates awarding one grant of up to $1.8 million to support program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. Therefore, organizations that cannot demonstrate at least four years experience in conducting international exchanges are ineligible to apply under this competition.

There should be a clear justification of the need for any proposed sub-contracts. Subcontractors should bring unique skills or value to the process, and this should be demonstrated in the proposal.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $1.8 million, and may be smaller if an overlapping grant with the incumbent organization is necessary to ensure a smooth program transfer. There must be a summary budget as well as specific breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) Program costs for students' grants (up to two years of graduate study plus up to six months of language training);

(2) Staff salaries and benefits; and

(3) Administrative costs including communication, overhead and indirect costs, travel and per diem expenses, etc.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and the following number: ECA/A/E/EAP–2004–Vietnam–02.

FOR FURTHER INFORMATION, CONTACT: Mary Hanlon in the Office of Academic Exchange Programs, ECA/A/E/EAP, Room 208, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; phone: 202–619–5406; fax: 202–401–1728; e-mail: *mhanlon@pd.state.gov* to request a Solicitation Package if you are unable to download it from the internet (see instructions below). The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Mary Hanlon on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's 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 Thursday, May 1, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EAP–2004–Vietnam–02, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but

not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

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, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The grantee organization 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, as well as the Public Diplomacy section overseas where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants or cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as it unfolds and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance

with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: February 26, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–5008 Filed 3–5–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4293]

Bureau of Oceans and International Environmental and Scientific Affairs; Notice of Availability of a Draft National Plan of Action To Prevent, Deter, and Eliminate Illegal, Unregulated, and Unreported Fishing

SUMMARY: The Department of State announces the availability of a draft National Plan of Action (NPOA) developed pursuant to the International Plan of Action (IPOA) to Prevent, Deter, and Eliminate Illegal, Unregulated, and Unreported Fishing, adopted by the United Nations Food and Agriculture Organization (FAO) Committee on Fisheries (COFI) Ministerial Meeting in February 2001. Members of the public are encouraged to provide comments on the draft NPOA.

DATES: Comments must be received no later than May 31, 2003.

ADDRESSES: Written comments and requests for copies of the draft NPOA should be submitted to Deirdre Warner-Kramer, Office of Marine Conservation (OES/OMC), Bureau of Oceans, and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818, or may be sent via facsimile (fax) to 202–736–7350. An electronic version of the draft is available at *http://www.state.gov/g/oes/ocns/c7983.htm* Comments will not be accepted if submitted via e-mail.

FOR FURTHER INFORMATION CONTACT: Deirdre Warner-Kramer at 202–647–2335, fax 202–736–7350.

SUPPLEMENTARY INFORMATION: The United States and other members of the international community have experienced a growing incidence of fishing activity that does not respect applicable laws and regulations, including fishing rules adopted at the national and international levels. Examples of such activity include reflagging of fishing vessels to evade controls, fishing in areas of national jurisdiction without authorization by the coastal State, and failure to report (or misreporting) catches. Such irresponsible fishing activity directly undermines efforts to manage fisheries properly and impedes progress toward the goal of sustainable fisheries.

Under the auspices of the Food and Agriculture Organization of the United Nations (FAO), a concerted effort was undertaken to develop a comprehensive ''toolbox'' of measures that States could take, both individually and collectively, to address the problems of IUU fishing. This effort culminated with the adoption in 2001 of the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA).

As its title suggests, the objective of the IPOA is to prevent, deter and eliminate IUU fishing. The principles to guide the pursuit of this objective include: (1) Broad participation and coordination among States, as well as representatives from industry, fishing communities and non-governmental organizations; (2) the phasing-in of action to implement the IPOA on the earliest possible timetable; (3) the use of a comprehensive and integrated approach, so as to address all impacts of IUU fishing; (4) the maintenance of consistency with the conservation and long-term sustainable use of fish stocks and the protection of the environment; (5) transparency; and (6) non-discrimination in form or in fact against any State or its fishing vessels.

The draft U.S. National Plan of Action is organized along the same lines as the IPOA, including sections on All State Responsibilities, Flag State Responsibilities, Coastal State Measures, Port State Measures, Internationally Agreed Market State Measures, Measures to be Implemented Through Regional Fisheries Management Organizations and Special Requirements of Developing States. As envisioned in the IPOA, the United States intends to review the implementation of this National Plan of Action at least every four years after its adoption.

Dated: February 27, 2003.

Margaret F. Hayes,

Acting Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 03–5287 Filed 3–5–03; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Measure and Opportunity for Public Comment Pursuant to Section 421 of the Trade Act of 1974: Certain Steel Wire Garment Hangers From the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed measure; request for comments.

SUMMARY: The United States International Trade Commission (ITC) has determined, pursuant to section 421(b)(1) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2451(b)(1)), that certain steel wire garment hangers [1] from the People's Republic of China (China) are being imported into the United States in such increased quantities or under such conditions as to cause market disruption to the domestic producers of like or directly competitive products. Pursuant to section 421(h)(1) of the Trade Act, the United States Trade Representative (USTR) is publishing notice of proposed restrictions with respect to imports of the subject steel wire garment hangers from China. USTR invites domestic producers, importers, exporters, and other interested parties to submit their views and evidence on the appropriateness of the proposed restrictions and whether they would be in the public interest. USTR also invites interested parties to participate in a public hearing (if requested).

DATES: Requests for USTR to hold a public hearing are due by March 18, 2003. Written comments and requests to testify at any public hearing are due by March 20, 2003. If a request for USTR

[1] For purposes of its investigation, the ITC considered certain steel wire garment hangers to consist of garment hangers, fabricated from steel wire in gauges from 9 to 17, inclusive (3.77 to 1.37 millimeters, inclusive), whether or not galvanized or painted, whether or not coated with latex or epoxy or other similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles, tubes, or struts. After fabrication, such hangers are in lengths from 7 to 20 inches, inclusive (177.8 to 508 millimeters, inclusive), and the hanger's length or bottom bar is composed of steel wire and/or saddles, tubes, or struts. The product may also be identified by its commercial designation, referring to the shape and/or style of the hanger or the garment for which it is intended, including but not limited to Shirt, Suit, Strut, and Caped hangers. Specifically excluded are wooden, plastic, aluminum, and other garment hangers that are covered under separate subheadings of the Harmonized Tariff System of the United States (HTS). The products subject to the investigation are classified in subheading 7326.20.00 of the HTS and reported under statistical reporting number 7326.20.0020.

to hold a public hearing is received, the hearing will be held on April 1, 2003.

ADDRESSES: *Submissions by electronic mail: FR0070@ustr.gov; Submissionsse 3581 by facsimile:* Sandy McKinzy, USTR, at (202) 395–9672.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and holding of a public hearing, contact Sandy McKinzy, USTR, telephone (202) 395–9483, facsimile (202) 395–9672. Other questions should be addressed to Terrence J. McCartin, Office of North Asian Affairs, USTR, telephone (202) 395–3900, or David L. Weller, Office of General Counsel, USTR, telephone (202) 395–3581.

SUPPLEMENTARY INFORMATION:

1. The ITC Investigation and Section 421

Following receipt of a petition filed on November 27, 2002, on behalf of CHC Industries, Inc., M&B Metal Products Co., Inc., and United Wire Hanger Corp., the ITC instituted investigation No. TA–421–2, under section 421 of the Trade Act (19 U.S.C. 2451) to determine whether the subject steel wire garment hangers from China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. The ITC made an affirmative determination on January 27, 2003, and transmitted a report on its determination, as well as its remedy proposals, to USTR on February 14, 2003. The views of the ITC, including its remedy proposals, are available on the ITC's Web site (*http://www.usitc.gov/7ops/chinasafeguard.htm*) and are contained in USITC Publication 3575 (February 2003), entitled ''Certain Steel Wire Garment Hangers from China: Investigation No. TA–421–2''. A copy of that publication, which also includes the ITC staff report, can be obtained from the ITC by faxing a request to (202) 205–2104 or calling (202) 205–1809.

Following an affirmative determination by the ITC, and pursuant to Section 421(h) of the Trade Act, USTR is required to make a recommendation to the President concerning what action, if any, to take to remedy the market disruption. Within 15 days after receipt of USTR's recommendation, the President is required to provide import relief unless the President determines that provision of such relief is not in the national economic interest of the United States or, in extraordinary cases, that the taking of action would cause serious harm to the national security of the United States. (Section 421(k)) Prior to making a recommendation, USTR is required to publish notice of any proposed measures and of the opportunity to comment.

2. Proposed Measure and Opportunity for Comment

The ITC recommended that the President impose a duty, in addition to the current rate of duty, for a three-year period on imports of the subject steel wire garment hangers from China, as follows: 25 percent ad valorem in the first year, 20 percent ad valorem in the second year, and 15 percent ad valorem in the third year. The ITC further recommended that, if applications are filed, the President direct the U.S. Department of Commerce and the U.S. Department of Labor to provide expedited consideration of trade adjustment assistance for firms and/or workers affected by the subject imports. (68 FR 8926) USTR proposes this remedy for further consideration by domestic producers, importers, exporters, and other interested parties, and invites any of these parties to submit their views and evidence on the appropriateness of the proposed remedy and whether it would be in the public interest. In addition, USTR invites comments on other possible actions, including: imposition of an additional duty on imports of the subject steel wire garment hangers from China, at a rate and/or for a period different from the ITC recommendation; imposition of a tariff-rate quota on the subject imports from China; imposition of a quota on the subject imports from China; an import monitoring mechanism; or no import relief (pursuant to a determination under Section 421(k) of the Trade Act regarding the national economic interest or national security). In commenting on possible actions, interested parties are requested to address: (i) The short- and long-term effects that implementation of the proposed action is likely to have on the domestic steel wire garment hanger industry, other domestic industries, and downstream consumers, and (ii) the short- and long-term effects that not taking the proposed action is likely to have on the domestic steel wire garment hanger industry, its workers, and on other domestic industries or communities.

An interested party may request that USTR hold a public hearing, which request must be received by March 18, 2003. Written comments, as well as requests to testify at any public hearing, must be received by March 20, 2003, and should be submitted in accordance with the instructions below. Parties that have submitted comments and/or requested to testify at any public hearing will be informed if a hearing is to be held. In addition, information on any public hearing may be obtained by contacting Sandy McKinzy at (202) 395–9483. If a public hearing is requested, it will be held on April 1, 2003, at 9:30 a.m. in Rooms 1 and 2, 1724 F Street, NW., Washington, D.C. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: ''Wire Hangers'' followed by (as appropriate) ''Written Comments'', ''Request for Public Hearing'', or ''Request to Testify''. Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC–'', and the file name of the public version should begin with the characters ''P–''. The ''P–'' or ''BC–'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public

inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

Wendy S. Cutler,

Assistant United States Trade Representative, Office of North Asian Affairs.

[FR Doc. 03–5329 Filed 3–5–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED TRADE REPRESENTATIVE

[Docket No. WTO/DS–282]

WTO Dispute Settlement Proceeding Regarding Antidumping Measures on Oil Country Tubular Goods From Mexico

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representatives (''USTR'') is providing notice that on February 18, 2003, the United States received from Mexico a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') regarding various measures relating to the antidumping duty order on oil country tubular goods (''OCTG'') from Mexico. Mexico alleges that determinations made by U.S. authorities concerning this product, and certain related matters, are inconsistent with Articles 1, 2, 3, 6, 11, and 18 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (''AD Agreement''), Articles VI and X of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 25, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0069@ustr.gov*, or (ii) by mail, to Sandy McKinzy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Mexico OCTG Dispute, with a confirmation copy sent electronically to the address above, or by fax to (202) 395–3640, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Urugary Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1) requires that notice and opportunity for comment be provided after the United States submit or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Mexico

With respect to the measures at issue, Mexico's request for consultations refers to the following:

- The final sunset review determinations on OCTG from Mexico by the U.S. Department of Commerce (''Commerce'') (66 FR 14131 (March 9, 2001), and the U.S. International Trade Commission (''ITC'') (66 FR 35997 (July 10, 2001)), as well as the resulting continuation by Commerce of the antidumping duty order on OCTG from Mexico (66 FR 38630 (July 25, 2001);
- The final results of the fourth administrative review by Committee of the antidumping duty order on OCTG from Mexico, such review covering the time period from August 1, 1998 to July 31, 1999 (66 FR 15832 (March 21, 20010);
- Sections 751 and 752 of the Tariff Act of 1930;
- The URAA Statement of Administrative Action;
- Commerce's Sunset Policy Bulletin (63 FR 18871 (April 16, 1998));
- Commence's sunset review regulations, 19 CFR 351.218;
- The ITC's sunset review regulations, 19 CFR 207.60–69; and
- Portions of Commerce's regulations concerning administrative reviews, including 19 CFR 351.213, 351.221, and 351.222.

With respect to the claims of WTO-inconsistency, Mexico's request for consultations refers to the following:

- With regard to the sunset review conducted by Commerce:
- Commerce's misapplication of the standard of ''would likely be to lead to''; and
- Commerce's reliance on a presumption in favor of maintaining the anti-dumping measures.
- With regard to the sunset review conducted by the ITC:
- The ITC's misapplication of the ''would be likely to lead to '' principle;
- The ITC's failure to conduct an ''objective examination'' of the record based on ''positive evidence'';
- The ITC's failure to base its determination of injury on the ''effects of dumping'' on the domestic industry and to consider whether injury was caused by ''any known factors other than the dumped imports'';
- The ITC's cumulative assessment of injury; and
- The standards requiring that the ITC determine whether injury would be likely to continue or recur ''within a reasonable foreseeable time'' and that the ITC ''shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves over a longer period of time'', both *per se* and applied.
- With regard to the fourth administrative review:
- Commerce's determination not to revoke the antidumping order;
- Commerce's retroactive application of new requirements for revocation; and
- Commerce's use of the practice known as ''zeroing'' for negative dumping margins.

Mexico also alleges that the U.S. statutory, regulatory and administrative provisions it cites require Commerce and the ITC to act inconsistently with Articles 1, 2, 11 and 18 of the AD Agreement and Article VI of the GATT 1994, thereby rendering the U.S. provisions inconsistent *per se* with those articles, as well as with Article 18.4 of the AD Agreement and Article XVI:4 of the WTO Agreement. In addition, Mexico alleges that its claims, viewed cumulatively, establish a violation of Article 11.1 of the AD Agreement and Article VI and Article X:3(a) of the GATT 1994.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a

copy electronically to *FR0069@ustr.gov,* with ''Mexico OCTG Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically, to the electronic mail address listed above, or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself and not as separate files. Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Dock No. WT/DS–282, Mexico OCTG Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–5330 Filed 3–5–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–281]

WTO Dispute Settlement Proceeding Regarding Antidumping Measures on Cement From Mexico

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on January 31, 2003, the United States received from Mexico a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') regarding various measures relating to the antidumping duty order on gray portland cement and cement clinker (''cement'') from Mexico. Mexico alleges that determinations made by U.S. authorities concerning this product, and certain related matters, are inconsistent with Articles 1, 2, 3, 4, 6, 8, 9, 10, 11, 12 and 18 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 (''AD Agreement''), Articles III, VI and X of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before March 28, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0068@ustr.gov,* or (ii) by mail, to Sandy McKinzy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Mexico Cement Dispute, with a confirmation copy sent electronically to the address above, or by fax to (202) 395–3640, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meeting in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Mexico

With respect to the measures at issue, Mexico's request for consultations refers to the following:

- The final results of the fifth through eleventh administrative reviews of the antidumping duty order on cement from Mexico, such reviews collectively covering the time period from August 1, 1994 to July 31, 2001. These final results, which were made by the U.S. Department of Commerce (''Commerce'') are published at 62 FR 17148 (April 9, 1997); 63 FR 12764 (March 16, 1998); 64 FR 13148 (March 17, 1999); 65 FR 13943 (March 15, 2000); 66 FR 14889 (March 14, 2001; 67 FR 12518 (March 19, 2002); and 67 FR 12518 (January 14, 2003);
- The final sunset review determinations on cement from Mexico by Commerce (65 FR 41049 (July 3, 2000)), and the U.S. International Trade Commission (''ITC'') (USITC Publication No. 3361 (October 2000) and 65 FR 65327 (November 1, 2000)), as well as the resulting continuation by Commerce of the antidumping duty order on cement from Mexico (65 FR 68979 (November 15, 2000));
- The dismissal by the ITC of a request for the institution of a changed circumstances review of the antidumping duty order on cement from Mexico (66 FR 65740 (December 20, 2001));
- Sections 736, 737, 751, 752 and 778 of the Tariff Act of 1930;

• The URAA Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1 (1994);
• Commerce's Sunset Policy Bulletin (63 FR 18871 (April 16, 1998));
• Commerce's sunset review regulations, 19 CFR § 351.218;
• The ITC's sunset review regulations, 19 CFR §§ 207.60–69; and
• Portions of Commerce's regulations governing the calculation of dumping margins, 19 CFR §§ 351.102, 351.212(f), 351.213(j), 351.403, and 351.414(c)(2).

With respect to the claims of WTO-inconsistency, Mexico's request for consultations refers to the following:
• With regard to the sunset review conducted by Commerce:
• Commerce's misapplication of the standard of ''would be likely to lead to'';
• The basis of Commerce's determination of the likelihood of dumping;
• Commerce's failure to disclose the ''essential facts under consideration which form the basis for the decision'';
• U.S. laws, regulations and procedures relating to duty absorption, both *per se* and as applied; and
• Commerce's reliance on a presumption in favor of maintaining the anti-dumping measures.
• With regard to the sunset review conducted by the ITC:
• The ITC's misapplication of the ''would be likely to lead to'' principle;
• The ITC's failure to compile sufficient information on the existence of either a domestic industry or regional industries;
• The ITC's determination to the effect that ''all or almost all'' U.S. producers from the southern United States would suffer material injury in the event of the antidumping duty order being revoked;
• The ITC's failure to conduct an ''objective examination'' of the record based on ''positive evidence'';
• The ITC's failure to base its determination of injury on the ''effects of dumping'' on the domestic industry and to consider whether injury was caused by ''any known factors other than the dumped imports''; and
• The statutory requirements that the ITC determine whether injury would be likely to continue or recur ''within a reasonably foreseeable time'' and that the ITC ''shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time'', both *per se* and as applied.
• With regard to the ITC's determination to reject the request of the Mexican producers for the initiation of a changed circumstances review:
• The ITC's failure to consider the positive evidence which justified the need for a changed circumstances review and its failure to initiate such a review;
• The ITC's failure to initiate a changed circumstances review to ensure that the antidumping duty order only applied to a regional industry in exceptional circumstances; and.
• The ITC's failure to disclose the necessary evidence for and adequately substantiate its decision.
• With regard to the administrative reviews:
• Commerce's improper exclusion of domestic sales of identical Type II and Type V LA cement;
• Commerce's comparison of sales of bagged cement with sales of cement in bulk;
• Commerce's failure to make a ''fair comparison'' on the basis of weighted average values, and its failure to make the required determinations regarding the use of alternative methodologies;
• Commerce's use of the practice known as ''zeroing'' for negative dumping margins;
• The levying of antidumping duties on the products consigned outside the area defined in the seventh to tenth administrative reviews;
• Commerce's use of an ''arm's length'' review to determine whether sales to related customers were ''in the ordinary course of trade'';
• Commerce's request that the Mexican respondent parties report downstream sales by affiliated to unaffiliated customers, and Commerce's calculation of dumping margins on the basis of these downstream sales;
• Commerce's failure to take account of cost-related evidence in the record in relation to differences in merchandise which affected price comparability, and its application of the ''facts available'' when making difference in merchandise adjustments;
• Commerce's failure to deduct certain pre-sale warehousing costs;
• Commerce's determination to ''amalgamate'' two Mexican companies and to calculate a single weighted average margin and establish a single importer-specific rate applicable to both companies; and
• The imposition by Commerce of an unreasonable burden of proof on the Mexican respondent parties in the determination of duty absorption.
• Commerce's failure to establish that there was adequate support from the regional industry for continued imposition of the antidumping duty.
• With regard to the U.S. retrospective duty assessment system:
• The failure to notify importers of the application of final or definitive anti-dumping duties;
• The application of a rate of antidumping duty that is sometimes higher than the rate applicable at the time of entry; and
• The collection of interest payments over and above the amount of the applicable antidumping margin.
• The application of Section 129(c)(1) of the URAA to currently unpaid amounts in respect of cement from Mexico.

Mexico also alleges that the claims described above reveal that the U.S. antidumping measures in question resulted in less favorable treatment being accorded to Mexican cement than to the U.S. like product in a manner inconsistent with Article III.4 of the GATT 1994. In addition, Mexico alleges that these claims, viewed cumulatively, establish a violation of Article X:3(a) of the GATT 1994 and Articles 1 and 18 of the AD Agreement

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to *FR0068@ustr.gov,* with ''Mexico Cement Dispute'' in the subject line. For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically, to the electronic mail address listed above, or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitting person. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of

the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–281, Mexico Cement Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–5331 Filed 3–5–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Review Under 49 U.S.C. 41720 of Delta/Northwest/Continental Agreements

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice requesting comments.

SUMMARY: Delta Air Lines, Northwest Airlines, and Continental Airlines have resubmitted their codeshare and frequent-flyer program reciprocity agreements to the Department for review. The three airlines originally submitted those agreements for review under 49 U.S.C. 41720 on August 23, 2002. The Department determined that the agreements, if implemented as presented by the three airlines, could result in significant adverse impacts on airline competition unless the airlines agreed to six conditions that would limit the likelihood of competitive harm. The three airlines have accepted three of the six conditions and, after consultations with the Department, have proposed alternative language for the remaining three conditions. The Department is inviting interested persons to submit comments on whether the airlines' proposed alternative language adequately addresses the competitive concerns relating to those three conditions.

Any comments should be submitted by March 18, 2003.

ADDRESSES: Comments must be filed with Randall Bennett, Director, Office of Aviation Analysis, Room 6401, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file three copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St., SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: On August 23, Delta, Northwest, and Continental (''the Alliance Carriers'') submitted codeshare and frequent-flyer program reciprocity agreements to us for review. Their proposed alliance would be a comprehensive marketing arrangement that would involve code-sharing, frequent flyer reciprocity, and reciprocal access to airport lounges. Their alliance agreement would have a ten-year term. *See* 68 FR 3293, 3295, January 23, 2003.

The Alliance Carriers submitted their agreements under 49 U.S.C. 41720, which requires certain kinds of joint venture agreements among major U.S. passenger airlines to be submitted to us at least thirty days before they can be implemented. We may extend the waiting period by 150 days with respect to a code-sharing agreement and by sixty days for other types of agreements. At the end of the waiting period (either the thirty-day period or any extended period established by us), the parties may implement their agreement. The statute does not expressly require the parties to obtain our approval before proceeding, and, to block the implementation of an agreement, we would normally institute a formal enforcement proceeding under 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act) to determine whether the agreement's implementation would be an unfair or deceptive practice or unfair method of competition that would violate that section. We interpret and apply section 41712 in light of the express direction of the statute that we consider the public policy factors set forth in 49 U.S.C. 40101. At the conclusion of the proceeding, we could issue an order directing the parties to cease and desist from practices found to be anti-competitive.

Following the original submission of the agreements, we invited interested persons to submit comments. We required the Alliance Carriers to make available to interested parties unredacted copies of their alliance agreements. 67 FR 69804, November 19, 2002. We reviewed the comments, material obtained by us from the three airlines, and other data in our possession. We met with the Alliance Carriers and with parties opposed to their proposed alliance. After analyzing the agreements and conducting an extensive informal investigation, we determined that the agreements, if implemented as presented by the three airlines, could result in significant adverse impacts on airline competition unless the airlines accepted six conditions developed by us to limit potential competitive harm. We stated that we would direct our Aviation Enforcement Office to institute a formal enforcement proceeding regarding the matter if the Alliance Carriers chose to implement the agreements without accepting those conditions. 68 FR 3293, January 23, 2003 (''the January Notice'').

As described more fully in the January Notice, we had the following concerns with the alliance: It would create a potential for collusion among the three partners; it could enable the Alliance Carriers to take advantage of their combined dominant market presence in a number of cities in ways that could force unaffiliated airlines to exit the markets and deter entry by other airlines; it would establish joint marketing efforts that could reduce competition between the partners and preclude effective competition from unaffiliated airlines; it could lead to a ''hoarding'' of airport facilities; and it could result in ''screen clutter,'' causing the services of competing carriers to be downgraded in the displays offered to travel agents by computer reservations systems (''CRSs''). 68 FR 3295–3297. We developed six conditions in an attempt to address these concerns. The January Notice set forth the text of these conditions. 68 FR 3297–3299.

The Department of Justice, pursuant to its separate and independent authority to enforce the antitrust laws, reviewed the alliance agreements and determined that it would not challenge the implementation of the agreements under the antitrust laws if the Alliance

Carriers accepted certain conditions, primarily concerning pricing and code-sharing. The three airlines have accepted those conditions.

The Alliance Carriers initially stated their intent to proceed to implement their alliance without accepting our conditions. Subsequently, however, they asked us to consider alternatives for three of our six conditions. They are proposing alternatives to those three conditions after having consultations with us. On February 28 they resubmitted the agreements for our review with their proposed alternative conditions. They request that we complete our review within thirty days. While they acknowledge our legal authority under section 41712 to impose conditions, they assert that they consider that neither these conditions nor the conditions required by the Department of Justice are necessary to protect competition.

The Alliance Carriers assert that they accept, without change, our first, fifth, and sixth conditions, which involve the alliance's steering committee, CRS displays, and the agreements' exclusivity provision. They are requesting changes in the second, third, and fourth conditions, which involve airport facilities, limits on code-sharing flights, and joint marketing. Their requested alternative language for the three conditions is as follows:

2. Airport Facilities: The Alliance Carriers agree that due to co-location the following gates, along with related facilities (including overnight positions), shall be released at the time of co-location to the airport sponsor upon its request for lease to domestic non-Alliance Carriers or for common use: (a) Four gates at IAH, (b) two gates at DTW, (c) five gates at CVG, and (d) two gates at DFW. In addition, within 90 days following the date of this agreement, Northwest Airlines shall release to the airport sponsor upon its request two gates at BOS [1], Continental shall release to the airport sponsor upon its request two gates at LGA [2], and Delta shall release to the airport sponsor upon request two gates at LGA [3] for lease to domestic non-Alliance Carriers or for common use. Further, Delta Air Lines will release thirteen gates and related facilities at BOS upon Delta's relocation to its new Terminal A facility currently anticipated to be completed in the second quarter of 2005. Of these thirteen gates, eight gates shall be released to the airport sponsor and five gates shall be returned to the airline lessors from whom Delta subleases such gates; provided however that if the lessor is also an Alliance Carrier, that lessor shall release the gate to the airport sponsor. Additionally, if during the term of the Marketing Agreement the Alliance Carriers choose to co-locate gates at any of their other hub airports [4] or BOS, or to further co-locate at any of the above hub airports where the Alliance Carriers have agreed to release gates, the relocating carrier will promptly notify the Department of such co-location and the relocating carrier will release to the airport sponsor upon its request the same number of gates and related facilities as the number to which it relocates following such co-location move (or, in the case of leased gates from another airline, the relocating carrier will return the gates to the lessor, and, if the lessor is also an Alliance Carrier, that lessor shall release the gate to the airport sponsor), provided the airport sponsor or airline lessor assumes responsibility of any existing subleases. No Alliance Carrier shall be required to release a leased gate (or related facilities) pursuant to this condition if it will be required to continue to pay rentals, charges or any other lease obligations related thereto. For the purposes of this condition ''co-locate'' shall mean a move of the flight operations from one Alliance Carrier's gate(s) to another Alliance Carrier's gate(s), or to a gate or gates adjacent to the latter carrier's gates.

3. Codesharing: Domestic, Canadian, and Caribbean codesharing between Delta and Continental and between Delta and Northwest shall be limited to 650 flights per two-carrier combination for a total of 2,600 flights during the first year following the commencement of codeshare operations (''Year One''). In Year One, not less than 25% of each marketing carrier's new codeshare flights must be to or from airports that neither the carrier nor its regional affiliates directly served or served with no more than three daily roundtrip flights as of August 2002 (''Category I flights''). Also in Year One, an additional 35% of each marketing carrier's new codeshare flights must either meet the above requirement or be to or from small hub and non-hub airports (''Category II flights'').[5] In the second year following commencement of codeshare operations (''Year Two''), Domestic, Canadian, and Caribbean codesharing between Delta and Continental and between Delta and Northwest shall be limited to an additional 650 flights per two-carrier combination (for an additional 2,600 flights for Year Two and an aggregate total of 5,200 flights by the end of Year Two). For codeshare flights added in Year Two, no less than 12% of each marketing carrier's new codeshare flights must be Category I flights and no less than an additional 18% of each marketing carrier's new codeshare flights must be Category II flights.[6] The Alliance Carriers shall maintain the above percentages with respect to 5,200 codeshare flights (in this case, 18% Category I flights [7] and 27% Category II flights) for the duration of the Marketing Agreement. In the event the carriers desire to add additional Domestic, Canadian, and Caribbean codeshare flights after Year Two, the carriers shall provide the Department with at least 180 days advance notice and with such information as the Department shall request with respect to such additional codeshare services.

4. Joint Corporate and Travel Agency Contracts: If the Alliance Carriers wish to offer joint bids to corporations or travel agencies, the corporation or travel agency shall be given the option of dealing with each Alliance Carrier separately or of receiving a joint bid from two or more of the Alliance Carriers. Only after the corporation or travel agency has requested a joint bid in writing shall such a bid be developed and submitted. In addition, following the date of this agreement the Alliance Carriers shall not offer a joint bid for domestic travel, or for a combination of domestic travel linked with international travel, to any corporation or travel agency that at the time of the bid has a principal place of business or headquarters in a city [8] listed in Exhibit A, except that a joint bid may be submitted to such corporation or travel agency for travel originating from cities other than their principal place of business or headquarters city. The list of cities in Exhibit A will be revised every three years during the term of the Marketing Agreement beginning August 2006 to include only cities where all three carriers (themselves or through regional affiliates) operate scheduled service and their combined market share [9] exceeds 50%, based on schedules published in the Official Airline Guide for the August of that year. In any joint bid, the Alliance Carriers shall not make the contractual discounted fares or commissions dependent on satisfaction of minimum purchase or booking requirements, whether based on threshold or percentage, for specific domestic O&D city pair markets offered by one of the Alliance Carriers unless the corporation or travel agent has stated in writing that it desires such a specific domestic O&D city-pair offer in order to compare it to a competitive bid from one of the largest seven carriers [10] or a carrier alliance (excluding any bid involving an Alliance Carrier) that contains a specific

[1] Terminal E, Gates 1A and 1B with the related support space (including overnight positions) shown on Exhibit 1.

[2] Central Terminal Building, Gates A1 and B2 with the related support space (including overnight positions) shown on Exhibit 2.

[3] Marine Air Terminal, Gates 5 and 6 with the related support space (including overnight positions) shown on Exhibit 3.

[4] For the purposes of this condition, ''other hub airports'' are defined as Atlanta (ATL), Cleveland (CLE), Memphis (MEM), Minneapolis/St. Paul (MSP), Newark (EWR), and Salt Lake City (SLC).

[5] For the purposes of this condition, ''small hub'' and ''non-hub'' airports are defined by the Airport Activity Statistics published by the Department of Transportation, Bureau of Transportation Statistics.

[6] If any Alliance Carrier is unable to meet the requirements for Category I flights due to not enough Category I flights being available, that carrier may substitute Category II flights for Category I flights, provided that the substituted Category II flights are over and above the separate requirement for Category II flights.

[7] This percentage may be adjusted due to the circumstances set forth in footnote 6.

[8] For the purposes of this condition, ''city'' is defined as a primary metropolitan statistical area with the exception of New York City, which is defined as including Newark.

[9] For the purposes of this condition, ''market share'' is determined by scheduled departing seats on flights within the 50 United States.

[10] For the purposes of this condition, the largest seven carriers will be determined by system scheduled passenger revenue for the latest twelve-month period as reported to the Department of Transportation (14 CFR Part 241, Section 24).

domestic O&D city pair offer. This condition shall not apply to joint bids involving only Northwest and Continental and it shall not require that an agreement in place with a corporation or travel agent be terminated.

Before deciding whether the requested alternatives are adequate, we believe that we would benefit by obtaining the views of interested parties and the public. We are therefore inviting public comment on the Alliance Carriers' proposed alternatives. To allow us to complete our review promptly, we are making comments due by March 18. In light of our already-completed comprehensive review of the original proposal, and the limited scope of the additional review necessary to consider the three alternative conditions, we will grant the Alliance Carriers' request for expedited review and will decide whether their proposals are adequate within 30 days. We are now considering only whether the Alliance Carriers' three new proposals adequately address the competitive concerns regarding the three corresponding conditions that were discussed in our January Notice. Accordingly, comments should be directed solely to those three alternative conditions. We are not requesting comments on the analysis and conclusions set forth in our January Notice.

If we determine that the alternative conditions adequately address our concerns, and the Alliance Carriers formally accept them along with the other three conditions developed by us, we would not institute a formal enforcement proceeding at this time to determine whether the airlines' agreements violate section 41712. We retain our statutory authority, however, to continue to monitor the three airlines' implementation of their alliance, and to take enforcement action under section 41712 in the future if necessary. We continue to believe, however, that if the alliance were implemented as originally presented to us, it would raise serious competitive issues. As a result, if the Alliance Carriers implemented the alliance without conditions satisfactory to us, we would begin a formal enforcement proceeding.

Issued in Washington, DC on March 3, 2003.

Read C. Van de Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–5450 Filed 3–4–03; 2:35 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2002–13962]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 2115–0086 and 2116–0551

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before April 7, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2002–13962] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2002–13962 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the Internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (67 FR 72718 (December 6, 2002)) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2002–13962. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or

fewer days after the publication of this request.

Information Collection Request

1. *Title:* Application for Measurement of Vessels for Tonnage.
OMB Control Number: 2115–0086.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners of vessels.
Form: CG–5397.
Abstract: The information from this collection helps the Coast Guard to determine a vessel's tonnage. Tonnage in turn helps to determine licensing, inspection, safety requirements, and operating fees.
Annual Estimated Burden Hours: The estimated burden is 33,000 hours a year.

2. *Title:* Vessel Reporting.
OMB Control Number: 2115–0551.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners, charterers, managing operators, or agents.
Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.
Abstract: This collection of information requires the owner, charterer, managing operator, or agent of a U.S.-flagged vessel to immediately notify the Coast Guard if there is reason to believe the vessel is in distress or lost. Comparable information must follow in the form of written confirmation within 24 hours to the Coast Guard.
Annual Estimated Burden Hours: The estimated burden is 137 hours a year.

Dated: February 26, 2003.

Clifford I. Pearson,

RADM, USCG, Director of Information and Technology.

[FR Doc. 03–5328 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 1.75 acres of land at the Charlottesville-Albemarle Airport, Charlottesville, Virginia, to the Virginia Department of Transportation for construction of State Route 649. An additional 0.19 acres will be permanently utilized by VDOT within utility and drainage easements. There are no adverse impacts to the airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be deposited into a sponsor owned interest bearing account, and used for airport purposes.

DATES: Comments must be received on or before April 7, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Terry J. Page, Manager, FAA Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bryan Elliott, Executive Director, Charlottesville-Albemarle Airport, at the following address: Bryan Elliott, Executive Director, Charlottesville-Albemarle Airport Authority, 100 Bowen Loop, Suite 200, Charlottesville, VA 22911.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Page, Manager, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, VA 20166; telephone (703) 661–1354, fax (703) 661–1370, e-mail *Terry.Page@faa.gov.*

SUPPLEMENTARY INFORMATION: On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Chantilly, Virginia on January 31, 2003.

Terry J. Page,

Manager, Washington Airports District Office, Eastern Region.

[FR Doc. 03–5293 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–04–C–00–EAT To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pangborn Memorial Airport, Submitted by the Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 7, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Colin A. Clarke, Airport Manager, at the following address: One Pangborn Drive, East Wenatchee, WA 98802–9233.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pangborn Memorial Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration, 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–04–C–00–EAT to impose and use PFC revenue at Pangborn Memorial Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 26, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Ports of Chelan and Douglas Counties, Pangborn Memorial Airport, Wenatchee, Washington, was substantially complete within the

requirements of § 58.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 27, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2003.

Proposed charge expiration date: May 30, 2004.

Total requested for use approval: $123,500.

Brief description of proposed project: Phase II Pavement Overlay—Taxiway G Slurry Seal; Equipment Garage; Security Fencing; Acquire Vacuum Runway Sweeper and Curb Sweeper; Segmented Circle and Wind Tee; Update Master Plan and Runway Snow Plow.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pangborn Memorial Airport. Issued in Renton, Washington on February 26, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–5294 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Navigation Sensors Using the Global Positioning System Augmented by the Local Area Augmentation System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a draft Technical Standard Order (TSO) C–162, Local Area Augmentation System Very High Frequency Data Broadcast Equipment. The draft TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their Very High Frequency (VHF) data broadcast (VDB) equipment using the Global Positioning System (GPS) augmented by the Local Area Augmentation System (LAAS) must first meet for approval and identification with the applicable TSO marking.

DATES: Submit comments on or before April 8, 2003.

ADDRESSES: Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. You may deliver comments to: Federal Aviation Administration, 800 Independence Avenue, SW., Room 815, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce DeCleene, Federal Aviation Administration, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 385–4640, Fax: (202) 385–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft TSO listed in this notice by submitting written data, views, or arguments, to the address listed above. Your comments should be identified as ''Comments to TSO C–162.'' You can examine comments on the draft TSO before and after the closing date, at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal Holidays between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA is pursuing differential GPS technology under the LAAS program. LAAS ground facilities will be consistent with the International Civil Aviation Organization standards for Ground-based Augmentation Systems for GPS that support Category I precision approaches and the positioning service. RTCA has developed standards for airborne navigation equipment using LAAS. Two new TSOs have been drafted based upon the RTCA standards. One TSO is for the VHF data broadcast receive function; the other is for the position and navigation function.

How To Obtain Copies

You may get a copy of the draft TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy from Mr. Bruce DeCleene. *See* section entitled **FOR FURTHER INFORMATION CONTACT** for complete address.

Issued in Washington, DC, on February 28, 2003.

Susan J.M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–5291 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Navigation Sensors Using the Global Positioning System Augmented by the Local Area Augmentation System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and requests comments on a draft Technical Standard Order (TSO) C–161, Local Area Augmentation System Positioning and Navigation Equipment. The draft TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their airborne navigation equipment using the Global Positioning System (GPS) augmented by the Local Area Augmentation System (LAAS) (GPS/LAAS equipment) must first meet for approval and identification with the applicable TSO marking.

DATES: Submit comments on or before April 8, 2003.

ADDRESSES: Send all comments on the proposed TSO to: Federal Aviation Administration, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. You may deliver comments to: Federal Aviation Administration, 800 Independence Avenue, SW., Room 815, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce DeCleene, Federal Aviation Administration, Aircraft Certification Service, Room 815, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 385–4640, Fax: (202) 395–4651.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the draft TSO listed in this notice by submitting written data, views, or arguments, to the address listed above. Your comments should identify ''Comments to TSO C–161.1.'' You can examine all comments on the draft TSO before and after the closing date, at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal Holidays between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service considers all communications received on or before the closing date before issuing the final TSO.

Background

The FAA is pursuing differential GPS technology under the LAAS program. LAAS ground facilities will be consistent with the International Civil Aviation Organization standards for Ground-based Augmentation Systems for GPS that support Category I precision approaches and the positioning service. RTCA has developed standards for airborne navigation equipment using LAAS. Two new TSOs have been drafted based upon the RTCA standards. One TSO is for the VHF data broadcast receive function; the other is for the position and navigation function.

How To Obtain Copies

You may get a copy of the draft TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy from Mr. Bruce DeCleene, *See* the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC, on February 28, 2003.

Susan J.M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–5292 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bossier, Webster, and Claiborne Parishes, Louisiana and Union and Columbia Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed Interstate highway project in Bossier, Claiborne, and Webster Parishes, Louisiana and in Union and Columbia Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Mr. William Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 757–7615, or Mr. Vincent Russo, Environmental Engineer Administrator, Louisiana Department of Transportation and Development, Post Office Box 94245, Baton Rouge, Louisiana 70804–9245, Telephone: (225) 248–4190, or Mr. Randal Looney, Environmental Specialist, Federal Highway Administration, Federal Office Building, 700 West Capitol Avenue, Room 3130 Little Rock, Arkansas 72201, Telephone: (501) 324–6430 or Mr. Bill Richardson, Asst. Division Head, Environmental Division, Arkansas Highway and Transportation Department, 10324 Interstate 30, Little Rock, Arkansas 72201, Telephone: (501) 569–2379. Project information may be obtained from the project Internet web site at *www.i69arkla.com* and the project hotline at 1–877–886–9233.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (DOTD) and the Arkansas Highway and Transportation Department (AHTD), will prepare an Environmental Impact Statement (EIS) on a proposal to construct section of independent utility (SIU) Number 14 for the proposed Interstate Highway 69 (I–69) in Bossier, Webster, and Claiborne Parishes, Louisiana and in Union and Columbia Counties, Arkansas. This proposal will provide a divided four-lane, limited access highway on new location between Interstate Highway 20 (I–20) near the Town of Haughton in Bossier Parish, Louisiana to U.S. Highway 82 (U.S. 82) near the Town of El Dorado in Union County, Arkansas, a distance of approximately 80 miles. The proposed new highway is a portion of the planned improvements to Congressionally-designated High Priority Corridor Numbers 18/20, which will link Indianapolis, Indiana to the Texas/Mexico border. The purpose of this proposal is to improve international and interstate trade in accordance with national and state goals; to facilitate economic development in accordance with state, regional, and local policies and plans; and to improve surface transportation consistent with national, state, regional, and local needs and with the Congressional designation of the corridor.

Social, economic, and environmental considerations will determine the number and location of alternatives to be developed during the preparation of the EIS. The western terminus of the proposed highway will be an interchange at I–20 near the Town of Haughton in Bossier Parish, Louisiana. The eastern terminus of the proposed highway will be an interchange at U.S. 82 near the town of El Dorado in Union County, Arkansas.

Alternatives under consideration include (1) the no build and (2) constructing a four-lane, limited access highway within the limits described above, on various alignment alternatives.

Letters describing the proposed action and soliciting comments will be sent to the appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Federal and State agencies with jurisdiction by law with regards to the socials, economic and environmental impact of his proposal will be requested to act as a Cooperating Agency in this matter in accordance with 40 CFR 1501.6. Numerous public involvement initiatives, including public meetings, newsletters, and advisory committee meetings will be held throughout the course of this study. Additionally, a Public Hearing will be held. Public notice will be given, in local newspapers, of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review prior to the Public Hearing. A formal scoping meeting will be held upon initiation of this project.

Three public scoping meetings will be held with the intent of soliciting public concerns related to issues that should be evaluated in detail in the study. Dates, times and locations of these meetings follow:

- Tuesday, March 25, 2003, 4–7 p.m.: South Arkansas Community College, West Campus Library Auditorium, 3200 Southwest Avenue, El Dorado, Arkansas 71730;
- Wednesday, March 26, 2003, 4–7 p.m.: Claiborne Parish Fair Barn Complex, 1563 Fairgrounds Drive, Haynesville, Louisiana 71038; and
- Thursday, March 27, 2003, 4–7 p.m.: Minden Civic Center Complex Court/Meeting Room, 520 Broadway, Minden, Louisiana 71055.

To ensure that the full range of issues related to this proposal are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or

questions concerning this proposed action and the EIS should be directed to the DOTD at the address above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: February 27, 2003.

Jose Bloise,

Assistant Division Administrator, FHWA.

[FR Doc. 03–5125 Filed 3–5–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20997]

Coach USA, Inc., et al.—Purchase and Sale of Assets—Academy Bus, LLC, et al.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and Suburban Transit Corp. (Suburban) and Red & Tan Tours, Inc. (RTT), two motor passenger carriers, filed an application under 49 U.S.C. 14303 jointly with Academy Bus, LLC (Academy Bus), a noncarrier, and Academy Express, LLC (Academy Express) and Academy Lines, LLC (Academy Lines),[1] two motor passenger carriers, to acquire from each other certain operating rights in New York and New Jersey, and other assets. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by April 21, 2003. Applicant may file a reply by May 5, 2003. If no comments are filed by April 21, 2003, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20997 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: David H. Coburn, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Coach, a Delaware corporation, currently controls numerous motor passenger carriers,[2] including Suburban and RTT,[3] both of which are based in New Jersey and operate in the New Jersey/New York area. Academy Bus, a noncarrier, currently controls certain motor passenger carriers,[4] including Academy Express and Academy Lines; both of these carriers are based in New Jersey with operations in that state and New York.[5] In this transaction, these carriers will exchange certain routes and other assets with one another.

Specifically, under an Asset Purchase and Exchange Agreement (Agreement), Academy Express and related entities have agreed to transfer to Coach or to an affiliate of Coach to be designated by it, certain bus routes between points in New York City and Westchester County, NY, on the one hand, and Atlantic City, NJ, on the other, as well as certain assets including relevant agent lists, customer lists, sales records, accounting records, and the trade name ''Funaway Tours'' in which this bus service is provided.

Further, Suburban has agreed to transfer to Academy Lines certain commuter routes along the Route 9 Corridor in New Jersey to and from New York City, and to Academy Express certain routes between points in Northern New Jersey, on the one hand, and Atlantic City, on the other. In addition, RTT has agreed to transfer to Academy Express certain routes between points in Staten Island and northern New Jersey, on the one hand, and Atlantic City, on the other. The Agreement also provides that each of these transfers will also embrace the transfer of relevant agent lists, customer lists, as well as certain records and other instruments related to the operation of the specific routes.

Finally, the Agreement provides that the carriers will not engage in the operation of scheduled bus service on each other's transferred routes during a 5-year period.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicants submit that they have suffered economically following the events of September 11, 2001. They maintain that these route and related asset exchanges will allow them to improve the efficiency of their operations and reduce costs because the routes they will attain will blend efficiently into other operations that they conduct. They also claim that passengers on the various routes being exchanged will retain substantial intermodal and intramodal competitive alternatives, and therefore that the transaction will not adversely impact the adequacy of service to the public. Applicants also state that the proposed transaction will not adversely affect the employees of the carriers and will not increase fixed charges. *See* 49 CFR 1182.2(a)(7).

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

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

It is ordered:

[1] On January 27, 2003, New Jersey Transit Bus Operations, Inc., and Academy Lines, jointly filed an application for approval of a pooling agreement with respect to Route 9 Corridor service from points in New Jersey to New York City, NY. In *New Jersey Transit Bus Operations, Inc.—Pooling—Academy Lines, L.L.C.*, STB Docket No. MC–F–20994 (STB served Feb. 12, 2003), the Board, under 49 U.S.C. 13541, authorized an exemption from the requirements of 49 U.S.C. 14302 to permit applicants to conduct interim pooling operations pending Board action on the pooling application.

[2] Coach is wholly owned by Stagecoach Group plc, a noncarrier which indirectly controls the carriers controlled by Coach.

[3] Suburban and RTT hold federally issued operating authority in Docket Nos. MC–115116 and MC–162174, respectively, and New Jersey intrastate authority.

[4] Academy Bus and its motor carrier affiliates are indirectly controlled by Tedesco Family ESB Trust. *See Tedesco Family ESB Trust—Continuance in Control and Acquisition of Properties—Academy Bus, L.L.C., et al.*, STB Docket No. MC–F–20983 (STB served Aug. 2, 2001).

[5] Academy Express and Academy Lines hold federally issued operating authority in Docket Nos. MC–228481 and MC–414016, respectively, and New Jersey intrastate authority.

1. The proposed purchase and sale of assets is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on April 21, 2003, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: February 27, 2003.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams,

Secretary.

[FR Doc. 03–5153 Filed 3–5–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Delegation of Authority to the Secretary of Homeland Security

AGENCY: Departmental Offices, Treasury.

ACTION: Notice.

DATES: Treasury Department Order 165–09 became effective on February 28, 2003.

SUMMARY: On February 28, 2003, the Secretary of the Treasury issued Treasury Department Order 165–09 to preserve the ability of the Department of Homeland Security to continue to perform the functions of the United States Customs Service pending consideration of a delegation of authority concerning the Customs revenue function retained by the Secretary of the Treasury pursuant to the Homeland Security Act of 2002. Under the Order, the Department of the Treasury retains the same authority over the Customs revenue functions it possessed prior to the transfer of the United States Customs Service to the Department of Homeland Security.

SUPPLEMENTARY INFORMATION: The text of Treasury Department Order 165–09 follows.

Dated: March 3, 2003.

Richard S. Carro,

Senior Advisor to the General Counsel (Regulatory Affairs).

Treasury Department Order No. 165–09

Maintenance of delegation in respect to general authority over Customs revenue functions vested in the Secretary of the Treasury, as set forth and defined in the Homeland Security Act of 2002.

Treasury Department, Washington, DC, February 28, 2003

Whereas the Homeland Security Act of 2002 (Pub. L. 107–296) (the ''Act'') was enacted into law on November 25, 2002;

Whereas the Act transfers the United States Customs Service from the Treasury Department to a new Department of Homeland Security, and, under the President's Reorganization Plan submitted to the Congress, this becomes effective March 1, 2003;

Whereas the Act requires that legal authority over the Customs revenue functions vested in the Secretary of the Treasury shall be retained, but may be delegated to the Secretary of Homeland Security in whole or in part;

Whereas the Treasury Department is studying the proper allocation of these authorities and consulting with the Administration and Congress in that regard;

Whereas the pre-existing Treasury Order 165, as amended (''Treasury Order 165''), has provided the Commissioner of Customs a delegation of authority from the Secretary of the Treasury for Customs functions;

Whereas the United States Customs Service relies on delegated authority for important aspects of its functions and operations;

Now therefore, in order to preserve the ability of the Department of Homeland Security to continue to perform the functions of the Customs Service and to provide adequate time for a considered decision on any new delegation, I hereby order that, with respect to authority over Customs revenue functions, Treasury Order 165 remains in effect except that the authority previously delegated to the Commissioner of Customs as an official of the Department of Treasury is now delegated to the Secretary of Homeland Security. Treasury shall retain the same authority delineated in Treasury Order 165 that it possessed prior to the transfer of the Customs Service to the Department of Homeland Security. Consistent with past interpretation and practice, I note that the use of the term ''transferred'' with respect to certain authority delegated in Treasury Order 165 shall continue to be understood to effect only a delegation.

John W. Snow,

Secretary of the Treasury.

[FR Doc. 03–5359 Filed 3–5–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8288 and 8288–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, and Form 8288–A, Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.

DATES: Written comments should be received on or before May 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288) and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).

OMB Number: 1545–0902.

Form Number: 8288 and 8288–A.

Abstract: Internal Revenue Code section 1445 requires transferees to withhold tax on the amount realized from sales or other dispositions by foreign persons of U.S. real property interests. Form 8288 is used to report and transmit the amount withheld to the IRS. Form 8288–A is used by the IRS to validate the withholding, and a copy is returned to the transferor for his or her use in filing a tax return.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 23 hr., 55 min.

Estimated Total Annual Burden Hours: 239,175.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–5341 Filed 3–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC) and Information Reporting Program Advisory Committee (IRPAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) requests nominations of individuals to be considered for selection as Internal Revenue Service Advisory Council (IRSAC) and Information Reporting Program Advisory Committee (IRPAC) members. Interested parties may nominate themselves and/or at least one other qualified person for membership. Nominations will be accepted for current vacancies and should describe and document the applicants' qualifications for membership. IRSAC is comprised of twenty-three (23) members, approximately half of these IRSAC appointments will expire in November 2003; IRPAC is comprised of twenty (20) members, approximately half of these members appointments will expire in October 2003. It is important that the IRSAC and IRPAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on applicant's qualifications as well as the segment or group he/she represents.

The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The Council advises the Commissioner on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the Commissioner with respect to issues having substantive effect on federal tax administration.

The Information Reporting Program Advisory Committee (IRPAC) advises the IRS on information reporting issues of mutual concern to the private sector and the federal government. The committee works with the Commissioner and other IRS executives to provide recommendations on a wide range of information reporting administration issues. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, state tax administration, and the payroll community.

DATES: Written nominations must be received on or before May 30, 2003.

ADDRESSES: Nominations should be sent to Ms. Jacqueline Tilghman, National Public Liaison, CL:NPL:PAC, Room 7563 IR, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: IRSAC Nominations; or by e-mail: **public_liaison@irs.gov*. Applications may be submitted by mail to the address above or faxed to 202–927–5253. However, if submitted via a facsimile, the original application must be received by mail, as National Public Liaison cannot consider an applicant nor process his/her application prior to receipt of an original signature. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at *http://www.irs.gov/taxpros/index.html*. Application packages may also be requested by telephone from National Public Liaison, 202–622–6440 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Tilghman, 202–622–6440 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Authorized under the Federal Advisory Committee Act, Pub. L. No. 92–463, the first Advisory Group to the Commissioner of Internal Revenue or the Commissioner's Advisory Group (CAG)—was established in 1953 as a national policy and/or issue advisory committee and was renamed in 1998 to reflect the agency-wide scope of its focus as an advisory body.

Conveying the public's perception of IRS activities to the Commissioner, the IRSAC and IRPAC are comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's/Committee's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, state tax administration, and the payroll community.

IRSAC and IRPAC members are appointed by the Commissioner and serve a term of three years. The Commissioner determines the size of the IRSAC and IRPAC and the organizations represented on the Council/Committee. Working groups mirror the reorganized IRS and address policies and administration issues specific to the four Operating Divisions. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

Receipt of nominations will be acknowledged, nominated individuals contacted, and immediately thereafter, biographical information must be completed and returned to Ms. Jacqueline Tilghman in National Public Liaison within fifteen (15) days of receipt. In accordance with Department of Treasury Directive 21–03, a clearance process including pre-appointment and annual tax checks, a Federal Bureau of Investigation criminal and subversive name check, and a security clearance will be conducted.

Equal opportunity practices will be followed for all appointments to the IRSAC and IRPAC in accordance with the Department of Treasury and IRS policies. To ensure that the recommendations of the IRSAC/IRPAC have taken into account the needs of the diverse groups served by the IRS, membership shall include individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

Dated: February 27, 2003.

Robin Marusin,

Designated Federal Official, National Public Liaison.

[FR Doc. 03–5340 Filed 3–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New, USAA/Hartford]

Agency Information Collection: Emergency Submission for OMB Review; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). An emergency clearance is being requested pursuant to a Settlement Agreement resolving litigation between VA and United Services Automobile Association (USAA) and Hartford Life Insurance to reimburse veterans insured by either carrier during the period from January 1, 1995 through December 31, 2001 who paid copayments to VA during that period for their VA care. OMB has been requested to act on this emergency clearance request by March 10, 2003.

DATE: Comments must be submitted on or before March 13, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New, USAA/Hartford.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316 or FAX (202) 395–6974. Please refer to ''2900–New, USAA/Hartford.''

SUPPLEMENTARY INFORMATION:

Title: VA Copayment Refund—USAA/Hartford Claim Form, VA Form 10–0406.

OMB Control Number: 2900–New, USAA/Hartford.

Type of Review: New collection.

Abstract: As a result of a Settlement Agreement between VA, USAA and Hartford, VA will reimburse veterans insured by either carrier for co-payments they paid to VA for their medical care from January 1, 1995 through December 31, 2001. Such insured veterans will have a one year time period from the initial notification date on a first-come-first-served basis, to file claim with VA for refund of their co-payments. VA Form 10–0406 will be used to collect the information and to determine the validity of such claims. If the information is not collected, VA will not be able to reimburse those insured veterans.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 12,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 24,000.

Dated: February 26, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–5195 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0178.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d. (**Note:** A reference to VA Form 22–6553d also includes VA Form 22–6553d–1 unless otherwise specified. VA Form 22–6553d–1 contains the same information as VA Form 22–6553d.)

OMB Control Number: 2900–0178

Type of Review: Extension of a currently approved collection.

Abstract: VA 22–6553d is used by trainees and employers to report the number of hours worked in on-the-job training programs and apprenticeships, and to report terminations of training in such programs. VA uses the information to determine whether a trainee's education benefits are to be continued, changed or terminated, and the effective date of such action. VA is authorized to pay education benefits to veterans and

other eligible persons pursuing approved programs not leading to a standard college degree under Title 38, U.S.C., Chapters 32 and 35, Title 10, U.S.C., Chapter 1606, and Public Law 96–342, Section 903. Benefits are authorized monthly based upon the number of hours worked by the trainee and verified by the training establishment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2002, at page 69305–69306.

Affected Public: Individuals or households, Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 20,100 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 13,400.

Estimated Total Annual Responses: 120,600.

Dated: February 13, 2003.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–5273 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0156.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0156'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice of Change in Student Status (Under Chapter 30, 32, or 35, Title 38, U.S.C; Chapter 1606, Title 10. U.S.C. or Section 901 or 903 of Pub. L. 96–342), VA Form 22–1999b.

OMB Control Number: 2900–0156.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–1999b is used by educational institutions to report changes in the enrollment of students in receipt of VA education benefits. The information is used to determine a student's entitlement to educational benefits or whether the benefit should be increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 3, 2002, at page 72029.

Affected Public: State, Local or Tribal Government, business or other for-profit, and not-for-profit institutions.

Estimated Annual Burden: 24,750 hours.

VA Form 22–1999b—13,750.

VA Form 22–1999b Electronically Filed—11,000.

Estimated Average Burden Per Respondent:

VA Form 22–1999b—5 minutes.

VA Form 22–1999b Electronically Filed—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,817.

Number of Responses Annually: 330,000.

VA Form 22–1999b—165,000.

VA Form 22–1999b Electronically Filed—165,000.

Dated: February 13, 2003.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–5274 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0358]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 7, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0358.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0358'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

OMB Control Number: 2900–0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C., Section 3691. Before VA may approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's

aptitudes, interests, and abilities, or that the cause of any unsatisfactory progress or conduct has been resolved before entering into a different program. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA file.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2002, at page 69304.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,750 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 17,500.

Dated: February 13, 2003.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–5275 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on applicants' qualifications to become a fee basis appraiser to appraise residential real estate.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 5, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0113'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Fee Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The form solicits information on the fee personnel applicant's background and experience in the real estate valuation field. VA regional offices and centers use the information contained on the form to evaluate applicants' experience for the purpose of designating qualified individuals to serve on the fee roster for their stations.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,067 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,200.

Dated: February 13, 2003.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–5276 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0578]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 5, 2003.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0578'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's

functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida and Claim for Miscellaneous Expenses, VA Health Administration Center, VA Form 10–7959e.

OMB Control Number: 2900–0578.

Type of Review: Revision of a currently approved collection.

Abstract: The information collected will be used to determine whether to approve requests for preauthorization of certain health care services and benefits for children of Vietnam veterans, and to make decisions during the review and appeal process concerning health care. VA Form 10–7959e will be used to claim payment or reimbursement for expenses related to birth defects among Vietnam Veterans' children.

Affected Public: Individuals or households, Business or other for-profit, and not for profit institutions.

Estimated Total Annual Burden: 3,400 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,600.

Estimated Total Annual Responses: 31,400

Dated: February 13, 2003.

By direction of the Secretary:

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–5277 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for plot-interment allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 5, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0565'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form 21–530a is used by a State to file a consolidated application for plot or interment allowances for eligible veterans buried in a cemetery owned by that State and is used solely for the interment of persons eligible for burial in a national cemetery.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 40,000.

Dated: February 13, 2003.

By direction of the Secretary.

Ernesto Castro,

Director, Records Management Service.

[FR Doc. 03–5278 Filed 3–5–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
March 6, 2003

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 70, 75, and 90

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75 and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings; close of record.

SUMMARY: This proposed rule supercedes the proposed rule published by MSHA on July 7, 2000. Under this proposed rule mine operators would be required to verify and periodically monitor, through sampling, the effectiveness of the dust control parameters for each mechanized mining unit (MMU) specified in the mine ventilation plan. For samples to be valid, the operator would be required to sample on a production shift during which the amount of material produced by a MMU is at or above the verification production level using only the dust control parameters listed in the ventilation plan. The use of approved powered, air-purifying respirators (PAPRs) and/or verifiable administrative controls would be allowed as a supplemental means of compliance when MSHA determines that all feasible engineering or environmental controls are being used. MSHA is also proposing to rescind operator compliance sampling in underground coal mines. The use of a personal, continuous dust monitor (PCDM), once developed and approved, could be used by an operator in conjunction with the dust control parameters specified in the mine ventilation plan. The proposed rule would significantly improve miners health protection by limiting the exposure of individual miners to respirable coal mine dust.

DATES: Comments on the proposed rule should be submitted on or before June 4, 2003.

MSHA also is announcing that the Agency will hold public hearings on the proposed rule. The hearing dates and times will be announced by a separate document in the **Federal Register**.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

Information Collection Requirements

Send written comments on the information collection requirements to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) To OMB: If under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA; or by email to: *cathomas@omb.gov.* All comments may be sent 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: Comments must be clearly identified as comments on the information collection requirements and transmitted either electronically to *comments@msha.gov,* by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.*

This proposed rule is also available on MSHA's webpage at *http://www.msha.gov,* under Statutory and Regulatory Information; **Federal Register** Documents; Proposed Rules. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm.*

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II. Background

A. Procedural History

On July 7, 2000, the Mine Safety and Health Administration published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register:** Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (65 FR 42122). A notice of public hearing and close of record was also published in the **Federal Register** (65 FR 42186) on July 7, 2000. During August 2000, three public hearings were conducted in Morgantown, West Virginia; Prestonsburg, Kentucky; and Salt Lake City, Utah. Transcripts of those proceedings were made available to the public. The close of the rulemaking record was originally scheduled for August 24, 2000. In response to requests from commenters, an extension of the comment period for the NPRM was published in the **Federal Register** (65 FR 49215) on August 11, 2000; the rulemaking comment period was extended to September 8, 2000. Supplementary statements and data postmarked on or before the close of the record, September 8, 2000, were included in the rulemaking record and made available to the public.

Many commenters on the proposed rule urged MSHA to withdraw the proposed rule and publish another. In their opinion, the agency failed to adequately address the concerns of mine operators and ignored other reforms in the dust sampling program urged by coal miners since the mid 1970s or that were recommended by the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers (Dust Advisory Committee) and the NIOSH Criteria Document addressing respirable coal mine dust.

After carefully considering all the facts, issues, and concerns raised by commenters during this rulemaking, MSHA concluded that, to proceed to a final rule would not be in the best interest of miners' health or the mining community. The Agency is re-proposing for further public comment, the rule which is the subject of this rulemaking.

B. Overview of Proposed Rule

In preparing this proposed rule, MSHA has responded to comments that were made to the July 7, 2000 proposed rule. However, since this proposed rule differs from the earlier proposed rule in several areas, the agency may not have addressed each concern that was identified by the earlier commenters.

MSHA believes that the proposed rule would significantly improve miners' health protection from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust to no more than the applicable dust standard on each shift.[1] Accordingly, this proposed rule revises 30 CFR part 70, subparts A, B, and C; amends two existing sections of part 75; and revises part 90, subparts A, B, C, and D.

Under this proposed rule, MSHA would be responsible for all compliance and abatement sampling, which is currently being carried out by the operator. This includes frequent sampling of each mechanized mining unit (MMU) and part 90 miner, sampling of outby Designated Areas (DAs) and occupations, and abatement sampling. This proposed rule specifies that compliance and abatement determinations will be based on the results of single samples. Also, only MSHA samples would be used to set a reduced dust standard when the quartz content of the respirable dust exceeds five percent.

In response to comments raised in the earlier proposed rule, mine operators will continue to play a role in monitoring the mine environment. The proposed rule requires each underground operator to verify, through sampling, that the dust control parameters specified in a mine ventilation plan are effective in controlling the concentration of respirable coal mine dust and quartz dust at or below the verification limits of 2.0 mg/m^3 and 100 μg/m^3 respectively. For a sample to be valid for verification purposes, the amount of material produced must be at or above the ''verification production level'' or VPL. The VPL is defined as the tenth highest production level recorded in the most recent 30 production shifts. In addition, the engineering or environmental control parameters must not exceed 115% of the quantities specified in the ventilation plan and the sampling must take place over the entire production shift.

The dust control parameters specified in mine ventilation plans must be designed to maintain dust concentrations at or below the applicable standard on each shift. If during the initial verification sampling, the VPL is achieved and dust concentrations are sufficiently low, the district manager could approve a plan based on one shift of sampling. However, if dust concentration measurements are higher, or if the actual production was less than the VPL, MSHA will require the operator to sample additional shifts. All verification samples would be submitted to MSHA for analysis. However, mine operators would not be cited if sample results show an overexposure so long as the operator takes steps to identify and correct the condition that caused the verification limit to be exceeded.

Also, to confirm the continued effectiveness of the plan parameters, mine operators would be required to sample quarterly each producing MMU designated by MSHA under the same conditions that were in place when the plan parameters were initially verified. As in the earlier proposed rule, mine operators would be required to maintain records of the total amount of material produced by shift for each MMU.

In the earlier proposed rule, commenters expressed concern about a provision in the July 7, 2000 proposed rule allowing the use of supplementary controls (powered, air-purifying respirators (PAPRs) and administrative controls), on an interim basis, in mines utilizing longwall mining technology. Commenters offered a wide range of opinions on this part of the proposed rule. Some commenters supported MSHA's decision to allow the use of supplementary controls, but criticized the proposed rule for being too restrictive. Other commenters objected to the proposed provision, claiming that the requirement was inconsistent with the provision of the Mine Act which prohibits respirators to be used as substitutes for engineering controls. These commenters were also concerned that operators would have no incentive to implement available engineering controls once they are permitted to use supplementary controls as proposed.

This proposed rule recognizes that there may be circumstances where, even after implementing all feasible engineering or environmental controls, a mine operator may be unable to maintain concentrations at or below the verification limits. This includes operations that employ longwalls or other mining systems. In those

[1] For details, see the Quantitative Risk Assessment and Significance of Risk Sections.

instances, the proposed rule would allow a mine operator, with the approval of the Administrator of Coal Mine Safety and Health, to use either PAPRs or administrative controls or a combination of both to supplement engineering or environmental controls to reduce the dust exposure of individual miners. Approval to use supplementary control measures would be contingent on the mine operator adopting new engineering and environmental controls when they become available. The proposed rule also recognizes that there may be special situations that occur intermittently and for short periods of time where the approved dust control measures may not protect miners from overexposure. An example would be where the operator is required to mine through a rock parting with high quartz content. In these situations, the district manager may allow the operator to use PAPRs for a period not to exceed 30 calendar days.

This proposed rule would require that the mine operator provide a copy of any request for supplemental controls to the representative of the miners. This would provide an opportunity for miners' input prior to MSHA making any determination.

A full discussion of these and other provisions is provided in the section-by-section analysis of this proposed rule.

A number of commenters stated that MSHA's earlier proposed rule was incomplete because it did not address some key recommendations of by the Dust Advisory Committee, and by NIOSH in its Criteria Document (see sections II.E. and II.F. of the preamble). Some of these commenters expressed concern that the proposed rule failed to recognize and consider alternatives involving continuous dust monitoring technology. Since publication of that earlier proposed rule, technology has advanced to a point that will likely allow for continuous monitoring of dust exposures in the near future. Accordingly, this proposed rule has provisions that would allow mine operators to adopt such technology to meet the requirements for operator monitoring of dust control effectiveness and miner exposure.

The recommendations regarding exposure limits for respirable coal mine dust and crystalline silica were beyond the scope of either the single sample or plan verification rules. In the interim, MSHA enforcement efforts continue to focus on lowering the quartz exposure of miners as recommended by the Dust Advisory Committee.

1. New Proposed Respirable Dust Sampling Program

In order to improve miner confidence in the respirable dust sampling program, the proposed rule revises the existing operator sampling requirements for underground mines and for part 90 miners under 30 CFR parts 70 and 90, respectively, and provides that MSHA conduct compliance and abatement sampling.

This proposed rule would result in fewer shifts being sampled than under existing requirements. However, MSHA believes that the amount of sampling it will conduct under the proposed rule will be more protective because a greater number of individual compliance determinations would be made. MSHA samples the Designated Occupation (DO) and at least four other occupations, if available, on each sampling inspection. Also, since all MSHA sampling is unannounced, sampling will occur under conditions that are more typical of the actual mining environment. In addition, compliance determinations would be based solely on a single-sample measurement and not on an average of multiple shift measurements. Multiple shift measurements can mask overexposures by diluting a measurement of high dust exposure with lower measurements made on different shifts or at different occupational locations.

Commenters to the July 7, 2000 proposed rule also criticized MSHA for failing to fully incorporate the preamble discussion on the Agency's sampling procedures into the proposed regulation to prevent those procedures from being changed or modified in the future. MSHA does not believe that it would be appropriate to incorporate agency enforcement procedures into rules that are designed to regulate the mining industry. It is necessary for MSHA to retain the ability to modify its enforcement policies and procedures in response to, among other things, case law, new health or safety concerns, major mine emergencies, or changes in technology which may require the agency to redirect its efforts to protect miner health and safety.

In order to provide the mining community with an understanding of how the agency intends to enforce this proposed rule, MSHA has published a draft of Chapter 1 (Respirable Dust) of MSHA's health inspection procedures (see *http://www.msha.gov*) which it intends to adopt as its enforcement strategy when the final rule becomes effective.

2. Verification of Ventilation Plan Effectiveness

The proposed rule requires that each underground coal mine operator must have a mine ventilation plan verified by operator sampling. The verified plan must be effective in controlling respirable dust in each MMU under typical mining conditions prior to approval of the plan by the district manager. In addition, mine operators would be required to sample quarterly each producing MMU designated by MSHA to determine if the dust control measures specified in the approved ventilation plan, continue to protect miners from overexposure. No citations would be issued to mine operators based on the results of this sampling as long as the operator takes steps to eliminate the conditions which caused any overexposure identified through such sampling.

Consistent with the Mine Act and its implementing regulations, this proposed rule preserves the primacy of engineering controls to the extent that they are technologically and economically feasible.

The dust control parameters specified in the mine ventilation plans should be designed to control respirable dust and prevent overexposures on individual shifts. These plans should accurately reflect the engineering or environmental controls that are suitable to the mining system and operating conditions at the MMU.

Under the proposed rule, the mine operator will collect respirable dust samples to demonstrate the adequacy of the dust control parameters specified in the mine ventilation plan in maintaining the concentration of respirable coal mine and quartz dust at or below the ''verification limits'' of 2.0 mg/m^3 and 100 $\mu g/m^3$, respectively. The adequacy of the dust control parameters must be demonstrated on shifts during which the amount of material produced is at or above the ''verification production level'' (VPL) or the tenth highest production level recorded in the most recent 30 production shifts, and using only the engineering or environmental control parameters proposed in the ventilation plan, at levels not exceeding 115 percent of the quantities specified in the plan.

The proposed rule would require mine operators to: (a) Set and maintain the dust control parameters during verification sampling at levels specified in the plan; (b) maintain and make available to MSHA records of the amount of material produced by each mechanized mining unit during each production shift; (c) provide additional

information in mine ventilation plans such as the VPL, shift length, etc.; and (d) provide the miners' representative the opportunity to participate in the plan verification process.

During sampling to secure plan approval, the district manager could approve a plan based on one shift of sampling if the VPL is achieved, and respirable dust concentrations are sufficiently low. However, if dust concentration measurements are higher, or if the actual production was less than the VPL, the mine operator would be required to sample additional shifts.

3. Measures To Supplement Engineering Controls to Reduce Exposures

Under the proposed rule, if a ventilation plan cannot be verified using all feasible engineering or environmental controls, the mine operator may be permitted to use either powered, air-purifying respirators (PAPRs) or verifiable administrative controls, or a combination of both, as a supplemental means of control (see section III.D. Hierarchy of Dust Controls). MSHA may, under certain conditions, approve such use only after the Administrator for Coal Mine Safety and Health has determined that all feasible engineering or environmental controls have been adopted in the ventilation plan, but miners continue to be at risk of overexposure. District managers may also approve the use of supplementary controls for limited periods of time when unusual or intermittent adverse conditions could result in miners not being fully protected by the approved dust control plan.

These and other provisions of the proposed rule are explained in more detail in the Section-by-Section Discussion of this preamble.

C. Control of Coal Mine Respirable Dust

Maintaining a work environment free of excessive levels of respirable coal mine dust and quartz dust (hereafter referred to as ''respirable dust'') is essential for long-term health protection. Section 202(b)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act) requires each operator to continuously maintain the average concentration of respirable dust in the mine atmosphere, during each shift to which each miner in the active workings of such mine is exposed, at or below 2.0 milligrams of respirable dust per cubic meter of air (mg/m^3). Under the Mine Act and the implementing regulations, when respirable coal mine dust contains more than five percent quartz, the applicable dust standard is further reduced by means of a formula. Although MSHA does not enforce a separate standard for respirable quartz dust, the formula (10 divided by the percentage quartz) used to establish an applicable dust standard, in effect, limits respirable quartz concentrations to 100 μg/m^3 (as an MRE equivalent).

Consistent with the Mine Act and MSHA regulations, the primary focus of the federal respirable dust program is on controlling the concentrations of respirable dust in the environment where miners work or travel through the application of feasible engineering or environmental control measures. Engineering or environmental controls for respirable dust in the mine environment are the proven dust-control techniques and the principal methods for protecting miners' health. These include all methods for controlling the quantity of respirable dust in the air that a miner breathes by either reducing dust generation, or by suppressing, diluting, capturing, or diverting the dust that is being generated by the mining process. Under the Mine Act, the mine operator has primary responsibility for implementing a program to control respirable dust so that all miners work in an environment free of excessive levels of respirable dust. Mine operators must develop, implement, and maintain effective measures to control the level of respirable dust in the mine environment, and evaluate these control measures at regular intervals to ensure that they function as intended. These control measures, or ''dust control parameters,'' are required to be specified in the dust control portion of the operator's mine ventilation plan under § 75.370.

Mine ventilation plans are a long-recognized means of addressing health issues that are mine-specific and for achieving work environments that are free of excessive concentrations of respirable dust. Currently, section 75.370 requires each operator of an underground coal mine to develop and follow a ventilation plan that is designed to control methane and respirable dust in the mine. The plan must be suitable to the conditions and mining systems employed at the mine. Although ventilation plans must be designed to control respirable dust, there has been no requirement that the plan's effectiveness be verified.

The dust control portion of the mine ventilation plan is a key element of the operator's strategy to control respirable dust in the working environment of each mechanized mining unit (MMU) during each shift. Existing section 70.2 defines, in part, a MMU to mean ''a unit of mining equipment, including hand loading equipment, used for the production of material.'' The plan provides a description of the specific engineering control measures in use. The plan also contains procedures for maintenance of specific dust control equipment, such as scrubbers, dust collectors on roof bolters, and spray nozzles, or for the replacement of cutting picks to minimize dust generation. Once approved by the district manager, the dust control parameters must be employed on a continuous basis to provide protection from the hazards of respirable dust to coal miners. By insuring that the parameters are being maintained on each production shift, miners can be assured that respirable dust levels are being adequately controlled without the need to continuously monitor respirable dust levels in the mine environment. Implementing dust control parameters that have been determined effective under typical mining conditions, and maintaining these controls in proper working order, provides reasonable assurance that no miner will be overexposed. Because technology that continuously monitors respirable dust and displays dust concentrations in real-time is not yet available for use in underground coal mines, the implementation of effective ventilation plans is the only practical means of reasonably ensuring, on a continuous basis, that miners are not overexposed.

In 1996, MSHA implemented revised ventilation standards which, among other provisions, required an on-shift examination of the dust control parameters before coal production begins on each MMU to assure compliance with the dust control parameters specified in the ventilation plan. Based on the recommendations of MSHA's Coal Mine Respirable Dust Task Group (MSHA, 1992), this requirement is intended to focus attention on the need for properly functioning dust controls before production begins. On-shift examinations of dust control parameters under existing § 75.362 are one important component for an effective respirable dust control strategy. Recent advances in technology make it feasible to continuously monitor certain parameters, such as air quantity and velocity and spray water flow rate and pressure (Spencer, *et al.* 1996). Existing §75.362 encourages the use of such monitors as it would eliminate the need for periodic physical measurements of some dust controls to verify if they are operating properly. Although current technology allows real-time data to be obtained on certain dust control parameters such as air quantities,

MSHA is not aware of its use by any operator.

Since establishment of the first comprehensive dust standards in 1969, the implementation of ventilation plans by mine operators and their enforcement by MSHA has had a significant impact on control of dust levels in underground coal mines. For example, based on federal mine personnel sampling results, the average dust concentration in the environment of a continuous miner operator (occupation code—036) has been reduced by 87 percent over the past 32 years, from 7.7 mg/m^3 to approximately 1.0 mg/m^3. This accounts for the significant decline in the percentage of operator continuous miner designated occupation (DO) samples with concentrations of 2.1 mg/m^3 or higher, from 49 percent (over 32,000 samples/shifts) in 1971, to 7 percent (over 1,250 samples/shifts) during the first three quarters of 2002. Analysis of all valid operator DO samples collected during the same time period as above indicates that in 1971, 53,463 (44 percent) of the 122,404 shifts sampled, were at or above 2.1 mg/m^3, compared to 1,450 (7 percent) of the 19,336 shifts sampled in 2002 (MSHA, DO Samples by Calendar Year, 2002). Despite this progress, MSHA has found evidence that a significant number of overexposures still occur on the shifts sampled during which the approved dust control parameters are operating at or above approved levels. This evidence suggests that it is highly probable that some miners are overexposed to respirable dust on shifts not sampled by either the operator or by MSHA. In addition, recent medical surveillance data suggests that miners continue to be at risk of developing simple coal workers' pneumoconiosis (CWP), progressive massive fibrosis (PMF), and silicosis (Elam, April 1999).

Two expert panels, that reviewed the federal program designed to prevent pneumoconiosis among coal miners, found that certain aspects of the current respirable dust program limit MSHA's ability to determine the adequacy of the dust control parameters under typical mining conditions. Both the *Coal Mine Respirable Dust Task Group,* (Task Group) an interagency task group established in 1991 by the Assistant Secretary for Mine Safety and Health, and the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers,* (Dust Advisory Committee) established in 1995 by the Secretary of Labor, considered all aspects of the respirable coal mine dust control program and made recommendations for improvement. In addition, in November 1995, NIOSH issued a criteria document that contained recommendations to improve miner health protections.

D. Coal Mine Respirable Dust Task Group

In response to concerns about the Federal coal mine dust program (MSHA, 1992), MSHA's Task Group undertook an extensive review of the program to control respirable coal mine dust and made recommendations to improve the program in 1991. As part of that review, MSHA developed a special respirable dust ''spot inspection program'' (SIP). This program was designed to provide the Agency and the Task Group with information on the dust levels to which underground miners are typically exposed.

The Task Group found that MSHA's current program did not promote the development and implementation of quality plans. Based on its review of a representative number of dust control plans, the Task Group found that some plans lacked specificity or did not include all the dust control parameters actually used. For example, the plans for three major underground coal mines listed the air quantity, the primary means of controlling concentrations of respirable coal mine dust, to be 18,000 cubic feet per minute (cfm) in the mining section. The actual quantities measured by MSHA samples at these mines during the SIP varied from 40,000 cfm to over 120,000 cfm.

Based on a review of MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data,* similar differences were found between air quantities specified in approved ventilation plans and the levels observed at a number of longwall MMUs inspected in 1999. For example, 20 of the 47 longwall MMUs were using significantly more air than specified in the ventilation plan (MSHA, September 1999). Under these circumstances, it would be impossible to assess whether the air volume specified in the plan was adequate to maintain dust concentrations at or below the applicable dust standard. It should be noted that air quantities, air velocities, water spray pressures, and other control parameters, specified in the plan are considered to be minimum requirements and MSHA encourages mine operators to exceed their plan parameters, but only after the levels specified in the plan have been shown to be effective under the conditions in effect during sampling. In addition, a lack of specificity in some plans made it difficult for MSHA samples to determine whether the operator was complying with the approved plan. Although several plans indicated that the mining equipment was to be provided with water sprays, the plan did not specify the location of the sprays or the water pressure at the spray nozzle.

Currently, MSHA relies on information provided by the operator to determine at what production level the plan should be evaluated. No production records are required for each MMU. Although operators must submit production data on a quarterly basis, the data is compiled for the entire mine. In addition, these quarterly reports provide information on the amount of clean coal produced, which are much lower than the tonnage of total material produced, and are not useful for establishing what constitutes ''normal production shifts'' for sampling purposes.

The Task Group determined that the use of low production levels for evaluating the effectiveness of dust control parameters can result in marginal or inadequate plans. Therefore, the Task Group recommended that MSHA require mine ventilation plans to be effective under typical mining conditions. A more detailed discussion of the impact of production on the quality of dust control parameters specified in mine ventilation plans is contained in sections III.C.1. and IV.B. of this preamble.

A survey conducted by MSHA in August of 2002 found that 48 percent of producing MMUs worked at least a 9-hour shift. The Task Group concluded that current regulations limiting the duration of sampling to eight hours do not provide for adequate assessment of respirable dust exposure during nontraditional shifts of more than eight hours.

Implementation of the Task Group recommendations would have required regulatory change. The effort to implement these changes was suspended pending the deliberations and recommendations of the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, which was convened in 1995.

E. NIOSH Criteria Document

On November 7, 1995, MSHA received the document, *Criteria for a Recommended Standard: Occupational Exposures to Respirable Coal Mine Dust,* (Criteria Document) from the National Institute for Occupational Safety and Health (NIOSH). That document contains recommendations to minimize the health risks encountered by surface and underground coal miners due to their occupational exposure to respirable coal mine dust and

crystalline silica, hereafter referred to as ''quartz.''

According to NIOSH,

> By means of criteria documents, NIOSH communicates these recommended standards to regulatory agencies (including the Occupational Safety and Health Administration (OSHA) and MSHA) and to others in the community of occupational safety and health * * *. In addition to transmitting these documents to the Department of Labor, NIOSH also distributes them to health professionals in academic institutions, industry, organized labor, public interest groups, and other government agencies. (NIOSH, 1995, p. iii).

Pursuant to the Mine Act, MSHA was required to issue a public response to this criteria document within 60 days. The statutory deadline for MSHA's response fell on January 7, 1996. In the fall of 1995, there was a lapse in funding for the Federal government, and the Department of Labor was unable to take timely action on this matter (61 FR 731). On April 25, 1996, MSHA published its response to the Criteria Document in the **Federal Register** (61 FR 18308) stating it would develop its regulatory response to the Criteria Document in conjunction with its response to the outcome of the Dust Advisory Committee. (See section II.F.).

Some commenters criticized the earlier proposed rules for not addressing all the recommendations of the Criteria Document. During the August 2000 hearings when these comments were made, a NIOSH representative stated, ''* * * strong steps are necessary * * * oftentimes they do need to be incremental in nature.'' Among the relevant recommendations from the Criteria Document raised by commenters were the following:

- Sampling should be conducted with a device that operates in accordance with NIOSH Accuracy Criteria Document, using the international definition of respirable dust.
- Single-shift measurements should be used to determine noncompliance.
- The exposure limit for respirable coal mine dust should be limited to 1.0 mg/m^3 as a time-weighted-average (TWA) concentration for up to 10 hours per day, during a 40-hour workweek.
- There should be a gravimetric standard for silica of 0.05 mg/m^3 as a TWA for up to 10 hours per day, for a 40-hour workweek.
- Sampling goals should include determining the effectiveness of a dust control system and determining compliance with exposure limits to ensure that exposure conditions are comparable between shifts which are sampled and those which are not.
- Engineering controls and work practices should reflect reasonable efforts to reduce exposures to respirable coal mine dust below the exposure limit.
- MSHA should not make an upward adjustment of the exposure limit to account for measurement uncertainties (*i.e.,* citation threshold values (CTV)). (See section III.A.4.a.).
- Continuous monitoring devices should be developed for use in sampling respirable coal mine dust.
- Sampling frequency should be enough that a significant and deleterious change in the contaminant generation process or exposure controls is not permitted to persist.

MSHA has carefully considered the applicability of each NIOSH recommendation to reduce miners' exposure to respirable coal mine dust, and the agency has integrated these recommendations into our programs, policies, and promulgation of standards. The proposed rule published today are, in part, responsive to NIOSH's recommendations.

For example, the single sample rule, for which the record is reopened in today's **Federal Register** notice is responsive to the Criteria Document. This rule was jointly developed with NIOSH.

The two recommendations regarding exposure limits for respirable coal mine dust and quartz dust are beyond the scope of either the single sample or plan verification proposed rules.

MSHA and NIOSH agree that the level of ''coal production significantly affects the amount of airborne respirable coal mine dust'' (NIOSH 1995, p. 86). NIOSH recommended that ''The mine operator, therefore, should establish a production-level threshold to ensure that exposure conditions are comparable between sampled and unsampled shifts'' (NIOSH, 1995, p. 86). NIOSH recommended that, for a production shift to be considered a normal production shift, it must produce at least 80% of the average production, over the last 30 production shifts.

Through this plan verification proposed rule, MSHA would require operators to design their ventilation plan to be effective in controlling respirable coal mine dust at or above the ''verification production level'' (VPL). The VPL is defined as the tenth highest production level recorded in the most recent 30 production shifts. This quantity generally exceeds the production criteria recommended by NIOSH by a substantial amount.

In addition, for MSHA to approve an operator's mine ventilation plan, the plan's dust control parameters must be shown to be effective in meeting the verification limits of 2.0 mg/m^3 for respirable coal mine dust and 100 μg/m^3 for respirable quartz dust, under typical mining conditions. MSHA expects that most ventilation plans will be verified at or below those values. Therefore, for most mechanized mining units (MMUs), engineering controls will be in place that can control respirable coal mine dust at or below the exposure limit. (See chapter IX. Costs in the Preliminary Regulatory Economic Analysis (REA) for details).

Citation threshold values (CTV) are calculated to ensure that citations are issued only when a single sample measurement demonstrates, with at least 95-percent confidence, that the applicable dust standard had been exceeded.[2] Thus, before issuing a citation, the Secretary requires a high level of confidence that there has been an overexposure. Even so, a dust concentration measurement that falls between the applicable dust standard and the corresponding CTV does not demonstrate that the sampled environment is in compliance. MSHA would identify such environments for further sampling to determine if engineering controls are adequately protective.

As mentioned earlier, several commenters to the 2000 proposal expressed concern that, under MSHA's proposed sampling program, the number of shifts to be sampled would be less than under the current operator and MSHA sampling programs combined. Although MSHA will sample fewer shifts than what was recommended by the Dust Advisory Committee, the number of compliance determinations per MMU will not decrease. Under the existing sampling programs, each MMU averages 10 compliance determinations per year.[3] Each of these compliance determinations is based on the average

[2] CTVs are listed in Table 70.2

[3] Currently, six of the ten compliance determinations are based on the average of five operator, ''designated occupation'' (DO) exposure measurements. Each of these measurements is collected on a different shift within a bimonthly cycle. The remaining four determinations are based on the average of five inspector samples taken quarterly on different occupations from a MMU. Since the publication of the earlier proposed rule, the number of yearly MSHA sampling inspections at each MMU was reduced from six to four. This was the result of the impact on Agency resources due to a decision by the Federal Mine Safety and Health Review Commission that violations of the applicable dust standard must be based on samples taken on multiple shifts. Prior to that decision, MSHA compliance decisions were based on multiple samples taken on a single-shift. Accordingly, there has been a need to increase the number of shifts of MSHA sampling at MMUs where overexposures are found on the first sampling shift. This results in fewer sampling inspections being available at other MMUs.

of five 8-hour exposure measurements. (See III.A.2. Post-1980 Sampling Program). Under this proposed rule, each MMU will average significantly more compliance determinations annually using the results of single sample measurements taken by MSHA personnel (30 CFR 70.202).[4] This increase does not reflect the additional compliance determinations that will be made as a result of sampling, concurrently with MMUs, each intake DA, roof bolter DA and outby occupations.

The new sampling program will be far more effective in monitoring the quality of the mine air that miners must breathe, and in preventing overexposures on individual shifts, because MSHA will be making compliance determinations using measurements that are more representative of the dust concentrations to which miners are exposed on individual shifts. As such, MSHA believes the new MSHA sampling program addresses the NIOSH recommendation that sampling be conducted ''frequently enough that a significant and deleterious change in the contaminant generation process or exposure controls is not permitted to persist'' (NIOSH, 1995, p. 85).

Significant progress in monitoring technology has been made since MSHA published the earlier proposed rule on plan verification. The agency has been informed by NIOSH that a continuous dust monitor may be available for in-mine use by the middle of 2004. Accordingly, as recommended in the criteria document, MSHA is proposing a new standard that would permit operators to use this new technology in conjunction with existing dust controls specified in the ventilation plan to prevent overexposures on individual shifts.

Today's proposed rule does not adopt all the Criteria Document recommendations since many of the recommendations are outside the scope of these rules. However, MSHA continues to be committed to the principles that ''preventive efforts [must] be focused primarily on reducing work exposures (NIOSH, 1995).''

The Secretary of Labor and the Secretary of Health and Human Services believe that miners' health will be further protected from the debilitating effects of occupational respiratory disease by limiting their exposures to the applicable dust standard through the implementation of the single sample rule which conforms to the NIOSH Accuracy Criteria. Furthermore, as stated by NIOSH during the hearings:

> NIOSH does support efforts by MSHA and anyone else that will reduce miners' exposures to dust and silica dust and also eliminate or at least reduce significantly the incidence of the diseases * * *.

MSHA believes that this proposed plan verification rule provides an improved program for measuring, monitoring, and reducing overexposures to respirable coal mine dust and quartz dust, under typical mining conditions. As such, it greatly advances the level of health protection afforded underground miners and is consistent with recommendations issued by NIOSH in its Criteria Document.

F. Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers

On January 31, 1995, the Secretary of Labor established the *Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers* (Dust Advisory Committee). The Dust Advisory Committee was chartered to ''make recommendations for improving the program to control respirable coal mine dust in underground and surface mines in the United States.'' The Dust Advisory Committee identified and addressed many of the same issues considered by the Task Group. Findings and consensus recommendations were developed for each issue (MSHA, 1996). The Dust Advisory Committee concluded that the dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. They concluded that the initial evaluation, approval, in-mine verification and monitoring to demonstrate the effectiveness of the operator's proposed dust control plan is critical for the protection of miners from lung disease. Also, believing that the credibility of the current system of mine operator sampling to monitor compliance with exposure limits has been severely compromised, the Dust Advisory Committee concluded that restoration of miner and mine operator confidence in the respirable coal mine dust sampling program should be one of MSHA's highest priorities. Accordingly, there was unanimous agreement that in order to restore confidence in the program MSHA should take full responsibility for all compliance sampling currently being carried out by mine operators under 30 CFR parts 70 and 90.

The November 1996 Dust Advisory Committee Report recommended numerous improvements for the federal program to protect miners from simple CWP, PMF, and silicosis. Of these, the following have been incorporated in this proposed rule:

1. MSHA will take full responsibility for all compliance sampling (periodic and abatement) at a level which ensures that representative samples are collected of respirable dust exposures under usual conditions of work without adversely impacting the Agency's resources and responsibilities.
2. Operators would be required to verify, through sampling, the effectiveness of the dust controls in the ventilation plan prior to approval by MSHA. The plan must be verified utilizing only those controls that are listed in the plan. In addition, mine operators would sample designated MMUs quarterly to ensure that the dust controls continue to protect miners from overexposure.
3. MSHA will redefine the range of production levels which must be maintained during sampling to verify the plan. The value will be sufficiently close to maximum anticipated production levels in order to reasonably ensure that the plan is effective under typical operations.
4. MSHA will review compliance and production records to determine when there is a need for plan verification and modification.
5. MSHA would allow mine operators to use newly developed technology to continuously monitor the work environment and prevent overexposures on individual shifts.

This proposed rule is intended to eliminate overexposures on individual shifts and to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program by addressing the shortcomings identified by the Task Group and the Dust Advisory Committee in the current respirable coal mine dust program. This proposed rule would revise the operator dust sampling programs under 30 CFR parts 70 and 90 and require the implementation of mine ventilation plans demonstrated to be effective in maintaining respirable dust at or below applicable dust standards on each shift. These ventilation plans will be verified through sampling by the mine operator, and the plans' effectiveness may be monitored on a quarterly basis by the operator. MSHA intends to periodically monitor operator verification sampling and on a recurring basis will conduct sampling on each MMU to assure

[4] On a re-occuring basis MSHA will sample an average of five different occupations on each producing MMU. Since every measurement will be compared with the CTV corresponding to the applicable dust standard in effect, MSHA will be making significantly more compliance determinations yearly than under the current operator and MSHA sampling programs combined.

compliance with the provisions of the ventilation plan and the applicable dust standard. A notice reopening the record regarding the use of single-shift sample measurements of respirable coal mine dust to determine average concentration is also published in today's **Federal Register**.

MSHA recognizes that the Dust Advisory Committee made several recommendations that also impact on surface coal mine workers. These surface coal mine issues are beyond the scope of this proposed rule and will be addressed by the Agency at a later date.

In response to comments received, MSHA has specifically stated in this proposed rule that the representative of miners has the right to observe MSHA sampling with no loss of pay as recommended by the Dust Advisory Committee. The proposed rule also allows the miners' representative the opportunity to participate in operator sampling to verify the ventilation plan. However, such participation would be with no loss of pay, only when MSHA personnel are present to observe that sampling. This proposed rule does not specifically address the committee's recommendations concerning specialized miner training on verification sampling procedures. However, MSHA does intend, during the implementation of any final rule, to provide training to miners, miners' representatives and mine operators on the requirements of the new regulations. In addition, agency personnel are available to provide training to miners and their representatives on the verification procedures as needed.

This proposed rule does not incorporate full-shift sampling as recommended by the Dust Advisory Committee. In this proposed rule, MSHA does require that verification and operator quarterly sampling occur for the entire production shift since the purpose of that sampling is to evaluate the effectiveness of the dust controls on the MMU. Therefore, outby travel time is not included. With regard to compliance sampling by MSHA, the agency believes that sampling portal to portal for the entire shift or eight hours, whichever is less, provides the agency with sufficient data to determine if the dust control measures outlined in the ventilation plan are adequate and being followed or to determine if overexposures are occurring.

Although the Dust Advisory Committee also recommended that MSHA adjust the exposure limit to account for extended work weeks, such a change is considered to be outside the scope of this rulemaking.

MSHA has clarified in this proposed rule that the Secretary will cite for overexposure when an MSHA sample demonstrates that the applicable dust standard has been exceeded, based on the citation threshold value (CTV). In response to concerns that, by using a CTV, MSHA is increasing the standard, MSHA has clarified that respirable dust concentration levels must always be maintained at or below the applicable dust standard. In order to obtain ventilation plan approval from MSHA, operators must demonstrate that the dust control parameters adequately prevent excessive dust concentrations on individual shifts. The plan's effectiveness is evaluated against the applicable dust standard itself—not the CTV—and must be demonstrated at a high level of confidence.

This proposed rule also provides for the limited use of measures to supplement engineering or environmental controls for exposure control. These supplemental measures would be permitted at certain times when the Administrator for Coal Mine Safety and Health has determined that all feasible engineering and environmental controls have been applied and the mine operator is unable to verify the ventilation plan. Supplementary controls may also be approved by MSHA for short-term use to protect individual miners when operators encounter intermittent, adverse conditions under which exposures cannot be maintained within the applicable standard using the approved dust control parameters.

Finally, MSHA received comments suggesting that this rule address the Dust Advisory Committee recommendation to establish a separate silica standard. This issue is outside the scope of this rule.

III. General Discussion

A. Proposed Reforms to the Respirable Dust Monitoring Program

One of the Dust Advisory Committee's key recommendations was that MSHA take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposure under usual conditions of work. This was based on the belief that one of MSHA's highest priorities must be to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program.

Accordingly, MSHA is proposing to revise the operator dust sampling programs under current 30 CFR parts 70 and 90 and to take full responsibility for all compliance sampling (*i.e.*, periodic and abatement sampling) in a manner that it believes will be more protective than the current operator sampling program. MSHA intends to monitor miners' dust exposure and compliance with the dust control provisions of the approved mine ventilation plan, or with the respirable dust control plan for a Part 90 miner at underground mines, in accordance with the procedures and guidelines established in Chapter 1 of the Coal Mine Health Inspection Procedures Handbook.

(a) Compliance Sampling

MSHA will routinely collect samples from the working environment of the DO, Part 90 miners and, if available, four or more other occupations working in each producing MMU. The data from this sampling will be utilized by MSHA to formulate an effective compliance sampling strategy that focuses on the performance of individual sampling entities and to target MMUs for operator quarterly sampling. The strategy will be detailed in the Agency's respirable dust inspection procedures.

Each DA inby the section dump point, such as intake and roof bolter DAs, and other DAs that can be sampled concurrently with the MMU will also be sampled routinely. If the MMU sampled is operating with approved supplemental control measures, the five or more occupations sampled will include the DO and all miners whose exposure is being controlled through the use of PAPRs or verifiable administrative controls.

Since MSHA's inspections are unannounced, the primary objective is to assess the respirable dust conditions to which miners are exposed under the operating conditions in effect at the time of sampling (*i.e.*, production level, air quantities and velocities, *etc.*). All respirable dust samples collected will be considered valid, unless voided by MSHA for other reasons, such as a malfunctioning pump. Because the primary purposes are to measure the quality of the mine air miners breathe and to evaluate the operating conditions on a particular shift, the Agency believes there is no reason to invalidate any sample if a certain level of production is not attained as under the previous sampling procedures. Compliance sampling results, however, will provide MSHA personnel with sufficient information to make a sound engineering judgement about the effectiveness of the dust control parameters in use.

Also, since the purpose of this sampling is not intended to evaluate plan effectiveness, the term ''full shift'' for purposes of compliance and

abatement sampling will continue to mean the entire work shift including travel time but excluding any time in excess of 480 minutes. This is different from the definition of ''full shift'' that is proposed for verification sampling. For purposes of verification sampling, ''full shift'' would mean an entire work shift during which material is produced by a MMU. MSHA solicits comments on whether full shift for compliance sampling should be defined in the same way as for verification sampling.

MSHA is proposing to continue the current policy of sampling outby locations only once per year. The historical data that has been collected by MSHA personnel at outby locations confirms our belief that, if the working sections are in compliance with the applicable dust standard and if controls are in place at outby dust generating locations, workers throughout the mine are being protected from overexposure. MSHA personnel will continue to sample each DA located outby the section dump point on a production shift and any other dust-generating sources that can be sampled concurrently with the DA.

MSHA will issue a citation for noncompliance when a valid single sample measurement, expressed as an equivalent dust concentration, meets or exceeds the Citation Threshold Value (CTV) corresponding to the applicable dust standard in effect.

The current CTVs are contained in Table 70.2 of this proposed rule. The CTVs and an explanation of how they were derived was originally published in the **Federal Register** notice of February 3, 1998 (63 FR 5687), entitled ''Coal Mine Respirable Dust Standard Noncompliance Determinations.'' As explained in that notice and in Appendix ''C'' of the current notice of proposed rulemaking, each CTV is calculated so that citations are issued only when a single-shift measurement demonstrates noncompliance at least at a 95 percent confidence level.

Noncompliance determinations based on single-shift measurements will reduce the chances for failure to cite cases of noncompliance. According to the federal sampling inspections conducted in 1995, only 132 MMUs were found to be in violation of the applicable dust standard. These MMUs were cited under the existing enforcement policy of measurement averaging, compared to 545 MMUs that would have been citable using single sample measurements in combination with the CTV table. This clearly demonstrates that the new enforcement strategy will not compromise miners' health, instead it would have identified 413 additional instances of overexposure. Otherwise, these overexposures would continue to go uncorrected under the previous policy of measurement averaging.

Many commenters believed that miners would receive greater protection if MSHA cited for noncompliance whenever any single-shift measurement exceeded the applicable dust standard. MSHA has carefully considered, but rejected this suggestion. Such citations may not be sustained with a sufficient degree of confidence for enforcement action. If the mine environment is sufficiently controlled, the likelihood that a particular measurement exceeds the applicable dust standard, but not the CTV, due to measurement error, can actually exceed the likelihood that the measurement exceeds the standard due to excessive dust concentration. A thorough technical discussion of this issue is provided at 63 FR 5709–5712 (Appendix D of the **Federal Register** notice cited above) and is incorporated into this notice by reference. Basing noncompliance determinations on a single sample measurement, in conjunction with the CTV table, will improve working conditions for miners.

Many commenters contended that a policy of citing in accordance with the CTV table, rather than citing whenever a measurement exceeds the applicable dust standard, would effectively increase the allowable dust concentration limit. These commenters expressed concern that MSHA was raising the applicable dust standard when it proposed to cite violations only when the measurement demonstrated noncompliance at a high level of confidence.

The CTVs do not raise the applicable dust standard. Instead, MSHA must ensure a sufficiently high level of confidence in noncompliance determinations to withstand a legal challenge. For those MMUs with measurements above the applicable dust standard but below the CTV, MSHA will thoroughly review their dust control parameters. Special emphasis will be directed to working environments required to comply with standards below 2.0 mg/m^3. As a result of such reviews MSHA may initiate additional sampling.

The Secretary has concluded that using single sample measurements for noncompliance determinations in accordance with the CTV table neither increases nor decreases the applicable dust standard. Operators are required to maintain compliance with the applicable dust standard at all times. Dust controls must be verified as adequate to maintain dust concentrations at or below the applicable dust standard on all shifts, not merely at or below the CTV. If a measurement exceeds the applicable dust standard by an amount insufficient to warrant citation—that is, the level does not meet or exceed the CTV—MSHA will target that mine or area for additional sampling to ensure that dust controls are adequate.

(b) Abatement Sampling

Under this proposed rule, MSHA would also assume responsibility for all abatement sampling. As recommended by the Dust Advisory Committee, MSHA would utilize single samples to demonstrate abatement. Since the criteria under which the effectiveness of ventilation plans are required to be verified are significantly more stringent than those for compliance sampling, MSHA does not anticipate issuing many citations to MMUs and sectional DAs.

When a mine operator is cited for violation of the applicable dust standard, MSHA will require that approved respiratory equipment be made available to the affected miners in accordance with existing § 70.300 of this part. The mine operator also will be required to review the dust control practices to identify the cause of the excessive dust concentration and correct any deficiencies within the abatement period fixed in the citation.

The mine operator must notify the district manager of the corrective measures taken within 24 hours of implementation to enable MSHA to determine whether abatement or verification sampling should be scheduled. This determination will be based on the review of the information the mine operator provides and the latest inspection reports documenting the measured quantities of the dust control parameters that were in use at the time the citation was issued.

If it is determined that the existing dust control parameters are likely to be adequate to maintain compliance, the district manager will initiate abatement sampling under § 70.218. For example, if the operator believes that the overexposure was caused by improper work practices, the proper course of action would be to review these work practices with the affected miners rather than requiring the operator to upgrade the engineering or environmental controls. Since there was no need to change the plan parameters, MSHA would initiate abatement sampling in this particular case.

If, on the other hand, the district manager determines that the dust control parameters may not maintain respirable dust levels at or below the

applicable dust standard, the mine operator will be notified to revise the dust-control portion of the mine ventilation plan as specified in this Part.

When MSHA samples a MMU for abatement purposes, single samples will be collected from the working environment of the cited occupation and, if available, four other occupations that will include the DO. Like compliance sampling, abatement sampling will be conducted portal to portal, for the entire shift or 8 hours, which ever is less.

When sampling DAs and outby occupations, MSHA will collect a similar single-shift abatement sample from the environment of the cited DA or occupation.

A citation for excessive dust will be terminated when all valid abatement samples collected are at or below the applicable dust standard. The subsequent action form will clearly and fully describe the action taken to abate the violation. Mine operators may be required to revise the ventilation plan in accordance with § 75.370(a)(2) of this title depending on the type of corrective measures taken to abate the violation. This includes, at a minimum, the actual dust control parameters that were in effect when MSHA sampled.

If the district manager requires the mine operator to initiate the plan verification process under § 70.206 of this part instead of abatement sampling, the citation for excessive dust will be terminated after a revised plan has been verified to be effective for the current mining conditions.

(c) Operator Verification Sampling and Quarterly Sampling

Mine operators are required, under this proposed rule, to verify, through sampling, the effectiveness of the dust control parameters for each MMU prior to receiving MSHA approval of the mine ventilation plan. In addition, certain mine operators must sample quarterly each DO, any occupation required to wear a PAPR or using administrative controls, and any other occupation designated by the district manager. The purpose of the quarterly sampling is to evaluate the continued effectiveness of the approved dust control parameters. These provisions are discussed elsewhere in this proposed rule.

(d) Advantages of MSHA Compliance Sampling Over the Existing Program

Under section 101(a)(9) of the Mine Act, no health standard promulgated under the Act shall reduce the protection afforded miners by an existing mandatory health standard. The joint promulgation of this proposed rule and the proposed single sample rule, would provide protection to miners from the debilitating effects of occupational respiratory disease by limiting their exposures to respirable coal mine dust and quartz dust on every shift:

- Providing and maintaining a work environment free of excessive levels of respirable dust is essential for long-term health protection. While monitoring of the work environment provides an indication of how effective the existing dust control measures are, monitoring alone does not control dust levels. Requiring mine operators to implement and maintain dust control parameters which have been determined effective under typical mining conditions, will provide reasonable assurance that no miner will be overexposed on individual shifts.
- Implementing single-shift sample determinations will more likely detect excessive dust concentrations and thus protect miners. Averaging samples taken on multiple shifts can mask overexposures on individual shifts. Although fewer shifts will be sampled under this proposed rule, MSHA believes the revised sampling methodology will provide a more accurate representation of dust conditions to which miners are exposed.
- Under the existing operator sampling program, only the DO is sampled. Under the new sampling program, MSHA will sample multiple occupations on the same shift. As a result, MSHA will make several times as many compliance determinations as under the previous operator and MSHA sampling programs combined, providing a more comprehensive assessment of dust conditions to which miners are exposed.
- Since MSHA will be conducting all compliance sampling, the Agency will be able to monitor the dust control parameters and work practices in effect during sampling. This will enable MSHA to determine the effectiveness of the mine operator's dust control program.
- Unlike the current sampling program, which allows operators' control over when to sample and under what operating conditions, MSHA's visits for compliance sampling will be unannounced. As a result, all phases of the mining cycle are likely to be sampled eventually (*i.e.*, construction activity, longwall start-up, turning crosscuts, *etc.*), and samples should be more representative of typical mining conditions.
- The miners' representative will have walkaround rights during all MSHA sampling, thereby increasing miners' confidence in the dust sampling program.

B. Procedures for Setting the Applicable Dust Standard When Quartz Is Present

1. Proposed Procedures

Consistent with MSHA's proposed rule to assume full responsibility for compliance sampling, the Agency also proposes to rely only on MSHA samples, *i.e.*, compliance or abatement samples, as the basis for setting the applicable dust standard when quartz is present. As discussed below, while today's proposed rule would reduce the burden and cost on mine operators to take and submit optional samples, it would not diminish the advantages afforded operators under the current program. In particular, it continues to consider temporal variability associated with quartz determinations by averaging three MSHA samples collected on different shifts.

MSHA believes that results under this revised process will be more representative of the quartz levels to which miners are exposed. Unlike the current process, which may cause a standard to be set based on the quartz content of an individual MSHA sample, three valid MSHA samples would be used to set a reduced standard under the revised procedures (64 FR 65671).[5] Since, under the rules being proposed today, MSHA intends to frequently sample underground mines and surface mines, MSHA personnel will have no difficulty in collecting the required number of samples to arrive at the average quartz percentage. If initial sampling shows that miners may be exposed to excessive levels of quartz, MSHA intends to sample at a greater frequency to ensure that miners are being protected. This level of sampling should also allay any operator concerns regarding the collection of ''misleadingly high'' samples during atypical periods. MSHA also intends to begin reporting quartz levels to the nearest tenth of a percent. This will be more protective for the miner than the current truncation of results to a full percentage point.

Under the revised procedures, when an MSHA sample contains more than five percent quartz, the agency will average the percent of quartz present in three most recent MSHA respirable coal mine dust samples to set the applicable

[5] Unlike MSHA's objective in compliance sampling, the objective in measuring quartz content is to establish a reduced standard that will apply to all shifts. This enables an operator to design a ventilation plan that will be protective on every shift. Therefore, it is appropriate to estimate the quartz content by averaging quartz measurements obtained over an extended time period.

dust standard. If a MMU, DA, Designated Work Position (DWP) at an underground mine, or Part 90 miner is already on a reduced standard, a new applicable dust standard will be established by averaging the results of the first two MSHA samples, taken under the revised procedures, with the quartz percentage associated with the reduced standard in effect. If fewer than two MSHA samples are taken, the existing reduced standard will continue to remain in effect.

Assume a MMU is on a 1.0 mg/m^3 standard (10 percent quartz). If the first MSHA sample contains 7.2 percent of quartz, the existing standard of 1.0 mg/m^3 would continue to remain in effect. If, however, the next sample contains 16.1 percent, the average quartz percentage would be 11.1 percent [(10.0% + 7.2% + 16.1%) 3 = 11.1%], resulting in a 0.9 mg/m^3-standard (10 11.1% = 0.9 mg/m^3). For any MMU, DA, DWP, or Part 90 miner not on a reduced standard, MSHA will collect and analyze three samples for quartz to determine if a reduced standard is warranted.

Under the revised procedures, if the newly-established standard is lower than the one in effect, the new standard will become effective seven days after the date of the notice informing the mine operator of the change in the applicable dust standard. However, if it is higher than the current standard, the newly-established applicable dust standard will become effective on the date of the notice.

As published elsewhere in today's **Federal Register**, MSHA is proposing to take enforcement actions on the basis of single-shift sample measurements. For entities on reduced standards, MSHA would delay enforcement action until the sample is analyzed for quartz. If an exposure measurement significantly exceeds the existing standard and the quartz content of that sample would cause the standard to be lowered below the existing reduced standard, the operator will be cited for violation of the applicable dust standard currently in effect. On the other hand, if the quartz content of the sample would cause the applicable dust standard and the corresponding citation threshold value (CTV) to increase so that the single-shift sample measurement would no longer indicate noncompliance, no citation will be issued. This is illustrated by way of the following example.

For example, suppose that the MMU is on a 1.3 mg/m^3 standard and a single-shift sample measurement of 1.6 mg/m^3 is obtained. Since this measurement exceeds the CTV value, the operator is in violation of the standard. However, analysis of the DO sample shows that the sample contained 5.6 percent quartz which, if averaged with the previous two MSHA quartz levels, would result in a 1.7-mg/m^3 standard. This indicates that the quartz level in the environment of the DO has changed, indicating that the current standard is no longer valid. Therefore, since the original measurement of 1.6 mg/m^3 is less than the 1.7-mg/m^3 standard that could have been in effect for the shift sampled, a citation would not be issued.

Since MSHA samples are viewed to be more representative of the respirable dust concentration to which miners are exposed, MSHA is proposing to revise section 70.101 to clarify that the Secretary will determine the quartz level by sampling. Operator samples would no longer be submitted to determine the applicable dust standard. It is our belief that the procedures being proposed today for setting reduced standards will be more protective for the miners than those in effect at this time. The revised approach provides for stringent monitoring of miners' exposure to quartz which is consistent with the Dust Advisory Committee's recommendation that MSHA increase surveillance and reduce exposure to this serious health hazard.

As under the current program, if operating conditions change following establishment of a lowered applicable dust standard and affect the level of quartz in the working environment, MSHA intends that mine operators or miners' representatives will be able to request MSHA to conduct a quartz reevaluation.

2. *Validity of Averaging Percentages*

The average quartz percentage that MSHA intends to use to set the applicable dust standard for a particular sampling location or area of a mine would be determined in accordance with accepted mathematical procedures for arriving at an average value from a set of values (*i.e.*, adding together the individual quartz percentages and dividing by the number of analyses that are in the set). MSHA believes that this is the most appropriate method to use.

One commenter who responded to a draft 1999 program policy letter (November 23, 1999, 64 FR 65671) concerning this issue contended that MSHA's approach of arriving at the average quartz percentage was mathematically incorrect. This commenter recommended that, to more accurately reflect the true quartz concentration, the average quartz percentage be calculated by dividing total mass of quartz in micrograms by the total mass of dust collected (based on three samples in the example submitted). In the commenter's example, the average percentage obtained using MSHA's proposed averaging method was larger than that obtained using the commenter's approach.

The following two scenarios in Table III–1 clearly demonstrate that MSHA's intended averaging method does not always result in a larger average quartz percentage value.

Scenario I			Scenario II		
Dust Mass	SiO_2 Mass	% SiO_2	Dust Mass	SiO_2 Mass	% SiO_2
1.7	0.136	8.0	1.7	0.17	10.0
1.0	0.04	4.0	1.0	0.08	8.0
2.5	0.3	12.0	2.5	0.15	6.0
MSHA's Method	Average of % SiO_2 = 8.0		MSHA's Method	Average of % SiO_2 = 8.0	
Commenter's Method	$\frac{\text{Sum } (SiO_2 \text{ Mass})}{\text{Sum (Dust Mass)}}$ =9.2%		Commenter's Method	$\frac{\text{Sum } (SiO_2 \text{ Mass})}{\text{Sum (Dust Mass)}}$ = 7.7%	

These examples show that for situations where MSHA would have determined a quartz percentage of 8.0 percent, the commenter's method would yield 9.2 percent in one case and 7.7 percent in the other.

C. Respirable Dust Control Program for Underground Coal Mines

The primary focus of the underground coal mine respirable dust program is to limit the concentration of respirable dust to which miners are exposed in the work environment. To ensure that miners are not being exposed to excessive concentrations of respirable dust, current regulations require mine operators to:

- Design a mine ventilation plan that effectively controls respirable dust under typical mining conditions;
- Implement the plan's dust control parameters when approved by MSHA before commencing production;
- Maintain the dust control parameters specified in the approved plan and monitor their function and operation through required on-shift examinations; and
- Evaluate the effectiveness of dust control parameters with bimonthly samples in order to provide reasonable assurance that such parameters continue to function as intended.

In addition, each plan must be suitable to the conditions and mining system in use at the mine. These plans provide detailed requirements for the protection of miners by specifying engineering controls. These engineering controls may include:

- The quantity and the velocity of the air current used to ventilate the MMU;
- The number, type, and location of water sprays;
- The pressure and quantity of water delivered by the sprays; and
- Additional environmental controls, such as dust scrubbers or devices which collect mine air and filter out dust particles.

Plans also contain procedures for maintenance of dust control equipment used on the mining machine and roof bolter. Mine operators frequently do not describe all dust controls in use at the mine. If such information is not included in the plan, it is impossible for MSHA to enforce those provisions or to determine if the ventilation plan provisions as approved are adequate to protect miners from overexposure.

When an operator submits a proposed mine ventilation plan or revision in accordance with § 75.370, the MSHA district office reviews it for completeness and adequacy. The district manager will approve the plan if it meets MSHA requirements, and he or she is confident that the dust control parameters specified will have a reasonable likelihood of maintaining dust concentrations within the allowable limits. Most proposed plans or revisions are approved immediately, or tentatively approved, based on engineering judgement, or experience, or both, until they are assessed by MSHA sampling or, to a lesser extent and only under certain circumstances, by mine operator bimonthly sampling. Generally, MSHA takes samples within 60 days of plan approval. Current regulations prohibit a mine operator from initiating any mining activity without an approved ventilation plan. MSHA allows operators to commence mining by granting tentative approval. However, under the existing process, plans may be implemented which are later determined to be inadequate under typical mining conditions.

1. Proposed Procedures for Evaluating, Approving, and Monitoring Ventilation Plan Requirements

The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment, thereby protecting miners. In recognition of this, MSHA is proposing to make a number of changes to the process for evaluating, approving, and monitoring mine ventilation plans, many of which are based on the Dust Advisory Committee's recommendations. These are addressed in detail under proposed §§ 70.201 through 70.220 of the preamble.

Consistent with the Dust Advisory Committee recommendations, MSHA is proposing to add provisions to verify the effectiveness of the ventilation plan in controlling dust, at a production level which will demonstrate the plan's effectiveness under typical operating conditions. Dust control parameters and production associated with samples on a given shift would be recorded in order to demonstrate that parameters specified in the ventilation plan continue to be effective in controlling respirable dust.

This proposed rule requires a ventilation plan to include all engineering or environmental controls necessary for maintaining dust concentrations at acceptable levels. A plan must also include any specific work practices or other means used to supplement these controls in order to minimize the dust exposure of individual miners. Unlike plans under the existing program, mine operators will have to identify all measures necessary for achieving continuous

compliance with the applicable dust standard in the plan.

MSHA would require mine operators to include information on the length of each normal production shift in § 75.371(f) and to specify the VPL, as defined in § 70.2, in every ventilation plan. The VPL is the tenth highest production level recorded in the most recent 30 production shifts. This value will represent the minimum production level at which effectiveness of the plan must be demonstrated.

MSHA believes that the current production criteria used to evaluate plan effectiveness may not adequately represent typical conditions under which miners work. Requiring that plans be verified at or above the VPL will provide assurance that excessive dust concentrations will be avoided, even on shifts with higher-than-average production. This is far more protective of miners than the current practice of evaluating plan adequacy based on MSHA samples taken when production can be as low as 60 percent of the average production.

Some commenters on the earlier proposed rule expressed confusion about the relative magnitude of the VPL, compared to average production or other possible production criteria. Figure 1 shows a typical distribution of 30 shift production levels recorded at a longwall MMU. As illustrated by this example, the VPL, defined as the 10th highest production achieved during 30 shifts, generally exceeds the average production by a substantial amount.

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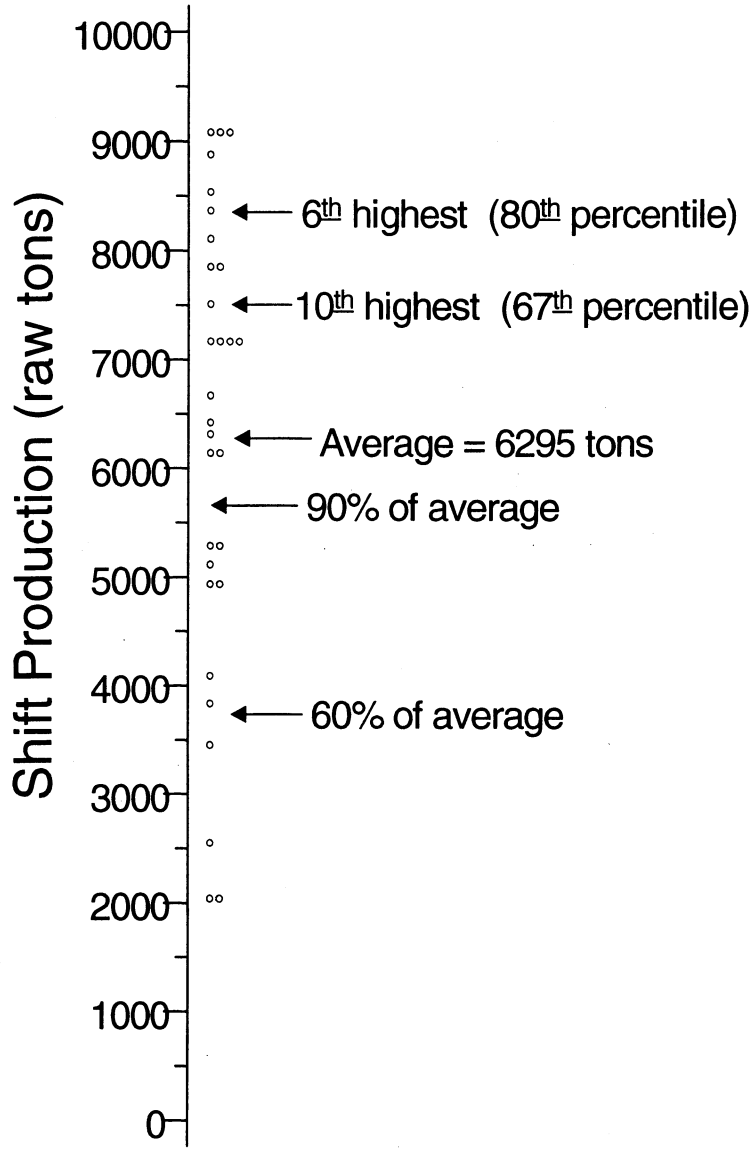

30 production shifts at a longwall MMU in District 3.
Each "O" represents production on one shift.

Figure 1. Example of a typical distribution of 30 shift production levels achieved at a longwall MMU.

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MSHA proposes to require mine operators to maintain records of the amount of material produced by each MMU during each shift. This will enable operators to establish the VPL. Because verification of a plan's effectiveness is conditioned on the VPL, these records are necessary to ensure that the VPL continues to represent typical production levels. Although a VPL must be included in the ventilation plan, MSHA will not cite mine operators for producing at levels exceeding the VPL.

MSHA considers the VPL to be a plan design criteria, not a minimum plan parameter that must be in effect on every shift. The Agency would expect production on a MMU to exceed the VPL on about 33 percent of all production shifts. If the district manager determines that an operator's actual production exceeds the VPL on more than 33 percent of the production shifts over a six-month period and the operator or MSHA samples exceed the applicable standard, the district manager may require that the adequacy of the plan parameters be verified under

different operating conditions of production.

Under the proposed plan verification procedures, mine operators will be required to verify through sampling the effectiveness of the dust controls specified in the ventilation plan prior to approval of that plan by the district manager. Sampling would occur when production is at or above the VPL specified in the plan and using only those control parameters and other measures listed in the plan. The sampling pumps must be turned on upon arrival on the MMU and remain operational during the entire production shift. The pumps must be turned off upon leaving the MMU. Samples would be collected on multiple occupations which are specified in proposed § 70.206. All verification samples must be transmitted to MSHA. However, no citations would be issued to mine operators if the verification sample results show that the applicable dust standard has been exceeded. Operators would be cited only if they fail to take steps to determine the cause and take corrective action to eliminate the overexposure. The agency would approve a plan only when a sufficient number of verification samples demonstrate, at a high level of confidence, that the plan is effective at production levels at or above the VPL.

Unlike the existing program, this proposed rule would allow certain longwall and other operations to use either approved PAPRs, administrative controls, or both, to supplement engineering or environmental controls if the mine operator is unable to verify the ventilation plan. This will be permitted only after the Administrator for Coal Mine Safety and Health determines that the operator has exhausted all feasible engineering or environmental controls. District managers also may allow mine operators to use PAPRs to achieve compliance with the applicable dust standard when unusual operating conditions are encountered briefly and intermittently and the operator believes that the approved plan parameters will not adequately protect all miners from overexposure. The period of time when PAPRs may be used cannot exceed 30 calendar days under this proposed rule. An example of when such approval may be granted is when an operator periodically must mine through rock strata with high quartz content.

Finally, under this proposed rule, mine operators also would be required to sample each DO and occupation using PAPRs or administrative controls at least once every three months to evaluate the continued adequacy of the approved plan parameters. As with verification samples, operators would only be cited if they fail to take corrective action to eliminate any overexposure identified through such sampling.

D. Hierarchy of Dust Controls

1. Primacy of Engineering Controls

Consistent with the Mine Act, engineering or environmental controls have been the principal method used for preventing or minimizing miners' exposure to both primary and secondary dust sources in the workplace over the past 30 years. Engineering controls that are able to manage the amount of dust throughout the work environment give reasonable assurance that all miners in the area will be adequately protected. Well-designed engineering or environmental controls provide consistent and reliable protection to all workers because they are not dependent upon constant human supervision or intervention, except for the periodic checks, to ensure that they are functioning as intended. Under this proposed rule, operators would be required to utilize, on each production shift, all engineering or environmental controls as specified in their mine ventilation plans. These controls will maintain concentrations of respirable dust in the work environment of MMUs at or below the applicable dust standard. Engineering or environmental controls include all methods that control the level of respirable dust by reducing dust generation (*e.g.*, machine parameters) or by suppressing (*e.g.*, water sprays, wetting agents, foams, water infusion, etc.), diluting (*e.g.*, ventilation), capturing (*e.g.*, dust collectors), or diverting (*e.g.*, shearer clearer, passive barriers, etc.) the dust being generated by the mining process.

The importance of using engineering or environmental controls was recognized by the Dust Advisory Committee and by NIOSH in *Occupational Exposure to Respirable Coal Mine Dust* (NIOSH, 1995). NIOSH recommended that such controls must continue to be relied upon as the primary means of protecting coal miners. The primacy of engineering or environmental controls would be preserved under this proposed rule. The proposed rule requires a mine operator to utilize all feasible engineering or environmental controls, specified in the approved ventilation plan, to reduce concentrations of respirable dust to a level at or below the applicable dust standard.

2. Administrative Controls

Administrative controls are another method of avoiding overexposure. Administrative controls refer to work practices that reduce a miner's daily exposure to respirable dust hazards by altering the way in which work is performed. They consist of such actions as rotation of miners to areas having lower dust concentrations, rescheduling of tasks, and modifying work activities. The Task Group found that administrative controls were used increasingly, even when it was feasible to implement additional engineering or environmental controls. The use of administrative controls was found to be increasing at mines employing longwall mining systems.

The most frequent administrative control in use consisted of restricting the activities of miners required to work downwind of the longwall shearer operator, the occupation designated as 044 by MSHA. This particular form of administrative control was in use at some of the 51 longwall MMUs that were operating on October 28, 1999. MSHA has observed the use of this particular administrative control, even after changing the location of the DO from the 044 to the 060 occupation—the miner who works nearest the return air-side of the longwall working face. Unlike engineering or environmental controls, to be effective, administrative controls rely on the ability of miners to follow specified procedures. However, difficulty in ensuring that miners adhere to the administrative controls, labor/management agreements, and limitations on the number of qualified miners capable of handling specific tasks may limit the use and effectiveness of such controls.

The Dust Advisory Committee Report stated that the use of administrative controls does not reduce the operator's responsibility to maintain ambient dust levels in active workings at or below the applicable dust standard. However, the Dust Advisory Committee noted that ''while not a substitute for engineering controls, administrative controls, which restrict the amount of time that miners spend in an area with uniform exposure level, can result in lower personal exposures (MSHA, 1996).''

3. Limitations of Engineering Controls

It is MSHA's position that technology is generally available to control respirable dust to, or below, the applicable dust standard at MMUs employing continuous and conventional methods of mining. However, where unusual or adverse conditions are encountered it is possible that available

controls may be inadequate to continuously protect all miners from overexposure. This is most likely to occur in areas where high levels of quartz are encountered that may result in the setting of lowered standards on a MMU.

However, MSHA recognizes that, unlike other mining systems, longwall MMUs may have acute dust problems. These problems can be caused by the face-ventilation airstream carrying the shearer-generated dust over the miners working along the face downwind of the longwall shearer operator (occupation code 044). This makes it more difficult to control the work environment downwind of the longwall shearer operator on a consistent basis.

Improvements in dust control technology have not kept pace with increases in production technology associated with high-production longwall MMUs. Average longwall shift production reported during bimonthly sampling has increased more than six-fold since 1980, from approximately 890 tons per shift (tps) to 5,500 tps in 2002. In fact, 49 percent of the shifts sampled averaged 4,000 to 8,000 tps, while approximately 8 percent of the shifts exceeded 8,000 tps. A major milestone in mining production was achieved in 1997 when a single longwall mine produced more than 1 million tons of coal in a single month (Fiscor, 1998).

Unfortunately, as more coal is mined, greater quantities of respirable dust are generated. The increase in longwall production levels has resulted in the generation of far more dust which must be controlled (Webster, *et al.,* 1990; Haney, *et al.,* 1993; O'Green, 1994). According to published literature, several thousand milligrams of respirable dust per ton of coal cut can be formed and liberated during the cutting process (National Research Council, 1980). Of course, the quantity of respirable dust produced by the cutting process can vary greatly, depending on the type of coal, its moisture content, the amount of rock bands in the coal, sharpness of the cutting bits, the particular mining machine, and many other factors. Although a considerable amount of respirable dust is formed by the cutting operation, not all of it becomes airborne. Nevertheless, given the amount of dust that is produced per ton of coal mined, a larger quantity of respirable dust would be generated and released to the mine environment from cutting 8,000 tons of coal than from cutting 4,000 tons. Currently, an operator is not required to produce, on a sampled shift, more than 50 percent of the average production reported during the last bimonthly sampling period. Therefore, dust concentrations on sampled shifts may be substantially lower than what is typical on nonsampled shifts.

While significant efforts have been made to implement available control technology, no significant new advancements in longwall dust control technology have been reported since 1989 (U.S. Bureau of Mines, undated). From 1989 to 2002 (Jan.–Sept.), the percentage of operators' longwall DO samples with concentrations of 2.1 mg/m^3 or higher dropped from 22 percent to 14 percent, reflecting the impact of implementing the pre-1990 advances in longwall control technology. Although this represents a significant improvement, especially in view of the six-fold increase in average shift production, the 2002 data suggests that miners continue to be overexposed on a significant number of shifts.

Over the past ten years, MSHA and the former U.S. Bureau of Mines, now part of NIOSH, have made unsuccessful efforts to conduct a joint research program that would evaluate the effectiveness of available longwall dust control technology. The objective of such research would have been to quantify the effects of employing all state-of-the-art dust control technology available for a longwall operation. Unfortunately, the two agencies have been unsuccessful in finding an industry partner to participate.

MSHA has worked with mine operators on an individual basis to determine the effectiveness and feasibility of existing and additional respirable dust controls on a particular longwall. However, the design and goals of those studies were neither intended nor sufficient to meet MSHA's broader research objective. Rather, the scope of those studies was to evaluate the effectiveness of control technology that both MSHA and the mine operator agreed were applicable to that one particular longwall MMU. The objective of the cooperative research program that MSHA and the Bureau of Mines were attempting to conduct, was to establish the combined efficiency of the various control technologies that the Bureau of Mines had developed through their ongoing dust control research program.

However, even though no such study has been conducted, based on our experience, MSHA's position remains that feasible engineering or environmental controls exist for maintaining dust exposures at or below the applicable dust standard, for most, if not at all longwall operations. MSHA believes that the plan verification provision contained in this proposed rule will foster further improvements in the design and quality of mine ventilation plans for longwall MMUs.

4. Respiratory Protection

While the Mine Act provides that operators ''make available'' approved respirators to miners during periods of noncompliance, when miners may be overexposed, the Act specifically prohibits using such devices as a substitute for environmental controls in the active workings of the mine. As previously discussed elsewhere in the preamble, this is because environmental or engineering controls are reliable, provide consistent levels of protection to large number of miners, allow for predictable performance levels, can be monitored continually and inexpensively, and can remove harmful levels of respirable coal mine dust from the workplace. MSHA recognizes that approved respirators, such as the powered air-purifying type (*e.g.,* Racal® Airstream helmet or air helmet),[6] can be effectively used as an interim method of protecting miners from respirable dust hazards when properly selected, used, and maintained. Although a respirator may achieve satisfactory air quality in the miner's breathing zone when used in a good respirator program, their use will not achieve the intent of the Act, which is to control the level of respirable coal mine dust in the mine atmosphere in the active workings at or below specific limits. Accordingly, consistent with the intent of the Act and general industrial hygiene practice, it has been MSHA's long-established practice to rely on the strict adherence to a hierarchy of controls that prefers engineering controls over dependence on supplementary control measures (*e.g.,* respirators, work practices or both) to achieve compliance with the applicable dust standard.

Nevertheless, the mining industry has urged MSHA over the years to accept the use of powered air-purifying respirators (PAPRs) or air helmets as an alternative method of complying with the applicable dust standard when engineering controls did not adequately control respirable exposure or were not feasible. Most recently, Energy West Mining Company (Energy West) petitioned the Secretary of Labor:

> [t]o amend the mandatory health standards for underground coal mines contained in the Secretary's regulations at 30 CFR part 70 in order to allow the use of airstream helmets or other types of powered air-purifying respirators (PAPRs) approved by the National Institute for Occupational Safety and Health (NIOSH) as a supplemental means of

[6] References to specific equipment, trade names or manufacturers does not imply endorsement by MSHA.

compliance with the respirable dust standards of subpart B of part 70. (Energy West, September 1997).

Energy West contended that PAPRs are necessary as a supplemental means of controlling respirable dust because even the most diligent application of feasible engineering or environmental controls could not always prevent overexposure. This proposed rule responds to Energy West's petition for rulemaking.

Although, as stated above and elsewhere in the preamble, the Agency does not believe that supplementary controls are as effective or as safe as engineering controls, MSHA believes, on balance, that under certain circumstances reliance upon the limited use of such measures is appropriate. Accordingly, MSHA is proposing to permit the limited use of either approved PAPRs, administrative controls, or a combination of both, for compliance purposes, in those circumstances where further reduction of dust levels cannot be reasonably achieved using all feasible engineering controls. In these situations, the burden of proof of infeasibility is appropriately placed on the operator. Also, as provided for under proposed § 70.212, MSHA recognizes that the use of PAPRs as a supplementary control may be appropriate on an intermittent basis when unusual operating conditions are encountered that adversely impact the ability of the previously verified plan parameters to effectively control respirable dust under prevailing conditions. MSHA will permit the use of PAPRs for a period not exceeding 30 calendar days if the operator demonstrates that the particular circumstances that necessitate the use of PAPRs occur only intermittently and are beyond the control of the operator.

While the conditions under which MSHA would permit supplementary controls to be used introduces an added element of complexity to the proposed standard, the Agency believes that it will provide operators the flexibility to select the most appropriate option for supplementing the engineering controls which best meet the needs of the miners under the prevailing operating conditions.

MSHA believes that the use of these supplementary control measures, under the conditions of use set forth in the proposed rule, will enhance the level of health protection for miners by preventing overexposures on all shifts when engineering controls cannot achieve the necessary reduction to or below the applicable dust standard. The combination of engineering and supplementary controls will provide reliable and effective exposure control when used in accordance with the approved plan provisions. This proposed rule, which provides for expanded use of supplementary controls under limited circumstances to protect individual miners, is not a departure from the Agency's long-standing practice of relying on engineering controls to achieve compliance, since these measures would not be used as a substitute or replacement for engineering control measures in the active workings. Rather, it is a recognition that, in those limited instances where supplementary controls may be used, engineering controls alone may not protect some miners from overexposure.

a. Selection of Respirators: Powered Air-Purifying Respirators (PAPR)

By choice, underground coal miners wear various styles of respirators to protect themselves from exposure to respirable coal mine dust including: disposable filtering facepieces, tight-fitting elastomeric masks, and PAPRs. Currently, over 50 percent of the operating longwall mines have miners who have chosen to wear PAPRs (MSHA, Longwall Summary, January, 1999) for added protection.

The Racal® Airstream, or air helmet as referred to by miners, is a type of loose-fitting PAPR which has long been the respirator of choice in underground coal mines. Due to the weight of the device, its use has generally been limited to mines with coal seam heights exceeding six feet. The functional and physical characteristics of air helmets, as described below, make them especially well-suited to underground coal mining conditions. Accordingly, MSHA has chosen PAPRs as the type of respirator to be used when such devices are approved under this proposed rule.

The air helmet has been in use in underground coal mines since the late 1970s. Developed primarily for mining use by the Safety in Mines Research Establishment (SMRE) in England, this respirator combines face, head, and respiratory protection in a single convenient unit. The support hardware, which provides the filtered air, is enclosed within the air helmet. Power for the system is provided by a belt-mounted battery. Mine air enters the helmet through a rear entrance port, passes through a pre-filter assembly that removes the coarse material, and then passes through the fan and into a final-filter assembly that is located between the head of the wearer and the outer helmet shield. The filtered air then sweeps down across the wearer's face, behind the face-shield visor, imposing minimal breathing resistance, and exits at the chin. A partial seal between the visor (inlet covering) and the face is accomplished using a flexible medium which contours to the wearer's neck and face. The original air helmet has undergone numerous design improvements since it was first introduced in British coal mines. The unit is now produced by the Minnesota Mining and Manufacturing Company (3M) (3M™ Helmet-Mounted Airstream™ series).

Unlike other styles of PAPRs (*e.g.*, hoods) and negative pressure, tight-fitting respirators, the air helmet is better able to provide various types of required personal protective equipment in an efficient package. For example, in addition to protecting the lungs, the helmet and visor (the inlet covering) of a PAPR can simultaneously protect the face and head from high-velocity nuisance dust, spray, and small pieces of coal from the cutting drums and face. PAPRs do not require fit-testing, unlike tight-fitting respirators.

By definition, for PAPRs to be approved for use under this proposed rule, the visor must form a partial seal with the face, limiting entry of unfiltered mine air. Because this style of respirator does not have a tight-fitting facepiece, miners are not required to be clean shaven in order to wear this respirator correctly. MSHA's allowance of facial hair with this style of PAPR is also consistent with the Occupational Safety and Health Administration's (OSHA) regulation that facial hair prohibition applies only to tight-fitting respirators (29 CFR 1910.134 (g)(1)(i)(A) as discussed in 63 FR 1152). MSHA recognizes that there may be facial conditions which may prevent the proper fit of a PAPR. However, a well-designed respirator protection program should identify and address any extreme facial conditions, including excessive facial hair, which prevent the partial seal of the inlet covering and the face as intended, and thereby compromise the efficacy of the PAPR. For example, a miner could have exceptionally bushy sideburns which prevent the inlet covering from forming an appropriate partial seal with the face, and leave a significant gap between the inlet covering (visor) and chin. This situation would have to be rectified in order for the PAPR to be worn properly.

Greenough (1978) summarized limitations of other styles of respirators as follows:

[T]he objections to conventional face-mask respirators arise primarily from the mask being clamped to the wearer's face, often causing irritation and soreness: also the breathing resistance, though small, can affect the wearer's capacity to work over long

periods (Johnson, 1976). Speech is impeded and if the respirator harness fits under the wearer's safety helmet it is necessary to remove the helmet when replacing the respirator.

Greenough's description illustrates how other styles of respirators are less compatible with the other safety requirements for miners, as well as miners' comfort, and their need to communicate. It would be more difficult for a miner to perform his/her job effectively and communicate with fellow workers, wearing a tight-fitting respirator their entire work shift. Voice transmission through a tight-fitting respirator can be difficult, annoying and fatiguing. In addition, movement of the jaw in speaking can cause leakage, thereby reducing the efficiency of the respirator and decreasing the protection afforded the wearer. While voice communication is somewhat easier with a PAPR than with other respirator styles, the face shield is generally raised to communicate. Also skin irritation can result from wearing a tight-fitting respirator in hot, humid conditions. Tight-fitting respirators have straps which go across the crown and back of a miner's head which is under a miner's helmet (*i.e.*, hard hat). Because miners are required to wear hard hats *at all times* while in the mine (30 CFR 75.1720(d)), each time a miner needs to break the seal of a tight-fitting respirator, to eat, or to speak, or to relieve the discomfort of the seal, he/she would have to remove the hard hat. Similarly, each time a miner would need to put a tight-fitting respirator back on he/she would have to remove their hard hat. It should be noted that both tight-fitting elastomeric respirators and disposable facepieces, if worn correctly, would require the wearer to be clean shaven. A large proportion of miners have a tendency to wear facial hair, especially during the fall and winter season.

The unique qualities of the PAPR identified within this proposed rule are such that it could fall into either the helmet or loose-fitting facepiece categories. ANSI defines a loose-fitting PAPR with a helmet to be ''a hood that offers head protection against impact and penetration (ANSI, 1988).'' ANSI defines a loose-fitting PAPR with a loose-fitting facepiece as ''A respirator inlet covering that is designed to form a partial seal with the face, does not cover the neck and shoulders, and may offer head protection against impact and penetration (*Ibid.*).'' In this proposed rule, a powered air-purifying respirator (PAPR) is defined as an air-purifying respirator that uses a blower to force ambient air through the air-purifying elements to the inlet covering, which provides a partial seal with the face. This respirator must be approved by NIOSH under 42 CFR part 84 and by MSHA under 30 CFR 18 and offer head and face protection in compliance with 30 CFR 75.1720(a)and(d).

A current list of equipment, including PAPRs, approved under 30 CFR 18 can be obtained from MSHA's Approval and Certification Center on the internet at *http://www.msha.gov/TECHSUPP/ACC/lists/18instrm.pdf.* A searchable index of approved respirators is available from NIOSH at *http://www2.cdc.gov/drds/cel/cel_form.asp.* As of 2002, the 3M Airstream Air-Purifying Helmet (MSHA Approval 2G–3143, originally issued to Racal 3/29/1979), was the only approved PAPR model suitable for use under this proposed rule.

b. PAPR Protection Program

In an underground coal mine, the degree of respiratory protection that a properly functioning PAPR will provide the wearer is a function of the type and condition of the air-purifying medium used to filter out the respirable dust particles from the mine air, the workplace environment (*i.e.*, nature and concentration of the respirable coal mine dust), the work activity of the wearer in that environment, how the wearer uses the device (*i.e.*, how often is the visor raised during the shift), and the care and maintenance of the PAPR's functional components and power source. These parameters are required to be addressed in the approved PAPR protection program (see example in Appendix B).

In 1998, to increase the efficiency of the filtering medium used in PAPRs, NIOSH began requiring PAPRs to be equipped with a high efficiency particulate air (HEPA) filter. This change introduced a denser medium to filter the air, providing an extra margin of safety at all levels of respirable coal mine and quartz dust exposure. However, as a result of this change, the PAPR's average airflow dropped from about 9 cubic feet per minute (cfm) to 7 (cfm). While the current airflow still exceeds the required minimum airflow of 6 cfm (42 CFR 84.1152(b)), the drop in airflow reduced the level of comfort the PAPR provides to the miner.

MSHA realizes that miners' comfort with a particular respirator is an important determinant to miners' proper use of it. Several previous commenters testified that PAPRs were not being used as approved.[7] Many of these examples related to reports that visors were fogging. These commenters attributed the fogging problem to NIOSH's recent (mid-1998) improvement in the filtering medium for PAPRs. One commenter testified:

> I would have to answer honestly and say they [PAPRs] are being used in a modified condition. Miners some, you know, have typically removed the shroud * * * [miners] raise the face piece to communicate and so on * * *. We've had that [fogging of the visor] problem recently, * * * since we've been required [by NIOSH] to use the new version of the filter [the HEPA filter]. There has been what seems to be reduced flow in the unit and that has also resulted in more fogging. And we've worked real hard to try to—[work] with 3–M to try to resolve that.

MSHA's experience has shown that fogging of PAPRs has been an intermittent problem since the introduction of PAPRs in underground mines. This is due to the inclement conditions of underground mining such as: High humidity, fluctuation in temperature, and physical exertion by miners.

Some miners indicated that they had to replace the HEPA filters with socks to increase the PAPR airflow. Using socks in lieu of required filters is unacceptable. This one example of PAPRs being used outside the manufacturer's recommendations and the requirements of an approved respiratory protection program. Various approved remedies are available to control fogging of visors including: intermittent wiping down of the visor, ''anti-fogging'' visors, application of anti-fogging sprays, and the use of a new visor design with an anti-fog impregnate baked directly into the visor. A properly functioning respiratory protection program would address this issue, with respect to the appropriate selection and maintenance of a respirator.

MSHA recognizes that for a PAPR protection program to be effective, the miner must be properly trained to wear the respirator, to know why the respirator is needed, and to understand the limitations of the respirator. Appendix B contains a model PAPR protection program to assist an operator in developing a mine-specific program in accordance with the provisions of the American National Standards Institute's ''Practices for Respiratory Protection ANSI Z88.2–1969'' as required by 30 CFR 72.710. Additionally, mine management must regularly conduct reviews to ensure continued effectiveness of the PAPR protection

[7] NIOSH requirements for PAPR performance, including airflow are specified in 42 CFR subpart kk. Although § 84.1136 specifies that facepieces, hoods, and helmets shall be designed and constructed to provide adequate vision which is not distorted by the eyepiece, NIOSH does not have requirements for a visor's predisposition to fogging.

program. Under this proposed rule an operator will not be permitted to use PAPRs as a supplementary control without an MSHA approved respiratory protection program which meets the requirements of § 72.710 and incorporates the information required by proposed § 70.210(a)(2).

c. PAPR Protection Factor

The degree of workplace respiratory protection provided to the wearer by a properly functioning PAPR when correctly worn and used depends on the unit's ability to prevent the contaminant from entering the wearer's breathing zone. In general, the protection factor (PF) expresses PAPR performance as the ratio of the respirable dust concentration outside the respirator facepiece to the concentration inside the facepiece. It reflects the effectiveness of a respirator used in conjunction with a good respirator protection program. For example, a PF of 4 means that the particular respirator will reduce the concentration of respirable dust actually breathed to one forth of the concentration outside the respirator.

In terms of worker health, there are various forms of the PF. One form is the assigned protection factor (APF). Terry Spear, *et al.*, 2000, defined an APF as follows:

> APF is a special application of the general protection factor concept, defined as a measure of the minimum nominal anticipated workplace level of respiratory protection that would be provided by a properly functioning respirator or class of respirators to a high percentage (usually 95% or more) of properly fitted and trained users * * *. The maximum specified use concentration for a respirator is generally determined by multiplying the exposure limit for the contaminant by the protection factor assigned to a specific class of respirator.

In the *NIOSH Respirator Decision Logic* (May 1987), based on simulated laboratory tests and some workplace protection tests (none of which replicated conditions in underground coal mines), NIOSH assigned, helmeted PAPRs, properly worn, a protection factor (APF) of 25. NIOSH made the following cautionary statement:

> Despite the fact that some of the PF's [APFs] have a statistical basis, they are still only estimates of the approximate level of protection. It must not be assumed that the numerical values of the APF's presented in this decision logic represent the absolute minimum level of protection that would be achieved for all workers in all jobs against all respiratory hazards. The industrial hygienist or other professional responsible for providing respiratory protection or evaluating respiratory protection programs is therefore encouraged to evaluate as accurately as possible the actual protection being provided by the respirator (NIOSH, May 1987).

Furthermore, in its *Guide to Industrial Respiratory Protection* (September 1987), published after the *NIOSH Respirator Decision Logic,* NIOSH offered an additional caution with regard to the effectiveness of PAPRs:

> Until recently, powered air-purifying respirators were considered positive pressure devices. Field studies by NIOSH as well as others, have indicated that these devices are not positive pressure, and that their assigned protection factors are inappropriately high. (NIOSH, September 1987).

There is virtually no positive pressure in the PAPR. Respirable dust may enter the miners' breathing zone through openings along the side and bottom of the visor, even when it is in the full lowered position. The extent to which respirable dust enters a miner's breathing zone, depends, in part, on the velocity of air provided to the MMU and on the miner's work rate and his or her angle of orientation to the airflow.

NIOSH recommended in their 1987 Respirator Decision Logic an APF of 25 for all loose-fitting hood or helmet PAPRs. However, the environmental conditions assumed in NIOSH's estimation of an APF for PAPRs are not consistent with those in underground longwall mining operations, where high air velocities for methane and dust control are common. Other, unique conditions of coal mining (obstructed views and difficulty communicating) will compel miners to lift their visors. Once the visor is raised, the respirator is no longer being worn in accordance with conditions required for an APF of 25.

The actual fit or seal of the respirator helmet to the wearer, repeated work-task motions in confined work spaces, raising the visor, and high air velocities along the longwall face all may significantly reduce the actual degree of respiratory protection provided in the workplace. Therefore, it is imperative that such factors be taken into account when estimating the degree of workplace respiratory protection a PAPR provides to the wearer.

According to Spear (2000) a workplace protection factor (WPF) is:

> [a] measure of the actual protection provided in the workplace under conditions of that workplace by a properly functioning respirator when correctly worn and used * * * samples [are] taken * * * while the respirator is being properly worn and used during normal work activities. In practice, the WPF is determined by measuring the concentration inside and outside the donned [worn] respirator during the activities of a normal workday.

An effective protection factor (EPF) is another form of estimate of efficacy of a respirator given its typical use. According to Spear (2000) an EPF is:

> [a] measure of the actual protection provided in the workplace under the conditions of that workplace by a properly functioning respirator, defined as the ratio of concentration outside to concentration inside * * * samples [are] taken * * * during normal work activities, while the respirator is being worn and not worn. Because concentration outside and concentration inside are measured during periods of use as well as during periods of non-use, EPFs are considered as estimates of the effectiveness of respirator use policies, rather than of intrinsic respirator performance capability.

A fourth type of protection factor, a program protection factor (PPF) was presented by 3M. In addition to the variables accounted for in an EPF, a PPF reflects factors affecting the respirator programs effectiveness including:

> * * * respirator selection, the respirator design, training, maintenance, storage, supervision, program administration and monitoring, and any other variable that affects program effectiveness. If any of these program elements are deficient, the program protection factor will be adversely affected.

An EPF is predicated upon proper fit and maintenance of a respirator, where a PPF is not. Unlike an APF or a WPF, an EPF reflects the degree of respiratory protection provided by a respirator over an actual work shift given specific occupational environmental conditions, such as the velocity of air provided to control methane and respirable dust, and the time when miners must raise their visors to speak or see, given that a miner performs typical work activities and uses the respirator in a typical manner. Based on MSHA experience and miners' testimony, it is not reasonable to expect underground coal miners to always wear the visor down. Due to this eventuality and MSHA's requirement for an approved respiratory protection program, an EPF study or studies, which reflect the conditions on longwall MMUs, such as high air velocities (*i.e.*, exceeding 800 feet per minute (fpm)), would provide suitable data for determining the effectiveness of PAPRs used there.

Although not specifically discussed in the 2000 proposed rule, MSHA had reviewed each of the more than one dozen protection factor studies submitted in Energy West's 1997 petition for rulemaking. The Agency also reviewed the additional relevant studies submitted by commenters in response to the previous proposed rule, as well as studies MSHA identified. A review of the literature identified the fundamental fact that effectiveness of

PAPRs in longwall mines is mediated by the high velocities of air customarily found there. Those velocities are not comparable to the air velocities experienced in most industry sectors nor in those represented in the studies used to determine the APF of 25, nor in the majority of studies submitted by Energy West in 1997.

The headgate and tailgate air velocities observed by MSHA at 55 longwall MMUs were reviewed in 1999. These velocities ranged from 365 to 1,645 fpm and from 200 to 1,400 fpm, respectively. More importantly, headgate velocities at 60 percent of the MMUs exceeded 500 FPM and some 18 percent exceeded 800 fpm. Approximately 55 percent of tailgate velocities exceeded 500 fpm and 11 percent exceeded 800 fpm.

Laboratory and in-mine studies (EPF studies) show that air velocity is the single biggest factor affecting the degree of respiratory protection provided by a PAPR. While important at longwall MMUs, air velocity does not significantly affect PAPR performance at non-longwall MMUs where the velocity of air provided to control methane and respirable dust is normally less than 100 fpm. There, the primary concern is the PAPR's ability to protect the miner from exposure to excessive quartz levels. Cecala, *et al.*, (1981) found protection of Racal® Airstream helmets to be inversely related to ambient air velocity in both laboratory and in-mine settings (Ibid). In other words, increased air velocity leads to decreased effectiveness of the PAPR.

The expected degree of workplace respiratory protection that would be provided by a properly functioning PAPR is also affected by the orientation of the helmet to the airflow. Cecala's wind tunnel tests clearly showed that, at the higher airflow rates, helmet efficiency was greatest when facing directly against the airflow and was reduced when the helmet was oriented in other directions. This is extremely important since miners are more likely to orient their heads at an angle to the airflow, or to face downwind, than to face directly into the airflow.

Cecala's in-mine testing of the PAPRs produced an EPF confirming the inverse relationship between air velocity and the level of protection provided by PAPRs shown during wind tunnel testing. Under air-velocity conditions less than 400 fpm, the Airstream helmet averaged a respirable dust reduction of 84 percent, which is equivalent to an EPF of 6.4. However, under higher air-velocity conditions (1,200 fpm), the helmet's dust reduction performance decreased significantly, averaging only 49 percent, which is equivalent to an EPF of 2. The higher face air-velocity conditions in this study best represent the higher velocities observed on longwalls. Today, the face air velocity in over 60 percent of the longwall MMUs exceed 500 fpm (MSHA, October 1999). Thus, it is critical to take into account the air velocity conditions when determining a PF for PAPRs used in underground coal mines.

Other researchers have reported that helmeted PAPR systems are vulnerable to inward leakage into the wearer's breathing zone (Howie, *et al.*, 1987; Sherwood, 1991). For example, Howie, *et al.*, found that increasing airflow velocities from approximately 400 to 800 fpm doubled the inward leakage of the helmet when the airflow impinged on the wearer's head only, and increased the leakage further when the airflow impinged on the wearer's body and head (Howie, 1987). Subsequent testing of a redesigned unit at a wind velocity of approximately 700 fpm showed decreased inward leakage, yielding a PF of 6.3. This met the target PF of 5, which was subsequently proposed by the European Community to be the standard for powered helmet respirators.

More recent studies conducted by Bhaskar, *et al.* (1994) at four western longwall MMUs indicated that, under these workplace conditions, PAPRs had an average dust reduction efficiency of 83.8 percent (*Ibid.*). Although a different sampling procedure was employed, this result is consistent with the performance (average value of 84 percent) obtained by Cecala, *et al.*, under air-velocity conditions less than 400 fpm. During the test period, Bhaskar reported headgate face velocities ranging from 345 to 500 fpm, with approximately 88 percent of the recorded velocities falling below 500 fpm. The tailgate face velocities ranged from 280 to 550 fpm and only one exceeded 500 fpm. None of these tests were conducted under face-velocity conditions that exceeded 800 fpm. As such, this study provides information on their effectiveness at lower velocity applications (*i.e.*, under 500 fpm).

In summary, there is consensus among studies that the effectiveness of the PAPR is reduced when air velocities are increased. The Cecala (1981) study alone, provided reasonable estimates of the degree of respiratory protection that PAPRs would provide to a wearer working on a longwall MMU where the face velocity exceeds 800 fpm. Consequently, this study provides the best data from which to estimate PAPR performance or the PF that should be assigned to PAPRs authorized for a particular MMU. As discussed elsewhere in this proposed rule, MSHA is proposing to allow the use of PAPRs only as a supplementary control measure after all feasible engineering controls have been applied to reduce exposure to the lowest possible level. In our view, these measures, when properly applied and maintained, will control respirable dust to a level reasonably near the applicable dust standard. Therefore, it would not be in the miner's best interest or necessary for compliance purposes to apply the highest PF suggested by these studies. Accordingly, MSHA is proposing that a PF factor of 4 be applied when using a PAPR under air velocity conditions of 400 fpm or less and a PF of 2 when the air velocity is equal or exceeds 800 fpm. This approach recognizes the increased level of respiratory protection that PAPRs afford at lower air velocities and, based on our engineering judgement, will allow operators to achieve compliance with the applicable dust standard on longwalls and other MMUs. Furthermore, the level of protection provided by a properly used PAPR will assure miners that they are being protected from overexposure.

For example, if the air velocity to be maintained in the headgate and tailgate of a longwall MMU ventilated head to tail is 400 fpm and 300 fpm, respectively, then PAPRs used there would be assigned a PF of 4. If on the other hand, the ventilation plan calls for 850 fpm to be maintained in the headgate location and 450 fpm in the tailgate location, then the applicable PF would equal 2. Because of the lack of data on PAPR performance under air-velocity conditions ranging between 400 fpm and 800 fpm, MSHA has proposed that, whenever plan velocities fall in that range, PAPRs used in the MMU be assigned a corresponding PF falling between 2 and 4 which would be determined using an interpolation formula [$2 \times (800/\text{air velocity})$]. For example, if the air velocity to be maintained in the headgate location is 700 fpm, then the applicable PF would equal 2.3 [$2 \times 800\text{fpm}/700\text{fpm}$].

The following example is meant to illustrate the application of the PF to determine the dust concentration to which the wearer of a PAPR is expected to be exposed. Assume for purposes of the example that the applicable dust standard is 1.5 mg/m^3 and the airborne concentration of respirable dust is 2.6 mg/m^3. Therefore, using a PAPR with a PF =4 is expected to reduce the miner's exposure to 0.65 mg/m^3 (2.6 mg/m^3 4).

The range of PFs that MSHA will allow to be assigned to PAPRs under this proposed rule will provide a margin

of safety for the miner. However, regardless of the particular PF allowed by MSHA, full compliance with the provisions of the approved respiratory protection program is necessary to ensure that a PAPR's protective value is not compromised.

E. Guidelines for Determining What Is a Feasible Dust Control

This proposed rule requires a mine operator to implement all feasible engineering or environmental controls that are technologically and economically feasible to control respirable coal mine dust. The Federal Mine Safety and Health Review Commission (Commission) has addressed the issue of what MSHA must consider when determining what is a feasible control for enforcement purposes. In cases involving the noise standard for metal and nonmetal mines, the Commission has held that a control is feasible when it: (1) Reduces exposure, (2) is economically achievable, and (3) is technologically achievable. *See Secretary of Labor* v. *Callanan Industries, Inc.,* 5 FMSHRC 1900 (1983), and *Secretary of Labor* v. *A.H. Smith,* 6 FMSHRC 199 (1984).

In determining technological feasibility of an engineering control, the Commission has ruled that a control is deemed achievable if through reasonable application of existing products, devices, or work methods with human skills and abilities, a workable engineering control can be applied to the exposure source. The control does not have to be ''off-the-shelf'' or already available but, it must have a realistic basis in present technical capabilities. Further, the Commission has held that MSHA must assess whether the cost of the control is disproportionate to the ''expected benefits,'' and whether the cost is so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that a cost-benefit analysis is unnecessary in order to determine whether an engineering control is feasible. According to the Commission, an engineering control may be feasible even though it fails to reduce the exposure to permissible levels in the standard, as long as there is a significant reduction in exposure.

Consistent with the Commission case law, MSHA would consider three factors in determining whether engineering or environmental controls are feasible at a particular mine: (1) The nature and extent of the overexposure; (2) the demonstrated effectiveness of available technology; and (3) whether the committed resources are disproportionate to the expected results. As explained in the discussion of § 70.209 in Section IV of this proposed rule, the formal determination of whether all feasible engineering or environmental controls have, in fact, been implemented at a specific mine to prevent excessive dust concentrations will be made by the Administrator for Coal Mine Safety and Health based on the best available information, experience, and engineering judgement.

F. Application of New Technology for Monitoring Coal Mine Dust Levels

Because of the ever changing mining environment, more timely feedback on current dust conditions in the workplace should enhance miner health protection from coal workers' pneumoconiosis (CWP) and silicosis. To obtain such feedback requires a type of dust monitoring instrument designed to directly measure on a continuous basis the amount of respirable coal mine dust that is present in the work environment. The availability of this information on a real-time basis would enable mine personnel to optimize mining procedures and dust control parameters when dust levels approach the applicable dust standard, thus averting possible overexposure. Knowing the actual dust levels during the shift would also empower the miner to be more directly involved in the dust control process to safeguard their health.

The current monitoring program, which has been in effect since 1970, lacks this capability. Samples results are not known by mine personnel until days after completion of sampling. If there is an overexposure, corrective action does not occur until the overexposure has been confirmed by the dust processing laboratory and communicated to the operator and MSHA. Consequently, any corrective action that may be taken would only impact exposures on subsequent shifts. Therefore, the ability to continuously monitor and display dust concentrations during the shift, rather than depend solely on periodic measurements under the existing program, has been a goal for nearly two decades. Recent advancements in personal dust monitoring technology make this goal achievable within the next two years, presenting opportunities to further improve miner health protection from disabling occupational lung disease.

The health benefits of continuous monitoring were recognized by both the Task Group and the Dust Advisory Committee. In 1992, the Task Group concluded that continuous monitoring of the mine environment and dust control parameters offered the best long-term solution for preventing occupational lung disease among coal miners. Similarly, the Dust Advisory Committee found that:

> Worker exposure to excessive levels of dust can be prevented by implementing a hazard surveillance program that provides mine personnel with current information on actual dust levels in the work environment at all times, and on the status of key dust control parameters.

The Dust Advisory Committee's final report issued in 1996 made the following recommendation with regard to continuous dust monitors:

> Once the technology for continuous dust monitors has been verified, these measures should be broadly applied in conjunction with other sampling methods for surveillance and determination of dust control at all MMUs and other locations at high risk of elevated dust exposure.

Over the past decade significant progress has been made as a result of the R&D efforts sponsored by the former U.S. Bureau of Mines in conjunction with MSHA. These efforts have advanced the technology for directly measuring and displaying the amount of respirable coal mine dust contained in mine air in real time, based on an inertial microweighing method called tapered element oscillating microbalance (TEOM®). The development and commercialization of this technology was pioneered by Rupprecht & Patashnick Co., Inc. (R&P).

A TEOM-based monitor consists of a filter mounted on the end of a hollow tapered tube. The other end of the tube is fixed rigidly to a base. The tube with the filter on the free end is oscillated at its natural frequency. This frequency depends on the physical characteristics of the hollow tube and the mass on its free end. Mine air is drawn through the filter that removes the respirable coal mine dust and then through the hollow tube. As more respirable dust particles are removed and deposited on the filter, the mass of the filter increases which causes the frequency of the tapered element to decrease. Because of the direct relationship between mass and frequency change, the amount of respirable coal mine dust deposited on the filter is determined by accurately measuring the frequency change. By combining the mass of dust and the known volume of air that was drawn through the filter during the period sampled yields a measurement of the respirable dust concentration.

While the capabilities of the TEOM method have been applied to a variety of particle monitoring applications, the first instrument designed specifically for mine use based on this technology was

a machine-mounted continuous respirable dust monitor (MMCRDM). In-mine testing of the prototype MMCRDM in the late 1990s demonstrated the capability of the TEOM system to produce dust measurements in a mining environment. However, because instrument accuracy could not be determined by in-mine testing and questions about the comparability of fixed-site versus personal sampling, NIOSH decided to discontinue final development of the MMCRDM.

In 1999, at the urging of labor and industry, NIOSH, in conjunction with MSHA, funded the development of a personal dust monitor (PDM) based on the TEOM technology used in the MMCRDM. The ability to miniaturize the TEOM dust sensor without compromising its performance made it possible in 2000 to develop the first PDM capable of directly measuring in real-time and displaying the concentration of respirable coal mine dust. The PDM–2, as it was called, was a two-piece unit consisting of a belt-mounted dust monitor battery/pump pack with a display and the TEOM dust sensor that was attached to the lapel like the standard sampling device in use today. Although laboratory and in-mine tests showed the PDM–2 to be dependable and capable of accurately measuring the amount of dust that accumulated on the filter, concern was expressed by miners about the size of the instrument. Specifically, miners believed that since they were already required to carry a cap-lamp battery and a self-contained self rescuer on their belt, there was no room for a separate dust monitor battery/pump pack. They also indicated that the TEOM dust sensor was too bulky, heavy and interfered with work activity. As a result of these concerns, further efforts to refine the PDM–2 were suspended by NIOSH.

In 2001, NIOSH contracted the development of a one-piece version of the PDM that would be less cumbersome to mine workers. Efforts to date have produced a belt-worn instrument (PDM–1) that contains the dust monitor and the miner's cap lamp battery in a single package. To improve wearer convenience and to simplify the monitor, the sample inlet for the instrument was moved from the traditional lapel location to the cap lamp of the hard hat. A pump mounted in the instrument transports the dust-laden air that enters the inlet to the instrument through a conductive silicone rubber tube that runs parallel to the lamp cord. Unlike the PDM–2 which employed a 10-mm Dorr-Oliver nylon cyclone used in the approved sampling device, the PDM–1 uses a Higgins-Dewell cyclone to separate the non-respirable dust. The redesigned cap-lamp battery pack contains all the components, including two separate batteries, to enable the instrument and cap lamp to be operated independently. To accommodate monitoring over an extended shift, the PDM–1 was designed to operate continuously for 12 hours.

The PDM–1 is designed to continuously measure dust levels on real-time basis and provide information on (1) the cumulative average dust exposure during the shift; (2) the current exposure level based on entire shift duration (projected end-of-shift exposure); and (3) the time-weighted average concentration (total mass of dust collect divided by the length of time the unit was operated) within 15 minutes after the end-of-shift. The unit is capable of being used either in a shift mode in which the instrument is programmed to operate for a specific shift length (*e.g.*, 8, 10, 12 hours) or in an engineering mode. When operated in the engineering mode, the miner could program periods during the shift to record dust levels during specific mining cycles or at specific dust-generation sources in the mine. The display on the instrument has various screens that show the (1) current time of day, (2) elapsed time since beginning of the shift, (3) total amount of dust accumulated on the filter since the start of sampling which is stored in an internal memory for analysis, (4) dust concentrations, and (5) a bar graph that shows the average dust concentration of the last 30 minutes. The PDM–1 is also capable of showing whether the instrument was bumped significantly or tipped beyond 90 degrees. This information will be stored along with information on the amount of dust that has accumulated on the filter and the concentration data which can be accessed with a personal computer at the end of the shift and analyzed. While the performance of the PDM–1 to accurately and precisely measure respirable coal mine dust in the mine environment and its durability under in-mine conditions has yet to be extensively evaluated, preliminary indications from the limited testing performed to date are that the PDM–1 has the potential to provide timely information on dust levels and miner exposure. Although MSHA has confidence in this technology, a final determination of the applicability and suitability of PDMs under the conditions of use being proposed is not expected until after completion of the scheduled laboratory and in-mine testing and evaluation at the end of 2003. Both NIOSH and MSHA recognize that to be accepted by the mining community, the PDM must reliably monitor respirable dust concentrations in the mine environment with sufficient accuracy to permit exposures to be effectively controlled on each shift.

Accordingly, as recommended by the Dust Advisory Committee and urged by the mining community, MSHA is encouraging deployment of personal continuous dust monitoring technology once verified as reliable under in-mine conditions by proposing a new standard for the use of such monitors as part of a comprehensive dust control program. As discussed under proposed § 70.220, operators would be permitted to use PDMs capable of continuously measuring and displaying dust levels during the shift in conjunction with engineering and administrative controls. Each miner would be required to wear such a device on each shift, unless the operator successfully demonstrated during verification sampling that the exposure of each miner working on the same shift is represented by sampling the DO and/or another occupation under administrative control. For additional specific details regarding the proposed application of PDM under this proposed rule refer to the discussion of § 70.220 in section IV of the preamble.

IV. Section-by-Section Discussion of Proposed Rule

A. Part 70

The following explains, section-by-section, each provision of the proposed rule. The text of the proposed rule is included at the end of the document.

Section 70.1 Scope

Under the proposed rule, the existing scope will remain the same. It sets forth mandatory health standards for each underground coal mine subject to the Federal Mine Safety and Health Act of 1977.

Section 70.2 Definitions

The technical terms that were developed for use in this part are defined in the proposed rule. These include ''citation threshold value,'' ''dust control parameters,'' and ''engineering or environmental controls.'' Some existing definitions of terms such as ''certified person'' and ''respirable dust'' have been modified to more clearly convey the intended meaning under the proposed rule. These and other modifications discussed below reflect changes resulting from the removal of existing paragraphs, the transfer of other paragraphs, and the

addition of new regulatory text. Other changes were made in response to previous commenters to make them consistent with the common usage of such terms. For example, under this new proposed rule, the Agency's definition of the term ''concentration'' has been changed to reflect the conventional definition. In doing so, it was necessary to include and define a new term ''equivalent concentration,'' which originally appeared within the proposed definition of the term ''concentration'' in the previous proposed rule.

This proposed rule also defines new terms to clarify the process of verifying the adequacy of the dust control parameters specified in a mine ventilation plan in controlling respirable dust in a mechanized mining unit. Specifically, MSHA provides definitions of ''critical value,'' ''protection factor,'' ''verification limits,'' and ''verification production level.'' Finally, the definition of ''normal production shift'' would be removed to be consistent with the proposed revocation of operator sampling requirements for purposes of determining compliance with the applicable dust standard.

The proposed rule also includes other terms like ''feasible'' for example, which have not been defined. The term as used applies to the suitability of the types of engineering or environmental controls required to control respirable dust under prescribed operating conditions. Since individual mine conditions would dictate the type of engineering or environmental controls to be considered as suitable candidates, MSHA has refrained from providing an explicit definition of this term. Instead, as noted in the discussion under section III.E. of this preamble, MSHA intends to follow the Federal Mine Safety and Health Review Commission case law as to what constitutes a feasible control for enforcement purposes. The Agency further notes in that discussion that the final determination of whether a particular operator has implemented all feasible engineering or environmental controls would be made by the Administrator for Coal Mine Safety and Health. That determination would be based on the best available information and on the combined experience and engineering judgement of an MSHA expert panel.

The following explains the new and revised definitions of terms that are used in the proposed rule. Please closely examine the context of the term as used in each proposed section.

Administrative Control

''Administrative control'' would mean a work practice intended to reduce an individual miner's exposure to respirable dust at the assigned job position or occupation by altering the way in which the assigned work is performed. Examples include rotation of miners to areas having lower concentrations of respirable dust, altering the way in which specific tasks are performed, rescheduling of tasks, and modifying work practices to reduce exposure. An ''administrative control'' must be (1) capable of being objectively reviewed and monitored to confirm that it has been properly implemented, (2) clearly understood by the affected miners for the controls to be effective, and (3) applied consistently over time.

Approved Sampling Device

''Approved sampling device'' would mean a sampling device approved by the Secretary and the Secretary of Health and Human Services under part 74 (Coal Mine Dust Personal Sampler Units) of this title; or approved by the Secretary when it has been demonstrated that a respirable dust concentration measurement can be converted to a concentration measurement equivalent to that obtained with an approved sampling device. Under the proposed rule, MSHA will continue to use sampling devices approved by NIOSH pursuant to existing 30 CFR part 74. To accommodate the adoption of advanced sampling devices in the future such as continuous respirable dust monitors, the proposed rule would permit the Secretary to approve and use any technologically advanced sampling device that should become available in the future but could not be approved under the regulatory requirements of 30 CFR part 74.

Therefore, under the proposed rule, any newly developed sampling instrument would be considered an approved device pursuant to this definition when the Secretary demonstrates that the respirable dust concentration measured by the new instrument can be converted to a concentration measurement equivalent to that obtained by a device approved under 30 CFR part 74 of this title.

To encourage greater innovation in sampler design without compromising accuracy, comments are specifically solicited on this approach of approving sampling devices. MSHA also solicits comments on an alternative approach based on the International Standards Organization (ISO) definition of respirable dust.

Certified Person

The existing definition would be modified by removing references to existing §§ 70.202 and 70.203. The provision requiring the use of a certified person to conduct sampling is being transferred to revised § 70.201. Existing § 70.203 which requires approved sampling devices to be maintained and calibrated by a certified person will be retained and redesignated as § 70.202.

Citation Threshold Value (CTV)

''Citation threshold value'' would mean the lowest acceptable equivalent dust concentration measurement demonstrating that the applicable dust standard has been exceeded at a high level of confidence and at which MSHA would cite an operator for a violation of §§ 70.100 or 70.101 under proposed § 70.218. Since MSHA would be assuming responsibility for all compliance sampling under this proposed rule, a determination of noncompliance would be based solely on the results of single-shift samples collected by MSHA. Appendix C explains how each critical value listed in Table 70–1 was derived. Each CTV is calculated to ensure that a citation will be issued only when a single-shift sample demonstrates noncompliance with at least 95 percent confidence.

Concentration

The existing definition would be modified by replacing the term ''substance'' with ''respirable dust'' to more clearly convey the meaning under the proposed rule.

Control Filter

''Control filter'' would mean an unexposed or clean filter cassette of the same design and material as the exposed filter cassette used for sampling that is pre- and post-weighed on the same day as the exposed filters. Its use is intended to eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules. The control filter is used to adjust the resulting weight gain obtained on each exposed filter capsule. That is, any change in the weight of the control filter will be subtracted from the change in weight of each exposed filter.

Critical Value

''Critical value'' would mean the maximum acceptable equivalent dust concentration measurement demonstrating that the applicable verification limit has been met at a high level of confidence. Appendix A

explains how each critical value listed in Table 70–1 was derived.

Designated Area (DA)

The existing definitions would be modified to certify that the Secretary may identify DAs which is consistent with existing procedures that have been in effect since 1980. Once identified, the location of these DAs and the respirable dust control measures to be used at the dust generating sources for these locations must be contained in the operator's approved mine ventilation plan as provided for under § 75.371(t) of this title. However, the operator would not be required to sample these areas under the proposed rule. MSHA is also proposing to transfer the requirement for identifying each DA as specified in existing § 70.208(e) to revised § 70.2.

Dust Control Parameters

''Dust control parameters'' would mean the respirable dust control provisions specified in an approved mine ventilation plan, including specific engineering or environmental controls, maintenance procedures, and other measures designed to control respirable dust levels in the working environment. These may also include, if approved by MSHA, supplementary controls such as powered air-purifying respirators and administrative controls. These measures are required for the protection of miners from excessive levels of respirable dust and must be in use on every production shift.

Engineering or Environmental Controls

''Engineering or environmental controls'' would mean methods that are designed to control the quantity of respirable dust that is released into the work environment by affecting the rate of generation or by suppressing it at the source of generation, or by diluting, capturing or diverting the generated dust. Examples include improved cutting tools, deep-cutting, water-spray delivery systems and orientation, air quantities and velocities, dust collectors, and passive barriers. Throughout the proposed rule, the terms ''engineering'' and ''environmental'' controls are used interchangeably.

Equivalent Concentration

''Equivalent concentration'' would mean the concentration of respirable dust, as measured by an approved sampling device, converted to an 8-hour equivalent concentration as measured by a Mining Research Establishment (MRE) sampler. This conversion is normally accomplished in two steps, unless powered air-purifying respirators (PAPRs) are used, and then an additional adjustment is made to account for the expected workplace level of respiratory protection being provided the wearer. In the first steps, the concentration measurement is multiplied by a constant factor prescribed by the Secretary specifically for the approved sampling device. In the second step, that result is then multiplied by t/480, where t is the sampling time in minutes if longer than eight hours, to make it equivalent in dosage to the concentration as measured by an MRE sampler on an 8-hour work shift. Since verification sampling will be conducted over the course of a full production shift of the MMU only, and not over the miner's entire work shift which includes travel to and from the MMU, except when employing personal continuous dust monitors (PCDM), t will also be equal to the length of a full production shift. If the full production shift is eight hours or less, then t must equal 480 minutes.

In cases where PAPRs are used, the equivalent concentration measurement obtained following step two is adjusted further to account for the expected workplace level of respiratory protection being provided the wearer. This is accomplished by dividing the equivalent concentration by the protection factor specified in the approved ventilation plan for the mechanized mining unit under a PAPR protection program. The result represents a surrogate measure of the respirable dust concentration to which the miner is exposed while wearing the PAPR.

The current U.S. coal mine applicable dust standard is based on epidemiologic studies of British coal miners. In these studies, miners routinely worked 8-hour shifts and their respirable dust exposures were assessed based on 8-hour measurements using an instrument known as the MRE instrument. Work shifts in U.S. coal mines now frequently exceed eight hours. Therefore, to provide the intended level of protection to miners working longer than eight hours, it is necessary to convert dust concentration measurements to equivalent, 8-hour values as measured by the MRE instrument.

The first step in the conversion from ''concentration'' to ''equivalent concentration'' is intended to make the measurement equivalent to the concentration measured by an MRE instrument. This instrument was designed to selectively collect airborne dust in a way that would approximate the deposition of inhaled particles in the lung. Because the MRE instrument was large and cumbersome, other more portable samplers were developed for use in U.S. coal mines. Currently approved sampling devices use a 10–mm nylon cyclone to separate the respirable fraction of airborne dust, instead of the four horizontal plates used in the MRE instrument. Such differences in instrument design lead to systematic differences in the amount of dust collected. Since 1980, measurements made using the currently approved cyclone-based devices operating at a flow rate of 2.0 liters per minute (lpm) were multiplied by the constant factor of 1.38 prescribed by the Secretary for the approved sampling device used. Application of this factor compensates for the difference in dust collection characteristics and makes the measurements equivalent to what would be obtained using an MRE instrument.

Similarly, the second step in the conversion from ''concentration'' to ''equivalent concentration'' is intended to compensate for differences between current conditions and conditions under which the existing applicable dust standards were developed. Specifically, it is designed to ensure that miners working shifts longer than eight hours will be afforded the same level of protection as miners working an 8-hour shift. MSHA developed the existing standards from 8-hour shift exposure measurements. Therefore, MSHA will adjust the measured concentration to be equivalent, in its effect on cumulative exposure, to a concentration over an 8-hour exposure period. This is accomplished by multiplying the concentration measurement by t/480, where t is the sampling time (*i.e.,* length of the sampled shift) in minutes.

The formula for an equivalent concentration is:

$$\text{equivalent concentration (mg/m}^3) = 1.38 \times \left(\frac{\text{accumulated dust (mg)}}{\text{t} \times \text{airflow rate}} \right) \times \frac{\text{t}}{480\,\text{min}}$$

where t = sampling time in minutes and airflow rate = 0.002 m^3/min). The product of t and the airflow rate is the total volume of air from which dust is accumulated on the filter.

The following example is meant to illustrate the effect of the second step in the conversion, multiplication by t/480, which adjusts for the full length of the sampled shift. Suppose a DO sample is collected over a 9-hour shift and that the amount of dust accumulated during the shift is 1.5 mg. If the concentration were not adjusted to an 8-hour equivalent concentration, the MRE-equivalent concentration would be calculated as 1.92 mg/m^3. Under the proposed definition of ''equivalent concentration,'' this quantity is then multiplied by 540/480, yielding an equivalent concentration measurement of 2.16 mg/m^3. Let us suppose now that this concentration measurement was for a longwall occupation under a PAPR protection program with an applicable protection factor of 2. Therefore, the concentration measurement of 2.16 mg/m^3 is divided by 2, which yields 1.08 mg/m^3, the equivalent concentration to which the wearer of the PAPR is exposed.

This adjustment does not change the daily limit on the accumulated dose of respirable coal mine dust as intended by the existing exposure limit for coal mine dust. Since the current limit was based on the assumption that exposure occurs over an 8-hour shift, it corresponds to a daily cumulative dose of respirable coal mine dust of 8×2.0 = 16 mg-hr/m^3 as measured by the MRE instrument. The proposed definition of equivalent concentration will maintain this same MRE-equivalent 16 mg-hr/m^3 daily limit, regardless of the length of the working shift being sampled.

To continue the example, the exposure accumulated during the sampled working shift is the same, whether over 8 hours at an average of 2.16 mg/m^3 or over 9 hours at an average of 1.92 mg/m^3. In either case, the MRE-equivalent exposure accumulated during the sampled shift is 17.3 mg-hr/m^3, which exceeds the intended limit of 16 mg-hr/m^3. Under the definition of ''equivalent concentration'' provided here, this will be reflected by the fact that, when more than 16 mg-hr/m^3 (MRE-equivalent exposure) is accumulated over the course of the particular shift sampled, the equivalent concentration will exceed 2.0 mg/m^3, regardless of the shift's length.

Similarly, using a currently approved sampler, the plan verification limit for respirable quartz dust (*i.e.*, 0.1 mg/m^3) will be exceeded when the total amount of quartz dust amassed on a filter during the full production shift exceeds 0.07 mg, regardless of the shift's length. For example, if 0.08 mg of quartz dust were accumulated over the course of a 12-hour shift, then the equivalent concentration of respirable quartz dust would be calculated as:

$$1.38 \times \frac{0.08\ \text{mg}}{720\ \text{min} \times 0.002\ \text{m}^3/\text{min}} \times \frac{720\ \text{min}}{480\ \text{min}} = 0.115\ \text{mg/m}^3,$$

This is exactly the same value of the equivalent concentration that would be obtained if 0.08 mg of quartz dust were accumulated on an 8-hour shift.

MSHA originally proposed a different but mathematically equivalent method of adjusting concentrations to an 8-hour equivalent and solicited comments on the proposed method. The proposed method would have defined ''concentration'' to mean what is here defined as ''equivalent concentration.'' Instead of making an explicit adjustment to the concentration, using the factor of t/480 as in the present definition, the proposed rule would have substituted 480 for the actual sampling time in the definition of respirable dust concentration. The proposed definition of ''equivalent concentration'' is meant to both preserve the ordinary definition of ''concentration'' and to clarify the adjustment to an 8-hour equivalent.

MSHA believes that the proposed adjustment to an ''8-hour equivalent concentration'' is necessary to protect miners, who normally work nontraditional or extended shifts, from excessive exposures. A miner working for ten hours at an average concentration of 2.0 mg/m^3 will inhale and retain more respirable coal mine dust as a result of that specific shift than a miner working for eight hours at the same average concentration. By comparing the adjusted concentration to the concentration limit originally intended for miners working an 8-hour shift, the same cumulative exposure limit is applied on individual shifts for all miners.

It should be noted that the American Conference of Governmental Industrial Hygienist (ACGIH) approach of reducing the permissible concentration to compensate for the extension of a shift beyond eight hours is similar in its effect to the approach taken here of adjusting the equivalent concentration upwards and comparing it to a fixed limit. MSHA makes similar adjustments for extended work shifts in the enforcement of exposure limits in metal and nonmetal mines under 30 CFR 56.5001 and 57.5001. Taking into account the reduced recovery time that results from an extended work shift would have led to a numerically greater and more protective adjustment, but this would also have introduced additional complexities in the calculation of equivalent concentration measurements. The Secretary believes that the method proposed strikes a reasonable balance between no adjustment at all, and a far more complex adjustment that would attempt to model clearance, deposition, and retention mechanisms.

Material Produced

''Material produced'' would mean the amount of coal and/or any other substance(s) extracted by a mechanized mining unit during a production shift. In order to properly assess the effectiveness of the ventilation plan requirements for respirable dust control and for subsequent monitoring purposes, MSHA proposes to require that the operator record and make available records of the amount of material produced by each mechanized mining unit each shift under a new paragraph (h) of § 75.370.

Mechanized Mining Unit (MMU)

The existing definition would be modified by deleting the reference to § 70.207(e) (Bimonthly sampling; mechanized mining units), and replacing it with proposed § 70.206(d); and by transferring the requirements for identifying each MMU specified in existing §§ 70.207(f)(1) and (f)(2), to revised § 70.2.

MRE

''MRE'' would mean Mining Research Establishment of the National Coal Board, London, England.

Personal Continuous Dust Monitor (PCDM)

''Personal continuous dust monitor'' would mean a type of approved

instrument capable of accurately measuring the concentration of respirable dust on a continuous basis during an entire shift and displaying in real-time the measured dust exposure information. To meet the definition of ''approved device,'' the Secretary must demonstrate that the respirable dust concentration measured by such an instrument can be converted to a concentration measurement equivalent to that obtained by a device approved under 30 CFR part 74 of this title. Comments are solicited on the practice of tying the performance of new sampler designs to the currently approved sampling device.

The PCDM must be capable of displaying (1) the cumulative average dust exposure during the shift; (2) the current exposure level based on entire shift duration (projected end-of-shift exposure); and (3) the time-weighted average concentration (total mass of dust collect divided by the length of time the unit was operated) within 15 minutes after the end-of-shift. The entire unit must comply with MSHA intrinsic safety regulations and pass tests for electromagnetic interference for emissions using ANSI C95.1–1982 and 47 CFR part 15 and for immunity/susceptibility using IEC 61000–4. Since work shifts longer than 8 hours are common in mining, the PCDM must have sufficient battery capacity to operate continuously for up to 12 hours. To ensure that air monitoring results are sufficiently accurate across the relevant range of exposure levels, the PCDM must meet an accuracy criterion of ±25% of a reference value determined using the currently approved sampling device (P/N 45243) with 95% confidence.

The Agency solicits comments on how continuous dust monitors could be applied to limit exposure of coal miners to respirable coal mine dust. Specifically, comments are solicited on the proposed performance, accuracy, and approval requirements for personal continuous dust monitoring devices, and whether less stringent requirements should be imposed on devices designed for surveillance and not for compliance purposes. What would be an acceptable level of accuracy of such a device if used for surveillance purposes (*i.e.*, identifying dust-generating sources and magnitude of dust concentrations), for compliance determinations, or for control enhancement purposes (*i.e.*, provide a means to take corrective measures in response to instrument readings by adjusting specific controls)? Comments are also solicited on the performance requirements for continuous dust monitors used primarily for surveillance purposes to prevent an individual miner from being overexposed on a particular shift and whether such devices need to be first approved by MSHA for use in underground mines.

Powered Air-Purifying Respirator (PAPR)

''Powered air-purifying respirator'' (PAPR) would mean a type of air-purifying respirator that uses a blower to force ambient air through air-purifying elements to the inlet covering (a visor), which provides a partial seal with the face, to deliver filtered air to the miner's breathing area. This category of respirator must be approved by the National Institute for Occupational Safety and Health under 42 CFR part 84 and by MSHA under 30 CFR part 18; and, offer head and face protection in compliance with 30 CFR 75.1720(a) and (d) of this title. The reasons for excluding other types of approved respirators are discussed in section III.D.4. of the preamble.

Protection Factor

''Protection factor'' (PF) would be a measure of the expected degree of workplace respiratory protection that would be provided to the wearer by a properly functioning PAPR when correctly worn and used. The PF expresses PAPR performance as the ratio of the respirable dust concentration outside the respirator facepiece to the concentration inside the facepiece. It reflects the effectiveness of a respirator used in conjunction with a good respirator protection program. For example, a PF of 4 means that the respirator is expected to reduce the concentration of respirable dust actually breathed to one fourth of the concentration outside the respirator.

Factors such as air velocity at the working face and raising of the visor during the shift significantly impact the effectiveness of a PAPR. Therefore, such factors should be taken into account when estimating the degree of respiratory protection a PAPR provides in the workplace. Although NIOSH has recommended that loose-fitting hood or helmet PAPRs should be assigned a PF of 25, the environmental conditions observed in the studies used in NIOSH's estimation of an assigned protection factor (APF) are not consistent with those found in underground coal mines, where high air velocities for methane and dust control are common.

Under this proposal, the PF that would be assigned to PAPRs authorized for a particular MMU depends on the air velocity that will be maintained at the working face. The applicable PF would be included in a written PAPR protection program, which must be approved by the district manager before it can be implemented. Based on the available technical information and sound engineering judgement, MSHA would permit a PF ranging from 2 to a maximum of 4 to be assigned to a particular MMU, depending on air velocity.

If, according to the ventilation plan, the minimum air velocity to be maintained in the headgate of a longwall MMU ventilated head-to-tail is less than 400 feet per minute (fpm), then PAPRs used in the MMU would be assigned a PF equal to 4. If the minimum air velocity to be maintained in the location specified in the plan exceeds 800 fpm, then the assigned PF would be 2. If the minimum air velocity specified in the plan falls between 400 fpm and 800 fpm, then PAPRs used in the MMU would be assigned a corresponding PF falling between 2 and 4.

Because there is a lack of data on the performance of PAPRs under actual air-velocity conditions ranging between 400 and 800 fpm, MSHA is proposing an interpolation formula [$2 \times (800/\text{air velocity})$] for determining the PF to be assigned to a MMU when the specified air velocity to be maintained falls in that range. For example, if the minimum air velocity to be maintained in the headgate is 550 fpm, then the assigned PF would be calculated as: $2 \times (800\text{fpm}/550\text{fpm}) = 2.9$. A reasonable alternative interpolation formula, 6—(air velocity/200), would yield somewhat higher protection factors for velocities between 400 fpm and 800 fpm. However, given the absence of supporting data, MSHA selected the proposed interpolation formula because it yields a more conservative PF.

Comments are invited on the proposed method of establishing the applicable PF and on the interpolation formula proposed for specified air velocities ranging between 400 fpm and 800 fpm. Data are requested in support of any recommendations that different protection factors should be assigned to MMUs authorized to use PAPRs.

Quartz

The existing definition would be modified by specifying the analytical method that MSHA has been using since 1983 to determine the quartz content of respirable dust samples. The reason for this modification is to standardize the analytical procedure, thereby enabling other certified laboratories to produce quartz determinations compared to those made by MSHA. Also, to accommodate the adoption of improved

or other quartz analytical techniques in the future, the definition of ''quartz'' has been expanded in the proposed rule to provide MSHA the flexibility to use alternative analytical techniques once these techniques have been demonstrated to provide quartz measurements that are equivalent to the currently used analytical method.

Respirable Dust

The existing definition has been modified by transferring the requirement for what constitutes an approved sampling device to the proposed new definition of the term ''approved sampling device'' above.

Verification Limits

''Verification limits'' would mean the maximum equivalent dust concentration for which the dust control parameters, specified in the ventilation plan for a particular MMU, have been verified as effective in maintaining dust levels during the entire production shift. Under the proposed rule, MSHA will require mine operators to address both respirable coal mine dust exposure and the potential for exposure to quartz when designing the dust control parameters specified in a mine ventilation plan by proposing two separate respirable dust limits—2.0 mg/m^3 for respirable coal mine dust and 100 μg/m^3 for respirable quartz dust for verification sampling.

The Dust Advisory Committee recognized that a significant quartz exposure hazard continues to exist in coal mines, especially for operations such as roof bolting. Based on recent MSHA data (April 23, 2002), 298 or (58 percent) of the 517 producing underground coal mines are operating on a reduced applicable dust standard due to the presence of high quartz levels in the working environment. This data also shows that 65 percent of the more than 470 roof bolters and 27 percent of the MMUs required to be sampled bimonthly by mine operators must comply with a reduced dust standard. The number of reduced standards in effect indicates that quartz exposure remains a significant health risk for miners.

Under the current program, miners can be exposed to excessive quartz levels during the period of time necessary to establish the applicable dust standard that would apply to a particular MMU. For example, consider a recent situation where an MSHA dust sample of a roof bolter was 0.9 mg/m^3, which complied with the applicable dust standard of 1.3 mg/m^3. However, the results of quartz analysis indicated that the actual concentration of quartz dust in the mine environment at the time of sampling exceeded 270 μg/m^3, or more than two and a half times the permissible level of 100 μg/m^3. The only action that MSHA could take in this particular situation is to initiate the process of establishing a new applicable dust standard, which, on average, can take at least one month or longer. During this period, the existing applicable dust standard remains in effect.

Under the proposed rule, MSHA would require operators to incorporate dust control parameters in mine ventilation plans that are designed to effectively control exposure to both respirable coal mine dust and quartz dust. To ensure the adequacy of the operator's dust control strategy, MSHA would determine the mass of quartz contained in each verification sample and express the concentration of quartz in the mine air as an airborne concentration and not as a percentage as has been the long-standing practice.

MSHA believes that by requiring operators to anticipate exposure to quartz dust in the initial design of the dust control parameters, especially at those operations with a quartz exposure history, and by adopting the new procedures for setting a reduced dust standard as outlined in section III.B., the level and quality of miner health protection in the workplace will be significantly enhanced.

Verification Production Level (VPL)

''Verification production level (VPL)'' would mean the tenth highest production level recorded in the most recent 30 production shifts. It is an estimate of the 67th production percentile within a MMU. Under the proposed rule, the VPL is the minimum production level at which the operator must demonstrate the adequacy of the plan parameters in controlling respirable dust. To enable the operator to establish the VPL required under proposed § 75.371(f), the operator would be required to begin maintaining records of the amount of material produced by each MMU during each shift in accordance with proposed § 75.370(h) of this title.

If records for 30 production shifts are not available to establish a VPL, as in the case of a new MMU, the operator would use the minimum production actually achieved on any shift used to verify the adequacy of the plan parameters as the VPL. For example, assume an operator initiates verification sampling at a longwall MMU. If the dust concentration measurements obtained on the first shift exceed either 1.85 mg/m^3 for respirable coal mine dust or 93 μg/m^3 for quartz dust but not the verification limits, the operator would need to sample at least two more shifts according to Table 70–1 to verify the adequacy of the plan parameters, provided that no sample exceeds 1.93 mg/m^3 for respirable coal mine dust or 97 μg/m^3 for quartz dust. If the highest production level was achieved on the third shift sampled and the dust concentration measurements obtained on that shift were low enough according to Table 70–1 to verify the plan parameters on a single shift, the operator would establish a VPL equal to the production achieved on that shift. If, on the other hand, the dust concentration measurements obtained on the third shift with the highest production level were not low enough to verify the plan parameters on a single shift and a determination of the plan's adequacy was based on these three shifts, the operator's VPL would be the minimum production achieved during verification sampling. In any case, the VPL would become part of the operator's ventilation plan.

Working Face

''Working face'' would mean any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

Sections 70.100 Through 70.101

Respirable Dust Standards

Section 70.100 Respirable Dust Standards When Quartz Is Not Present

MSHA is proposing no substantive changes in existing § 70.100(a) and (b), except for removing the reference to § 70.206 (Approved sampling devices; equivalent concentrations) from existing paragraphs (a) and (b) and replacing it with revised § 70.2. The requirements contained in revised § 70.2 are similar to the previous standard in § 70.206. The proposed rule retains the applicable dust standard of 2.0 mg/m^3 in existing paragraph (a) and the intake air standard for respirable dust of 1.0 mg/m^3 in existing paragraph (b), which have been in effect since 1972.

Section 70.101 Respirable Dust Standard When Quartz Is Present

MSHA is proposing to retain the existing formula (10 divided by the concentration of quartz, expressed as a percentage) for reducing the applicable dust standard below 2.0 mg/m^3 in proportion to the percentage of quartz when the quartz content of the respirable dust in the mine atmosphere exceeds 5.0 percent. However, the Agency is proposing to change the

procedures for determining the average quartz percentage used to calculate the applicable dust standard. Only the results of MSHA samples would be used to establish the applicable dust standard. The quartz results of the three most recent valid MSHA samples would be averaged and the resultant percentage would be used to set the new applicable dust standard. However, if an entity is already on a reduced standard when these revised procedures become effective, a new applicable dust standard will be established by averaging the results of the first two MSHA samples taken under the revised procedures with the quartz percentage associated with the reduced standard in effect. If fewer than two MSHA samples are taken, the existing applicable dust standard will continue to remain effect.

Application of the revised procedures will result in the setting of reduced standards that will (1) more accurately represent the quartz percentage of the respirable dust in the environment at the time of sampling; (2) reflect the dynamics of the mining process and the changing geologic conditions of the mine strata; and (3) continue to protect miners over multiple shifts.

Under the proposed rule, MSHA would also begin reporting the quartz content to the nearest tenth of a percent, instead of the current practice of truncating results to the nearest full percent. This is more protective for the miner because it will permit MSHA to also set reduced standards at such levels as 1.1 mg/m^3, 1.4 mg/m^3, 1.6 mg/m^3, 1.8 mg/m^3, and 1.9 mg/m^3. Setting these particular standards was not mathematically possible using the above formula due to the practice of truncating the average quartz percentage.

Section 70.201 Sampling; General and Technical Requirements

MSHA is proposing to modify the general requirements for operator sampling under existing § 70.201. The proposed rule would remove existing paragraph (d), revise and redesignate (b) as (c) and existing (c) as (g), revise paragraph (a), and add new (b), (d), (e), (f), (h), and (i).

To minimize repetition and to streamline the proposed requirements, paragraph (a) would be modified by removing the reference to part 74 approval (Coal Mine Dust Personal Sampler Units), and replacing it with ''approved sampling device,'' as defined under revised § 70.2. Respirable dust sampling under this proposed rule could also be conducted with sampling devices that can give a continuous readout of dust concentrations provided that the measured concentration can be converted to an equivalent concentration as measured with another sampling device approved under part 74 of this title.

Proposed new paragraph (b) would retain the requirements in existing § 70.202(a) and (b) that sampling required under this part be conducted by an individual certified by MSHA and the manner by which a person would be certified. Therefore, existing § 70.202(a), (b), and (c) would be removed.

While the sampling device would continue to be worn or carried to and from the MMU as required by existing § 70.201(b), proposed § 70.201(c), the existing requirement that sampling devices be operated portal-to-portal and for a period no longer than eight hours would be removed. Instead, since the objective is to assess the adequacy of the dust control parameters in effect in each MMU under proposed § 70.206 and § 70.215, except when using a personal continuous dust monitor (PCDM) under proposed § 70.220, the sampling device would be operated only during the period that the production crew spends in the MMU. That is, under proposed § 70.206 the sampling device would (1) be turned ''ON'' when the production crew arrives at the MMU, regardless if any actual mining is taking place; (2) remain operational during the entire shift that the production crew remains in the MMU, regardless of the number of hours worked; and (3) be turned ''OFF'' at the end of the shift as the production crew exits the MMU.

On the other hand, if using a PCDM under proposed § 70.220, the sampling device would be operated portal-to-portal and would remain operational during the entire work shift or for 12 hours, whichever time is less, to ensure that the miner's entire work shift is controlled. Because the use of a PCDM will permit the operator to make adjustments in administrative controls, without MSHA approval, at anytime during the work shift, the duration of sampling is not limited to the time period the production crew spends in the MMU as discussed in the previous paragraph but, instead, must be carried out over the entire work shift to ensure that each miner using a PCDM was not personally overexposed. Simply stated, the PCDM would be turned ''ON'' when the miner enters the mine and remain operational while traveling to the MMU, during the entire time period spent working in the MMU, and while traveling back to the mine entrance, at which time the device would be turned ''OFF.'' Since most non-traditional work shifts in underground coal mines are less than 12 hours in length, the PCDM currently under development is being designed with sufficient battery capacity for one 12-hr work shift of operation.

It should be pointed out that the duration of MSHA sample collection will continue to be limited to 480 minutes. The sampling device will be operated portal-to-portal and remain operational during the entire shift or for 8 hours, whichever time is less.

Consistent with accepted industrial hygiene practice, proposed paragraph (d) will require the operator to use control filters when verifying the adequacy of the plan parameters under proposed § 70.206 or § 70.220(c). A control filter is an unexposed filter of the same design as the filter cassette used for sampling, that is pre- and post-weighted on the same day as the filter cassettes used for verification sampling. MSHA first began using control filters in its enforcement program in May 1998 and continues this practice today. The reason for requiring their use by operators is to improve the accuracy in making weight-gain measurements of the exposed filter cassettes by eliminating the effect of differences in pre- and post-exposure laboratory conditions, or changes introduced during storage and handling of the filter cassettes. The control filter will be used to adjust the weight gain obtained on each exposed filter by subtracting any change in the weight of the control filter from the change in weight of each exposed filter. This is especially important since the filter cassettes to be used by operators will be pre- and post-weighed to the nearest microgram (0.001 mg). The other modification to the procedures for processing operator samples will be to discontinue the practice of truncating (to 0.1 mg) the recorded weights used in calculating dust concentrations. This means that Mine Safety Appliances Company (MSA), which upgraded its weighing equipment in 1996 and uses the same balance as MSHA's Coal Dust Processing Laboratory, will be permitted to follow MSHA and use all significant digits associated with the weighing capability of the balance (0.001 mg) when pre-weighing operator dust cassettes. These changes will enhance the proposed process of verifying the adequacy of plan parameters. This will also eliminate the need for operators to sample multiple shifts in order to obtain sufficient dust mass on the collection filter for quartz analysis. Since the use of a control filter adjusts for differences that may exist in laboratory conditions on the days of pre- and post-weighing, it is no longer necessary to pre- and post-weigh the filter cassettes in the same laboratory. To ensure the precision and accuracy of the pre-weight of filters

used by the operator and federal mine personnel, MSHA will institute a program to monitor the daily production of filter cassettes weighed to the nearest microgram (μg) by the manufacturer, MSA. The program will conform to MIL-STD–105D, which defines the criteria currently used to monitor the quality of pre-weighed filters used in the current operator bi-monthly sampling program.

Since the control filter will be used to adjust the resulting weight gain obtained on each exposed filter cassette, the control filter must have the same pre-weight date as the filter cassettes to be used for sampling on the same shift. The pre-weight date is noted on the dust data card. Failure to follow these instructions will be cause for voiding the sampling results. Only one control filter will be required for each MMU per shift sampled. To prevent exposure to the mine environment, the plugs attached to the inlet and outlet side of the cassette must not be removed. Also, it is important that the control filter be exposed to the same time, temperature, and handling conditions as the ones that are used for sampling, *i.e.*, carry the control filter in a shirt or coverall pocket while underground. While the control filter can be carried by any miner assigned to the MMU being sampled, it would be preferable if that miner performed the job of the DO. Finally, the control filter cassette must be kept together with the exposed samples after sampling and treated in the same manner as the exposed filters prior to being transmitted to MSHA. For processing purposes, the dust data card for the control filter must be marked with a large capital ''C'' for ''CONTROL'' in the middle of the card and enter a ''9'' in the ''Type of Sample'' box. The remaining items on the dust data card must be completed in the same manner as under the previous operator bimonthly sampling program. These procedures are identical to the ones followed by MSHA.

To ensure that the plan parameters are designed to control respirable dust and are suitable to the conditions and mining system at the mine as required under § 75.370(a) of this title, the proposed paragraph (e) prescribes minimum mining activity that must be ongoing during sampling, as well as the operating parameters for use of the engineering controls specified in the plan. Therefore, when sampling under proposed § 70.206, § 70.215 or § 70.220(c), respirable dust samples must be collected on a production shift during which the amount of material produced by the MMU is at least equal to or exceeds the verification production level (VPL) as determined in accordance with § 70.2. If the VPL is not achieved, the samples for that shift will be voided by MSHA. However, any sample that exceeds either verification limit or the applicable dust standard by any amount would be used to determine the equivalent concentration for that occupation, regardless of production. Also, if the MMU being sampled under proposed § 70.215 is authorized to use PAPRs under special circumstances (see § 70.212) and those circumstances prevent the operator from achieving the VPL, the sample(s) for that shift will be used to determine the equivalent concentration for the affected occupations.

In addition to minimum production activity, limits must also be set on how much the specified engineering control parameters can deviate during sampling from the quantities specified in the ventilation plan. Failure to meet either criterion will undermine miner confidence in the ability of the approved plan parameters to effectively control respirable dust under the conditions at the MMU. Accordingly, paragraph (e) requires each operator to use only the engineering controls and other measures specified in the plan. Recognizing that engineering parameters such as air quantity and velocity and water pressure are subject to measurement error and can vary because they cannot be easily controlled with absolute precision, proposed § 70.201(e) would permit the measured levels to be up to 115 percent of the minimum quantities specified in the plan.

Since miners play an important role in the implementation and maintenance of the approved plan parameters, MSHA recognizes the need for miners to have full confidence in the sampling process used to approve and evaluate the continued adequacy of the plan parameters. Therefore, consistent with the underlying purposes of the Mine Act, proposed paragraph (f) would require the operator to provide affected miners and their representatives with an opportunity to observe any sampling required by this proposed rule. In addition, the operator would be required to give prior notice to miners and their representatives of the dates and times when the operator intends to conduct sampling. If the exposure of individual miners is monitored on a daily basis using a PCDM, the operator would be exempt from this requirement since all affected miners would already be aware that they were being monitored on a continuous basis. To make miner participation more effective, it is important that miners and their representatives are knowledgeable in those features of the sampling program specified in the proposed rule. This will enable them to make sound and knowledgeable judgements on the conduct of operator sampling under the proposed rule.

While section 103(f) of the Mine Act requires the operator to compensate representatives of miners who accompany MSHA personnel conducting inspections, it would not apply to operator sampling as proposed, unless conducted on the same shift that MSHA chooses to monitor operator sampling. Therefore, unless accompanying MSHA personnel, section 103(f) would not authorize ''walkaround pay'' for time spent by a representative of miners observing the operator conducting sampling required by this part. MSHA believes that providing the representative of miners with an opportunity to accompany MSHA personnel monitoring operator sampling required by this part with no loss of pay is consistent with section 103(f) of the Mine Act. Under the guidance of the Interpretive Bulletin (43 FR 17546, April 25, 1978), walkaround rights arise when: (1) An ''inspection'' is made for the purposes set forth in section 103(a), and (2) the inspector is physically present at the mine to observe or monitor safety and health conditions as part of direct safety and health enforcement activity.

MSHA sampling required by this part would be unannounced and conducted to determine if the operator is in full compliance with both the operating conditions and sampling requirements of this part, as well as with all other health and safety standards. Consequently, the representative of miners would have the right to accompany the MSHA personnel with no loss of pay for the time during which the representative exercises this right.

Existing paragraph (c) which requires the operator to submit, when requested by the district manager, the date and time when sampling required by this part will begin would be redesignated as paragraph (g). This requirement enables MSHA to monitor operator sampling on a case-by-case basis to verify compliance with both the operating conditions and sampling requirements of this part.

The requirement that operators take corrective action during the time for abatement fixed in a citation for violation of §§ 70.100 or 70.101 specified in existing paragraph (d) of § 70.201 would be transferred to proposed § 70.218(b)(2). The requirement that the operator sample each production shift until five valid samples are taken under existing

paragraph (d) would be removed since MSHA is proposing to revoke operator sampling requirements under existing §§ 70.207 and 70.208, and assume full responsibility for all compliance sampling.

Section 70.202 Approved Sampling Devices; Maintenance and Calibration

In an effort to consolidate the requirements that address maintenance and calibration procedures of approved sampling devices, MSHA is proposing in § 70.202(a) through (e) to retain the requirements in existing § 70.203(a) and (b) and § 70.204(a) through (e), with minor changes. These standards require the sampling device be maintained as approved and calibrated only by a certified person in accordance with MSHA Informational Report IR 1240 (1996).[8] If using a PCDM under proposed § 70.220, the device would be calibrated to the manufacturer's specifications. The process of certifying an individual for maintenance and calibration would remain unchanged. It would continue to require an individual to successfully complete the applicable MSHA examination. Scheduling information for MSHA training courses and examinations would be available from MSHA District Offices.

These standards require approved sampling devices to be calibrated at a flowrate of 2.0 liters of air per minute. They also establish the flowrate and testing and examination requirements for approved sampling devices. Careful examination and testing of sampling devices would continue to be required immediately prior to the start of a shift during which samples would be collected for purposes of this proposed rule. This would include testing the battery voltage and examining all external components of the sampling devices to be used. Any necessary external maintenance to assure the sampling devices are clean and in proper working condition should be performed at this time by a certified person. Temporary certification of persons provided under existing § 70.203(b) would not be retained under the proposal.

If using a PCDM in accordance with § 70.220, the operator under proposed § 70.202(f) would be exempt from the examination requirements of paragraphs (d)(1) through (d)(5) of this section. Instead, the operator would be required to follow the examination procedures recommended by the manufacturer or prescribed by MSHA and NIOSH for the particular device.

Section 70.203 Approved Sampling Devices; Operation; Air Flowrate

Proposed § 70.203(a) through (c) retains the operation and flowrate requirements for approved sampling devices in existing § 70.205(a) through (d), with minor changes. Since MSHA has defined an approved sampling device in revised § 70.2 to mean a device approved in accordance with part 74 of this title, proposed paragraph (a) excludes reference to part 74. Similarly, for purposes of simplification, reference to § 70.202 (Certified person; sampling) would be removed and, replaced by certified person as defined in revised § 70.2.

MSHA believes that the two on-shift examinations of sampling devices under proposed paragraphs (b)(1) and (b)(2), which are identical to the examinations required under existing § 70.205(b) and (c), continue to be an important part of a reasonable and prudent sampling program. The first examination would be made by a certified person during the second hour after the sampling devices are placed in operation. This examination would assure that each sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments in the flowrate would be made at this time by the person certified to collect samples. The second examination would be made during the last hour of operation of the sampling devices. If the proper flowrate is not maintained, the certified person is required to make a notation on the dust data card for that sample stating that the proper flowrate was not maintained. Because it is unclear where on the dust data card such a notation should be made, proposed paragraph (b) would require all notations regarding failure to maintain proper flowrate or other events occurring during sampling that may impact the validity of the sample to be made on the back of the dust data card.

If using a PCDM under proposed § 70.220, the operator would not be required to examine the device during the second and last hour of operation as required under paragraph (b) of this section. Instead, the operator would be required to follow the procedures recommended by the manufacturer or prescribed by MSHA and NIOSH to assure that the PCDM is operating properly and at the proper flowrate.

Section 70.204 Demonstrating the Adequacy of the Dust Control Parameters Specified in a Ventilation Plan; Verification Sampling

Existing § 75.370(a)(1) of this title requires the operator to develop and follow a mine ventilation plan that is designed to control methane and respirable dust. It further requires the plan to be suitable to the conditions and mining systems at the mine. Accordingly, a properly-designed mine ventilation plan continues to be the most reliable means for ensuring that the work environment in each MMU is free of excessive concentrations of respirable dust.

MSHA recognizes that the operator has the legal responsibility for developing a ventilation plan that is designed to control respirable dust. Consequently, the operator has the obligation to demonstrate that the dust control parameters specified in the plan will effectively control respirable dust as required by § 75.370(a)(1). Therefore, within 12 months after the effective date of this rule, each operator of an underground coal mine must have an approved ventilation plan in which the dust control parameters specified for each MMU have been verified to be adequate in controlling respirable dust. Proposed §§ 70.205 through 70.208 set forth the specific steps an operator must follow to verify the adequacy of the plan parameters. To demonstrate adequacy, the operator would be required to collect valid respirable dust samples in accordance with proposed § 70.206 or § 70.220(c) if using a PCDM. Approval of the plan parameters for a particular MMU would be granted when these samples, called verification samples, demonstrate at a high level of confidence, in accordance with the limits specified in Table 70–1, the adequacy of the plan parameters in maintaining the equivalent concentration of respirable dust coal mine dust and quartz dust at or below the verification limits of 2.0 mg/m^3 and 100 μg/m^3, respectively.

Section 70.205 Verification Sampling; When Required; Time for Completing

Proposed § 70.205 specifies the various ways in which the process of verifying the adequacy of the dust control parameters for a MMU would be initiated. The operator would trigger the process by submitting a new ventilation plan under § 75.370. This process would also be initiated if the district manager requires the operator to amend the plan parameters in a previously approved ventilation plan after determining, based on dust sampling results or other

[8] On September 3, 1998, MSHA published a proposed rule in the **Federal Register** (63 FR 47123) requesting public comment on our intention to update the incorporation-by-reference in title 30 of the Code of Federal Regulations, Sections 70.204, 71.204, and 90.204. The Agency allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing. On August 10, 1999 the final rule was published and became effective on October 12, 1999 (64 FR 43283).

evidence, that the dust control parameters in effect are no longer suitable to the current conditions at a particular MMU.

Once the dust control parameters for a MMU have been verified as adequate, it would not be necessary to reverify the plan parameters as part of the MSHA six-month review under § 75.370(g), unless the district manager determines these parameters are unsuitable for the current conditions at the MMU. However, the operator may be required to make changes to the parameters based on (1) results of the MSHA six-month review, (2) excessive dust concentrations measured by either MSHA or operator monitoring samples, or (3) a new reduced applicable dust standard which is less than the highest respirable coal mine dust concentration that was previously used to verify the adequacy of the plan parameters. For example, if an operator was cited for exceeding the applicable dust standard when the approved plan parameters were being met or exceeded, the district manager may have cause to question the adequacy of the previously-approved dust control parameters.

Also, depending on sampling results and production records, if the production exceeds the VPL specified in the plan, the district manager may require the operator to verify the plan parameters at the higher production level. For example, suppose the VPL is 10,000 tons and all five concentration measurements taken during MSHA sampling exceed the applicable dust standard on a shift for which the production is 12,000 tons. Then, if the production records indicate that the operator has exceeded the VPL on more than 33 percent of all production shifts during the previous six months, that evidence would demonstrate that the VPL specified in the plan is no longer valid. The district manager would then require the operator to verify the plan parameters under current operating conditions.

Under the proposed rule, the operator would be required to verify the adequacy of the dust control parameters for each MMU within 45 calendar days after obtaining provisional approval from the district manager. This should be ample time for an operator to demonstrate the adequacy of the plan parameters, even when starting up a new MMU, such as a longwall panel. Should an operator experience difficulty in establishing the desired VPL or encounter other unexpected breakdowns or unforseen circumstances affecting the operational status of a MMU after obtaining provisional approval, the district manager may grant an operator an extension of up to 30 days to complete verification sampling. Before receiving provisional approval, the operator may be required to modify the plan parameters if the district manager determines that the particular parameters are inadequate or unsuitable for the current conditions in the MMU. If provisional approval is not granted, the operator may not operate the affected MMU.

Under the proposed rule, the adequacy of all previously approved dust control parameters would need to be verified by the operator within 12 months after the final rule becomes effective. Before submitting these plan parameters to the district manager for review and approval to commence verification sampling, proposed paragraph (b) would require the operator to provide additional information. The additional information is described under revised § 75.371(f) of this proposed rule. The operator will be permitted to operate a MMU under the previously approved dust control parameters until the amended plan parameters are either provisionally approved or denied.

To minimize delays in the verification process, MSHA will develop and issue appropriate compliance guides and provide adequate training on the new rule prior to its implementation. MSHA will also be available to provide guidance to individual mine operators once the rule becomes effective. The Agency intends to make every effort to ensure an orderly and efficient transfer from the previous plan approval process to the new process of validating the adequacy of dust control parameters for each MMU prior to implementation.

Section 70.206 Verification Sampling; Procedures for Sampling

This proposed section establishes the sampling procedures that each operator would follow when conducting verification sampling. Described are the specific occupations and areas to be monitored in a MMU, and the operation and placement of each sampling device during sampling. The specific operating conditions under which these occupations and areas would be sampled are discussed under § 70.201. These will be covered again for the benefit of the reader.

Proposed paragraph (a) would require the operator to sample specific occupations assigned to a MMU. These occupations were selected because, based on MSHA experience over the past 20 years, miners required to work in those occupations are likely to be exposed to the greatest respirable dust concentration and, consequently, would be at significant risk of overexposure. Therefore, the operator would be required to sample the environment of: (1) The DO in accordance with proposed paragraphs (d)(1) through (d)(10), which are identical to existing § 70.207(e)(1) through (e)(10); (2) the roof bolter operator(s) (occupation codes—012, 014 or 046); (3) the longwall jack setters (occupation code—041); and (4) any other occupation that the district manager may designate for sampling after reviewing the operator's plan parameters.

Unless otherwise directed by the district manager, when an operator samples a longwall MMU, the DO sample required by this part would be collected by placing the sampling device on the miner who works nearest the return air-side of the longwall working face. Since 1987, this work location has been assigned the 060 occupation code by MSHA for sampling and tracking purposes in accordance with existing § 70.207(e)(7). Therefore, when sampling the 060 DO, the sampling device would remain at all times with the miner working nearest the return air-side of the longwall face. If individual miners rotate out of the DO position during sampling, as is the common practice at some operations, the sampling device must be transferred to and worn by the new miner rotated into the DO position. For example, if all other miners are working upwind of the tailgate-side longwall operator, the miner performing that particular job becomes the DO and wears the sampling device since that individual is working nearest the return air-side of the longwall face. However, if during the shift being sampled another miner, such as the face mechanic, travels past the tailgate-side longwall operator toward the return air-side, the face mechanic would then become the DO and must wear the sampling device for the period of time that individual works nearest the return air-side of the longwall face. When the face mechanic returns upwind of the longwall operator, the sampling device must then be transferred back to the longwall operator, as that individual will now be the miner working nearest the return air-side.

This is compatible to sampling any other DO, whether it is the 036 DO (continuous miner operator) or the 044 DO (tailgate-side longwall operator). The sampling device must remain at all times in the environment of the DO and not with the individual miner, regardless of how many miners work in that location during the shift. Sampling the DO in this manner preserves the long-standing high-risk occupation

sampling concept which the Agency adopted in 1970.

Under these procedures the sampling device must remain in the environment of the miner who works nearest the return air-side of the longwall working face. However, in certain circumstances, MSHA may not require transfer of the sampling device if the amount of time a particular miner spends inby or downwind of the DO is known to be infrequent and of short duration, limited to 20 minutes or less. However, transfer of the sampling device is required if the same miner travels inby the DO routinely during the shift.

There are other ways to reduce the number of times that a sampling device needs to be transferred from one miner to another during a shift. This depends on the particular mining practices of the operator. By fully utilizing the operational capabilities designed into currently-employed longwall equipment or altering the mining cycle, the need for miners to work routinely inby the shearer can and should be minimized, thereby reducing the number of necessary pump transfers, and the potential for miners to be overexposed to respirable dust. Another approach has been used successfully at longwall MMUs employing a type of water-spray system called ''shearer-clearer.'' This involves limiting the movement of miners to a certain region or distance inby of the shearer. In some instances this distance can reach 40 feet inby if samples indicate dust levels are similar to the levels in the environment of the tailgate-side shearer operator (Occupation code 044).

If a properly designed shearer-clearer system is installed and maintained, it is very effective in confining the shearer-generated dust to the face for some distance downwind of the shearer and prevents migration to the walkway where miners are located. Therefore, miners who are required to spend time inby the shearer can be protected from exposure to excessive dust levels if their work is limited to this particular area. This area, however, is normally established through sampling on a mine-by-mine basis. The area can vary depending on the quantities and velocities of air delivered to the longwall face, type of cut sequence, water flow rates and spray pressures, and tonnage produced.

If any of these approaches are not suitable or if the miner working furthest downwind refuses to wear the sampling device for any reason, the proposed rule provides for the placement of the sampling device in a specified location on the return side within 48 inches of the corner of the longwall face, which MSHA has designated as the 061 DO. Placing the sampling device at this location is comparable to placing the sampling device on the continuous mining machine within 36 inches inby the normal work position of the machine operator. It should be noted, however, that since dust concentrations at this location are typically the highest, no longwall MMUs are currently submitting bimonthly samples taken at the 061 DO.

The proposed approach, which involves sampling the ''high risk occupation,'' currently referred to as the DO, is not new and has been in use since inception of the mandated sampling program in 1970. This sampling approach is designed to monitor the mine atmosphere with the greatest concentration of respirable dust exposure, in the areas where miners are working during their shift, to prevent excess exposure of miners to respirable coal mine dust. The goal has never been to measure the exposure of an individual miner for the duration of a shift, but rather to determine if the mine atmosphere in the active workings is free of excessive concentrations of respirable dust in order to protect each miner required to work in that environment.

Based on the various dust generating sources and the manner in which the face is ventilated, the return air-side of a longwall face is the area on a longwall MMU with the greatest concentration of respirable dust. Accordingly, since miners are required to work in this area, operators are required to maintain the mine atmosphere in this area or location in compliance with the applicable dust standard on each shift. By doing so, it can be concluded that other miners in less risky occupations are protected from excessive dust concentrations. While these measurements will not show a particular miner's dust exposure, the results will indicate if the air that miners are breathing is in compliance with the applicable dust standard. The objective of the proposed sampling scheme is to control the concentration of respirable dust in the workplace. The method of sampling the DO on a longwall MMU was determined to be reasonable and consistent with the Mine Act in *American Mining Congress* v. *Marshall,* 671 Fed 12151 (10th Cir. 1982). MSHA believes that the method of sampling being proposed will effectively serve the health protection goal of achieving and maintaining good air quality in each MMU. Therefore, the long-standing practice of sampling the DO in each longwall MMU or any other DO would be continued under the proposed rule.

Since the objective is to verify the adequacy of the dust control parameters in effect at a MMU, proposed paragraph (b) would require sampling devices to be turned ''ON'' when the production crew arrives at the MMU to be sampled, regardless if any actual mining is taking place, and not at the portal as required in existing § 70.201(b) for bimonthly sampling. The operator would continue to examine each sampling device at least twice during the sampling shift in accordance with proposed § 70.203(b)(1) and (2). Each sampling device would remain operational during the entire shift that the production crew remains in the MMU, regardless of the number of hours worked. The sampling devices would be turned ''OFF'' at the end of the shift as the production crew, assigned to the occupation(s) being sampled, exits the MMU to travel back to the mine portal.

Each operator would be required to use one control filter for each shift of sampling as required by proposed § 70.201(d). As explained earlier, the control filter will be used to adjust the weight gain obtained on each exposed filter by subtracting any change in the weight of the control filter from the change in weight of each exposed filter. Its use in accordance with § 70.201(d) will enhance the decision-making process involving the approval or denial of the dust control parameters by the district manager.

To qualify as a valid sample for verification purposes, the amount of material produced by the MMU during the shift being sampled must equal or exceed the VPL as required by proposed § 70.201(e). If the VPL is not achieved, the sample(s) will be voided by MSHA. However, any sample that exceeds either verification limit or the applicable dust standard by any amount would be used to determine the equivalent concentration for that occupation, regardless of production.

Proposed § 70.201(e) also requires the operator to utilize only the dust control parameters that were provisionally approved by the district manager. Recognizing that engineering parameters such as air quantity and velocity and water pressure are subject to measurement error and cannot easily be controlled with absolute precision, MSHA would allow the measured levels to be up to 115% of the quantities specified in the plan.

If a measured level exceeds the corresponding quantity specified in the plan by more than 15 percent, the operator would have the option to either (1) adjust the engineering parameter(s) to what is specified in the plan before beginning verification sampling or (2)

make no adjustment to the parameter(s) prior to verification sampling. Under the second option, final approval of the plan parameters would be contingent on the operator incorporating in the plan the maximum quantities of parameters measured during verification sampling. If verification samples were collected on a shift when a plan parameter exceeded 115 percent of the quantity specified in the plan, then (assuming none of the verification samples exceeded the critical values) that parameter quantity, as measured, would be incorporated into the plan parameters ultimately approved by the district manager.

If an operator chooses to sample multiple shifts, they would not have to be consecutive shifts as under the previous bimonthly sampling program. The operator would be required to submit for processing all samples collected by the operator, regardless of the operating conditions under which verification sampling was conducted.

The number of shifts that the operator would need to sample to verify the adequacy of the plan parameters depends on two factors: First, the actual operating conditions in effect during the shift being sampled; and, second, the individual sample results. As discussed earlier, for a respirable dust sample to be valid for verification purposes, the amount of material produced by the MMU must equal or exceed the VPL, and the dust control parameters must be at levels not exceeding 115 percent of the quantities specified in the plan. Therefore, the number of shifts depends largely on how quickly and consistently the operator would be able to achieve these operating conditions. The operator may need to sample several shifts before the production level on any single shift qualifies for verification purposes. The operator could verify the adequacy of the plan parameters based on this single shift—but only if all sample results are at or below the critical values listed in Table 70–1 that correspond to the number of shifts sampled. This would demonstrate the adequacy of the plan parameters at a high level of confidence. If any of the sample results exceed the appropriate critical value, then the operator would need to collect verification samples taken on one to three additional shifts, depending on the concentrations measured on those shifts. Since these additional shifts would also need to meet the production criteria, and use only the dust control parameters specified in the plan, some operators would need to sample a total of more than four shifts.

Assuming that the operator makes no special effort to meet the VPL during verification sampling, there is a 67-percent probability that a randomly selected production shift would not meet the VPL. Consequently, if the operator made no special effort to achieve the desired production, there would be a 13-percent chance the operator would need to sample more than five shifts and a 1.7-percent chance the operator would have to sample more than 10 shifts.[9] On the other hand, again assuming no special production effort, there would be a 98-percent chance the operator would need 10 or fewer shifts and a 70-percent chance that the operator would need to sample three or fewer shifts.[10] This assumes that the sample results for each shift do not exceed the critical value corresponding to the number of shifts sampled. If the operator should make a concerted effort to achieve the VPL on the sampled shifts and meet the other criteria, then sampling of fewer shifts would be needed to verify the adequacy of the dust control parameters.

Section 70.207 Approval of Dust Control Parameters by District Manager; Revocation of Approval

This proposed section establishes the criteria or ''critical values'' that the district manager would use to determine whether the operator's dust control parameters should be approved or denied. These critical values, which differ according to the number of shifts sampled by the operator, are listed in Table 70–1. Appendix A explains how the critical values were derived. When verification sample results do not exceed the applicable critical values, the district manager can be confident that the dust control parameters in use during verification sampling successfully prevented overexposures at the sampled locations.

The district manager would approve the operator's plan parameters when the amount of material produced is at or above the VPL, the parameters and other measures in place during verification sampling do not exceed 115% of the quantities specified in the plan, and no equivalent concentration measurement exceeds the applicable critical values corresponding to the number of shifts sampled.

[9] Assuming no special production effort, the probability of needing more than n shifts to be sampled before meeting the minimum production level required to verify the plan: $P(X>n)= (.667)^n$; for example, the probability of more than 10 shifts being needed, $P(X>) 10) = (.667)^{10} = 1.7$ percent.

[10] Assuming no special production effort, the probability of needing n or fewer shifts to be sampled before meeting the minimum production level required to verify a plan: $P(X\leq n)=1-P(X>n)$; for example, the probability of 10 or fewer shifts being needed, $(1-(.667)^{10}) = 98$ percent.

TABLE 70–1.—CRITICAL VALUES FOR DETERMINING COMPLIANCE WITH VERIFICATION LIMITS.

[The result of each verification sample collected must be less than or equal to the applicable critical values.]

Number of shifts meeting criteria for verification sampling	Critical value for coal mine dust (mg/m³)	Critical value for quartz dust (µg/m³)
1	1.71	87
2	1.85	93
3	1.93	97
4 or more	2.0	100

The proposed criteria would allow the district manager to base approvals on a reasonably small number of sampled shifts, while maintaining a high level of confidence that approved dust control parameters adequately prevent excessive dust concentrations on individual shifts.

The following two examples illustrate how the district manager would apply the proposed criteria or ''critical values'' to determine if the operator's plan parameters for a MMU should be approved.

Example 1: Suppose valid verification samples were taken on two shifts. According to Table 70–1, the district manager would approve the operator's dust control parameters if all coal mine dust and quartz measurements obtained on the two shifts were less than 1.85 mg/m³ and 93 µg/m³, respectively. On the other hand, if one roof bolter sample indicated a quartz concentration of 95 µg/m³, then the district manager would not approve the operator's plan parameters based on these two shifts alone. Instead, at least one additional shift of sampling would be needed. Valid verification samples from only one additional shift would be sufficient if none of the coal mine dust measurements on that shift exceeded 1.93 mg/m³, and none of the quartz measurements exceeded 97 µg/m³.

Example 2: Suppose valid verification samples were taken on four or more shifts. The district manager would approve the operator's plan parameters as proposed if no measurement taken over those four or more shifts exceeded 2.0 mg/m³ of coal mine dust or 100 µg/m³ of quartz dust.

The district manager may revoke approval of the dust control provisions if either MSHA samples or operator samples collected in accordance with proposed § 70.215 indicate that miners are being overexposed to respirable coal mine dust.

Section 70.208 Follow-up Action When Either Verification Limit Is Exceeded

This proposed section would require the operator to take certain actions when a verification sample exceeds either the respirable coal mine dust or quartz verification limit. The operator

would be required to stop verification sampling, provide approved respiratory equipment, identify the cause of the high dust concentration, and take corrective action to prevent miners from being overexposed on subsequent shifts.

When the operator receives notification from MSHA that a verification sample exceeded either verification limit, the operator must stop sampling and immediately make approved respiratory equipment available to affected miners in accordance with § 70.300. The use of respiratory equipment should be encouraged until the operator determines the cause of the overexposure and takes corrective measures. If deficiencies are identified in the operator's dust control program, appropriate corrections must be made under proposed paragraph (b) to lower dust concentrations in the work environment of the affected occupation or location to a level no greater than the applicable verification limits.

MSHA recognizes that, given the rigorous nature of the verification test conditions, such as requiring higher production levels to be maintained and the application of stringent approval criteria, some failures will occur. If some attempts prove to be less than successful, it would not necessarily be due to the lack of good faith effort on the part of the operator, but could be due to the inability to predict accurately the effectiveness of particular dust control parameters under the proposed test conditions. For example, assume the VPL proposed is significantly higher than that which has been recorded during previous sampling inspections. In this instance, it would be difficult to predict in advance that the proposed dust control parameters would be effective unless the VPL was more representative of the previous production levels. Therefore, MSHA is proposing not to cite the operator when samples exceed the verification limits. However, an operator would be cited under proposed paragraph (b) of this section for failure to take action required to address the cause of the excessive dust levels once notified of the results of verification sampling. This is consistent with the Dust Advisory Committee's recommendation that:

> MSHA should not issue citations for violation of the applicable dust standard based on operator verification sampling. Operator inaction to protect miners where dust values are in excess of the PEL should be citable by MSHA.''

The operator would also be required under proposed paragraph (c) to document the corrective actions taken and submit this information to the district manager within five days of receiving MSHA notification that one or both of the verification limits were exceeded. The documentation must describe the specific corrective measures taken and the manner that these measures would be used to prevent overexposures on subsequent shifts, including the proposed changes in dust control parameters. The operator would be encouraged to seek technical assistance from the district manager to help in determining what additional measures are reasonably likely to help in meeting the verification limits.

The district manager would notify the operator and the representative of miners if the proposed revisions to the plan are provisionally approved and whether the operator should either resume or initiate verification sampling in accordance with § 70.206. The district manager may require the operator to make additional changes to the plan parameters based on the results of verification sampling before the operator begins the verification sampling process over again. If no additional changes are required by the district manager, the operator would be instructed to resume the verification process by continuing the sampling from the point at which it was stopped.

The district manager would determine whether the operator should either resume verification sampling or start plan verification anew on a case-by-case basis. MSHA would not necessarily require the operator to revise the plan parameters nor require the verification process to start over again because a valid sample exceeded the verification limit by a small amount, such as 0.05 mg/m^3, unless the district manager no longer felt confident in the ability of the plan parameters to effectively control respirable dust under the proposed operating conditions. The decision to resume sampling to verify the adequacy of the current plan parameters or start over again with totally revised plan parameters would be based on the information the operator provides regarding the cause of any excessive dust concentration measurements and the steps taken to prevent similar occurrences in the future. For example, suppose the concentration measurements are excessive due to a deviation in the operator's established operating procedures. It should be possible for the operator to prevent this from occurring in the future without requiring changes in the dust control parameters. If the district manager finds this to be the case, and concurs with the operator's proposed action to prevent similar occurrences, the operator would be directed to resume verification sampling. However, if the plan parameters are found to be inadequate for the proposed operating conditions and the operator was notified to upgrade the parameters, the operator would be instructed to start the verification process over again.

Section 70.209 Use of Supplementary Control Measures; Types and Conditions for Use; Request for Approval

This proposed section would require the operator to take certain actions when verification samples exceed either verification limit after the operator implemented all feasible engineering or environmental controls. It would permit an operator to use approved powered air-purifying respirators (PAPRs), administrative controls, or a combination of both, after MSHA has determined that further reduction of dust levels cannot be reasonably achieved using accepted engineering controls. The decision-making process for determining whether feasible engineering controls should be augmented by supplementary controls (personal protective equipment and/or work practice controls) to maintain the personal work environment of the affected miners at a safe exposure level will consider the various factors involved in each specific situation. Some of the factors to be taken into account include: (1) The severity and magnitude of the exposure; (2) number of affected miners, their job location and assignment; (3) types and location of dust-generation sources; (4) range of effectiveness and reliability of the implemented engineering controls; (5) availability, suitability, reliability, and cost of other feasible engineering controls; (6) operational conditions such as the method of mining, mining height, etc.; (7) compliance history; (8) effectiveness and reliability of supplementary control measures; (9) concerns of individual miners and their representatives; and (10) ability to measure and ensure the adequacy of exposure control.

Section 202(h) of the Mine Act does not prohibit the use of PAPRs and administrative controls under the specific circumstances set forth in the proposed rule. These measures would be used only as supplementary controls and not as a substitute or replacement for engineering control measures in the active workings. The use of these supplementary control measures under the conditions of use set forth in the proposed rule will enhance the level of health protection for miners by preventing overexposures on all shifts.

The combination of engineering and supplementary controls will provide reliable and effective exposure control when used in accordance with the approved plan provisions.

Consistent with the Mine Act and the Dust Advisory Committee's recommendation, engineering controls continue to be recognized as the primary means to control exposure to respirable dust under this proposed rule. Therefore, if verification samples for a MMU continue to exceed either verification limit after implementing all feasible engineering controls, including such measures as required by the district manager, the operator must continue to use these control measures to reduce the concentration of respirable dust as low as possible.

MSHA believes that it is feasible to control respirable dust to an acceptable level as required by § 75.370(a)(1) at most non-longwall operations using available engineering controls. Currently, over 90 percent of the approximately 720 continuous miner operations employ extended cut techniques and, therefore, are being operated remotely. As a result, the continuous miner operator, the occupation normally identified as the DO, is no longer required to work near the face area where material is being extracted and respirable dust generated. Likewise, roof bolting machines, a major generator of respirable quartz dust on continuous miner MMUs, are now required to be equipped with suitable drill dust controls. Under § 72.630 of this title, drill dust must be controlled by either permissible dust collectors, by water, water with a wetting agent, by ventilation, or by any other method approved by MSHA. However, the Agency also recognizes that some non-longwall MMUs continue to have difficulty maintaining consistent compliance with reduced standards even at production levels that are significantly lower than the proposed VPL because of the high quartz content of the adjacent roof rock, which is drilled to install roof bolts, or of the coal seam being mined.

With regard to mining operations employing the longwall mining method, MSHA recognizes that technological advances have boosted longwall production to record levels. According to MSHA data, the average production reported by operators during bimonthly sampling of longwall MMUs has increased over 6 fold between 1980 and 2002, from 890 to 5500 tons/shift. Unfortunately, as discussed in section III.D. of the preamble, dust control technology has not kept pace, rendering available, acceptable controls less effective, which increases the miner's risk of being overexposed on any given shift. Given the state of longwall dust control technology, the engineering controls currently available may not be effective in achieving and maintaining continuous compliance at certain locations along the longwall face such as downwind of the longwall operator (occupation code—044) at some high-production longwall MMUs. If the operator believes that all feasible engineering controls have been installed, maintained, and operated as specified in the ventilation plan, the operator may submit a written request to MSHA's Administrator for Coal Mine Safety and Health, asking for authorization to augment the implemented engineering controls with supplementary controls to maintain the personal work environment of the affected miners at a safe exposure level and to achieve compliance with the verification limits and §§ 70.100 and 70.101. If such a request is made, a copy must be provided to the representative of miners and posted on the mine bulletin board in accordance with proposed § 70.217(b)(3) at the time it is submitted to MSHA.

When the Administrator receives such a request, guidance would be immediately solicited from a panel of experts specifically established to address such matters. Members of this panel would have extensive knowledge in respirable dust control and would represent the following organizations within MSHA: Technical Support, Division of Health, the MSHA District having jurisdiction over the mine making the request, and another MSHA District. In some cases, MSHA may solicit advice from NIOSH, an Agency with significant experience in dust control. As part of their deliberations and on a case-by-case basis, the expert panel may visit the mine to observe various controls in operation. This panel will also consider all comments MSHA receives from the representative of miners, as well as individual miners, and provide copies of these comments to the operator upon request. Any recommendations reached by this panel would be based on the (1) review of all the facts gathered, (2) consideration of the various factors involved in each specific situation as outlined above, (3) their combined practical and technical experience in dust control, and (4) sound engineering judgement.

Recognizing the urgency of such a request, the Administrator would either approve or deny the operator's request within 30 calendar days or as soon as practical after receiving the request. If approval is denied, the operator will be notified in writing of the specific reasons for disapproval. If approval is granted, the operator would be permitted to use either PAPRs approved by NIOSH under 42 CFR 84 and by MSHA under part 18 of this title, administrative controls, or a combination of both, as supplementary controls to protect those miners assigned to occupations that continue to exceed either verification limit, provided the operator meets the conditions specified in §§ 70.210 and 70.211 or §§ 70.213 and 70.214 of this part.

If the affected occupation involves the 060 occupation, the operator would also be informed that the DO would be changed from the 060 to the 044 occupation, or another occupation designated by the district manager depending on how the particular longwall MMU is ventilated. While it may be difficult to lower the dust levels to the applicable dust standard in the environment of some miners working on the longwall face under certain operating conditions, MSHA believes that, using available engineering controls, an acceptable work environment can be provided for the tailgate-side longwall operator (Occupation code—044) and other miners on a continuing basis. Therefore, unless demonstrated otherwise through verification sampling, the operator would be required to maintain the environment of the new 044 DO at or below the verification limits or below the applicable dust standard using engineering controls. This should have a significant effect on the quality of the mine atmosphere downwind of the 044 DO where miners, wearing PAPRs or under administrative controls, are required to work.

Under the proposed rule, the operator would be permitted to continue to use supplementary controls to reduce dust exposure of individual miners assigned to specific occupations until such time when other feasible engineering controls become available and are implemented or until the district manager revokes the operator's approval to use supplementary controls for failure to comply with the requirements of proposed § 70.211(b) or § 70.214(b).

As discussed above, MSHA will continue to require that all feasible engineering controls be installed. While the proposed rule provides for expanded use of supplementary controls, such control measures should only be used as an interim method of protection since their effectiveness remains secondary to that of engineering controls.

Section 70.210 Through 70.212

Use of Powered Air-Purifying Respirators (PAPRs)

These sections would establish the requirements for using PAPRs as a supplementary control to maintain the personal work environment of the affected miners at a safe exposure level when MSHA has determined that further reduction in respirable dust concentrations cannot be achieved using all feasible engineering or environmental controls or under special circumstances.

Section 70.210 Powered Air-Purifying Respirators (PAPRs); Requirements for Approval

If the operator chooses to use PAPRs as a supplementary control measure, the operator must submit a revision to the ventilation plan to the district manager within five days of receipt of MSHA's written approval in accordance with proposed § 70.209(b). The proposed revision would specify the feasible engineering controls that are capable of (1) reducing the concentration of respirable dust as low as achievable in every occupational environment where a PAPR is required to be worn, and (2) maintaining other occupational environments in the MMU at or below the verification limits. The proposed revision must reflect the engineering controls that were in use at the time that the determination was made by MSHA to permit the use of supplementary controls.

In addition to specifying all feasible engineering controls to be used, proposed paragraph (a)(2) would require the operator to develop a written PAPR protection program which meets the requirements of § 72.710 and incorporates the following information: (1) The protection factor as determined in accordance with proposed § 70.2 that would be assigned to the affected MMU; and (2) the specific occupation(s), work locations or tasks where PAPRs must be worn by the affected miners. A model PAPR protection program to guide the operator in developing a mine-specific program that complies with the requirements of this section is described in Appendix B. The district manager may require the operator to modify the PAPR protection program before granting provisional approval of the proposed plan revision.

Also, consistent with the NIOSH Criteria Document and section 101(a)(7) of the Mine Act, proposed paragraph (a)(3) would require the operator to post warning signs with the statement ''RESPIRATORY PROTECTION REQUIRED IN THIS AREA'' in locations where PAPRs must be worn. Since the presence of excessive dust concentrations is not readily discernible, MSHA believes that the use of warning signs is necessary to protect miners. The posting of warning signs is an appropriate vehicle to inform or remind miners, regardless of their familiarity with the workplace environment, that they are entering a high dust area where the use of PAPRs is mandatory. The Agency recognizes that § 75.370(e) requires that operators instruct persons affected by a revision to the ventilation plan prior to implementation. Section 75.370(f)(3) also requires approved revisions to be posted on the mine bulletin board for the period that the plan is in effect. MSHA is soliciting comments on whether it should require the posting of warning signs when PAPRs must be worn, or should it be optional and left to the discretion of the operator.

Proposed paragraph (b) requires the operator to verify, in accordance with proposed § 70.206(b) through (e), the adequacy of the revised plan parameters, incorporating the use of PAPRs, within 30 calendar days of obtaining provisional approval from the district manager. Accordingly, the operator would be required to collect verification samples in the environment of (1) the occupation(s) where PAPRs must be worn by miners assigned to work in those job positions, (2) the DO, and/or (3) other occupation(s) that may be designated by the district manager.

Section 70.211 Powered Air-Purifying Respirators (PAPRs); Approval and Conditions for Continued Use; Revocation of Approval

This proposed section establishes the criteria that the district manager would use to determine whether the operator's proposed plan revision incorporating the use of PAPRs should be approved. As previously discussed under proposed § 70.207, approval of the proposed revision would depend on the results of verification sampling and the operating conditions in effect for each sample.

The district manager would approve the operator's revised plan when: (1) The amount of material produced is at or above the VPL, the parameters and other measures in place during verification sampling do not exceed 115% of the quantities specified in the plan, and no equivalent concentration measurement exceeds the critical values listed in Table 70–1 that correspond to the number of shifts sampled; and (2) the revision incorporates the dust control parameters used during verification sampling.

To account for the expected workplace level of respiratory protection provided the wearer of the PAPR, the equivalent concentration measurement must be adjusted further in accordance with § 70.2. This requires the equivalent concentration to be divided by the protection factor (PF) specified in the PAPR protection program for the particular mechanized mining unit (MMU). The PF represents the minimum reduction in dust concentration that a respirator would be expected to provide. In the absence of a direct measure of the dust concentration inside the PAPR (in the miner's personal work environment) while under the conditions of the workplace, the adjusted equivalent concentration represents a surrogate measure of the respirable dust concentration inside the PAPR facepiece to which the wearer is exposed. Since the PFs assigned to MMUs under this proposed rule incorporate a margin of safety, the resulting equivalent concentration measurement represents a conservative estimate of the dust concentration in the miner's breathing zone.

For example, assume that a MMU, which was assigned a PF = 3, was sampled one shift and the concentration measurement for the sampled occupation under a PAPR protection program is 3.54 mg/m3 for respirable coal mine dust and 174 $\mu g/m^3$ for respirable quartz dust. Under the definition of ''equivalent concentration,'' these measurements are divided by 3, which yields an equivalent concentration of 1.18 mg/m^3 [3.54 $mg/m^3/3$] for respirable coal mine dust and 58 $\mu g/m^3$ [174 $\mu g/m^3/3$] for respirable quartz dust to which the miner assigned to that occupation is exposed. If no other valid equivalent concentration measurement obtained on one shift exceeds 1.71 mg/m^3 or 87 $\mu g/m^3$ according to Table 70–1, the district manager would approve the revised plan incorporating the use of PAPRs.

MSHA believes that this strategy provides far more health protection to miners than is available under current regulations, which only requires operators to make available approved respiratory equipment to miners when exposed to excessive dust concentrations. There is no requirement that miners actually wear the respirator when issued. Under the proposed rule, not only must PAPRs be worn at all times but must also conform to specific requirements consistent with an acceptable respiratory protection program.

Proposed paragraph (b) establishes the requirements for the continued use of

PAPRs as a supplementary control. To continue to use PAPRs and operate under the same conditions that were in effect during verification sampling, the operator would be required to comply with the approved revised plan parameters on each production shift, in particular, the provisions of the PAPR protection plan. MSHA believes that the effectiveness of a PAPR is dependent upon proper training and continued maintenance, which are critical elements of an acceptable PAPR protection program. Necessary maintenance includes examining the PAPR for defects prior to use, charging the batteries properly, and appropriate replacement of parts including, but not limited to, the filter elements, visors, batteries, blowers, and face seals.

In addition, the operator would be required to ensure that no occupation where PAPRs must be worn by the miners required to work in those particular job positions, the DO and other occupations in the affected MMU, are exposed to an equivalent concentration of respirable coal mine dust that exceeds the applicable dust standard.

Finally, since the use of PAPRs as a supplementary control is not intended to be permanent and their use is being permitted until feasible engineering controls become available, proposed paragraph (b)(3) would require the operator to continue to seek and implement additional improvements when they become available. To ensure conformance with these requirements, MSHA will review the operator's approved plan parameters, including the operator's compliance history, every 6 months to determine if the operator is using all feasible engineering controls and if the plan parameters continue to be suitable to the current operating conditions. If MSHA determines that other acceptable controls have become available which would be suitable to the particular MMU, MSHA would notify the operator and the representative of miners of its findings.

MSHA approval to use PAPRs as a supplementary control may be revoked if the operator failed to meet the requirements of proposed paragraphs (b)(1), (2) and (3) of this section. If the operator's plan provisions are revoked, the operator would be required to submit a revision to the plan parameters for the affected MMU that would include a VPL at which compliance with the applicable dust standard would be achieved.

Section 70.212 Powered Air-Purifying Respirators (PAPRs); Conditions for Use under Special Circumstances

Section 70.212 sets forth the special circumstances under which an operator would be permitted to use, on an intermittent basis, PAPRs to protect individual miners from excessive dust concentrations and for compliance purposes. Such use is only permitted after the plan parameters have been verified without the use of supplementary controls and additional remedial actions will not be practical or feasible because of the intermittent nature and duration of a special condition.

Because of the dynamic nature of mining, it is not uncommon for a MMU to occasionally encounter operating conditions which directly impact the ability of the previously verified plan parameters to effectively control respirable dust. This is especially true when the particular condition encountered varies from the operating conditions under which the adequacy of the plan parameters was originally demonstrated. It is not because an operator may have failed to adequately take such conditions into account when designing the plan parameters, but because the proposed verification process requires the adequacy of the plan parameters to be demonstrated only under typical operating conditions. For example, encountering a significant rock band in the coal seam containing a high percentage of quartz would be considered a unusual circumstance since its occurrence is not routine. While this may have occurred in the past and may occur again, the operator cannot predict with certainty when this condition might reoccur. Because of the unpredictable nature of such an occurrence, it may not be practical to factor this into the design of the plan parameters.

While the Mine Act and implementing regulations intend for the working environment to be free of excessive dust at all times, MSHA recognizes that it may not be practical or feasible to implement additional engineering controls whenever these unusual conditions occur, especially when they occur intermittently for a brief period of time. Even if the operator makes a concerted effort to implement additional engineering controls, it may require an extended period of time to complete and verify the effectiveness of the adjustments, during which time some miners may not be adequately protected from excessive dust.

Before MSHA will grant authorization to use PAPRs for compliance purposes, the operator must show that the particular condition or situation is atypical, occurs only occasionally, and is beyond the control of the operator. Increased production levels which exceed the VPL and any other situations which are more routine and therefore under the operator's control would not be characterized as unusual conditions. However, because of the difficulty in maintaining proper ventilation along a longwall face, during start-up, MSHA will consider and encourage the use of PAPRs at longwall MMUs until the first gob fall. The types of evidence MSHA would consider when the unusual condition encountered involves cutting rock occasionally, would include information on quartz levels, the duration and frequency of reduced standards, and/or on the reject rate for a particular MMU.

MSHA anticipates questions regarding what constitutes special circumstances under this proposed section. It is not possible or appropriate to set forth all circumstances which might be covered by this proposed rule. Each request will be considered by the district manager on a case-by-case basis. The district manager will rely on past in-mine experience and the information provided by the operator in determining whether the special circumstances under which the applicant is seeking authority to use PAPRs, occurs intermittently and is the best way to protect the affected miners during such periods. The Agency specifically solicits comments on these issues, especially, with regard to what other special circumstances in mining may necessitate the immediate use of PAPRs.

Under proposed paragraph (a), an operator can file a written request seeking MSHA approval to use PAPRs under special circumstances: (1) When submitting a ventilation plan under § 75.370 of this title, (2) when required to verify a previously approved ventilation plan that was revised in accordance with § 75.370(f), or (3) after the district manager approves the plan parameters based on the results of operator verification samples. To the extent possible, the operator must submit a written request prior to encountering special circumstances to assure prompt review, and revision to the ventilation plan. A copy of the request must be provided to the representative of miners at the time of submittal and posted on the mine bulletin board to alert the miners working in the affected MMU. The district manager will consider all comments and, if requested, provide copies of these comments to the operator.

In addition to showing that the particular circumstances necessitating use of PAPRs occur occasionally and are beyond the control of the operator, proposed paragraph (b) requires the operator to revise the previously approved plan provisions to incorporate the provisions proposed in § 70.210(a)(1), (2) and (3).

Once approval is granted by the district manager, proposed paragraph (c)(1) through (3) sets out the requirements for the use of PAPRs. The operator will be required to notify, in writing or by electronic means, the district manager and the representative of miners within 24 hours of determining that current operating conditions necessitate use of PAPRs. This would enable MSHA to follow-up with an in-mine visit to verify the operating conditions under which PAPRs are being used and whether the operator is in full compliance with the letter of approval and with the provisions of proposed § 70.211(b)(1) and (2). It is the responsibility of mine management to ensure that PAPRs are worn for all required periods and to see that the conditions stipulated in the plan, which are necessary to protect miner health, are followed.

When PAPRs are used during MSHA compliance sampling, the determination of compliance with the applicable dust standard will be made in accordance with proposed § 70.218(a). For occupations under a PAPR protection program, compliance would be assumed if the equivalent concentration measurement, as determined in accordance with § 70.2 and as discussed under § 70.211, is less than the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard in effect.

Unusual operating circumstances do not normally last for an extended period of time. Therefore, use of PAPRs for compliance purposes is limited to 30 consecutive days. The district manager may revoke the operator's authority to use PAPRs under special circumstances for failure to comply with this requirement. If the operator exceeds this time period or if respirable dust samples taken by either the operator or MSHA indicate miners are being overexposed, the operator must revise and verify the adequacy of the proposed plan parameters under the prevailing operating conditions. Comments are specifically requested on this issue.

Permitting the use of PAPRs to supplement existing engineering controls to protect individual miners under special circumstances as proposed is consistent with the intent of the Mine Act and is in the best interest for miner health.

Section 70.213 through 70.214

Use of Administrative Controls

These sections would establish the requirements for using administrative controls as a supplementary control to maintain the personal work environment of the affected miners at a safe exposure level when MSHA has determined that further reduction in respirable dust concentrations cannot be achieved using all feasible engineering or environmental controls.

Section 70.213 Administrative Controls; Requirements for Approval

If the operator chooses to use administrative controls as a supplementary control measure, this proposed section would require the operator to submit a revision to the plan parameters to the district manager within five days of receipt of MSHA's written approval in accordance with proposed § 70.209(b). The proposed revision would specify the engineering controls that are capable of maintaining the environment of any occupation under administrative controls and the DO or another occupation designated by the district manager at or below the verification limits.

In addition to specifying all feasible engineering controls to be used, proposed paragraph (a)(2) would require the operator to include a detailed description of each specific administrative control to be implemented. Because the effectiveness of administrative controls is based on adherence to strict time periods, work schedules, and or other administrative controls, the revision must explain how the operator would verify compliance with the prescribed administrative control. The district manager may require the operator to modify the administrative controls before granting provisional approval of the proposed plan revision incorporating the use of such measures as a supplementary control.

Proposed paragraph (b) would require the operator to verify, in accordance with proposed § 70.206(b) through (e), the adequacy of the revised plan parameters incorporating the use of administrative controls within 30 calendar days of obtaining provisional approval from the district manager. Accordingly, respirable dust samples would be collected in the environment of (1) The occupation(s) under administrative controls, (2) the DO, and (3) other occupation(s) that may be designated by the district manager.

Section 70.214 Administrative Controls; Approval and Conditions for Continued Use; Revocation of Approval

This proposed section establishes the criteria that the district manager would use to determine whether to approve the operator's proposed revision to the plan parameters incorporating the use of administrative controls as a supplementary control. As previously discussed under proposed § 70.207, approval of the proposed revisions would depend on the results of verification sampling and the operating conditions in effect during the time each sample is collected. The district manager would approve the revisions if (1) no valid equivalent concentration measurement exceeds the critical values listed in Table 70–1 that correspond to the number of shifts sampled, and (2) the revision incorporates the dust control parameters and administrative controls that were in effect during verification sampling. For the district manager to approve the revised plan parameters for a MMU based on only one shift of sampling, no valid concentration measurement can exceed 1.71 mg/m^3 for respirable coal mine dust or 87 μg/m^3 for respirable quartz.

Proposed paragraph (b) establishes the requirements for the continued use of administrative controls as a supplementary control. To continue to use administrative controls and operate under the same conditions that were in effect during verification sampling, the operator would be required to comply with the approved revised plan on each production shift, and particularly with the prescribed administrative controls. Since miners must actively comply for administrative controls to be effective in reducing dust exposure, the operator must train the affected miners to follow prescribed administrative controls and require their cooperation for them to be effective.

In addition, the operator would be required to ensure that no occupation is exposed to concentrations of respirable dust that exceed the applicable dust standard. MSHA will evaluate the effectiveness of the dust control parameters and the operator's performance in complying with all provisions of the approved plan.

Since the use of administrative controls as a supplementary control is not intended to be permanent and their use could be permitted only until feasible engineering controls become available, proposed paragraph (b)(3) would require the operator to continue to seek and implement additional improvements when they become available. To ensure compliance with

these requirements, MSHA will review the operator's approved plan parameters, including the operator's compliance history, every 6 months to determine if the operator is using all feasible engineering controls and if the plan parameters continue to be suitable to the current operating conditions. If the district manager determines that other controls have become available which would be suitable to the particular MMU, the district manager would notify the operator and the representative of miners of such findings.

MSHA approval to use administrative controls as a supplementary control may be revoked if the operator fails to meet the requirements of proposed paragraphs (b)(1), (2) and (3) of this section. If the operator's plan provisions are revoked, the operator would be required to submit a revision to the plan parameters for the affected MMU that would include a VPL at which compliance with the applicable dust standard would be achieved.

Section 70.215 Quarterly Evaluation of Approved Plan Parameters

Because conditions in an underground mine are constantly changing, the effectiveness of previously approved dust control parameters for a particular MMU may change. Consequently, plan parameters may later be inadequate in preventing overexposures on individual shifts and adjustments may be necessary to continually comply with the applicable dust standard. Therefore, in addition to ensuring compliance with the plan parameters under existing § 75.362(a)(2), the operator also has the responsibility to ensure that the plan parameters continue to be effective in controlling respirable dust as required by § 75.370(a), and to upgrade the plan parameters when deemed appropriate. This is necessary to prevent overexposures on individual shifts and, in the long run, the occurrence of coal workers' pneumoconiosis and silicosis in miners.

The importance of assessing the continued adequacy of plan parameters and the role of operators in that process was recognized by the Dust Advisory Committee:

> MSHA should develop specific performance requirements for operator sampling relative to documentation of continued adequacy of the plan parameters. (MSHA, 1996)

To accomplish this, proposed § 70.215, would require an operator to implement a 3-month interval (quarterly) sampling program at MMUs where the continued adequacy of the approved plan parameters is in question and miners are at risk of being overexposed as indicated by MSHA-collected respirable dust samples used to audit operator compliance with applicable standards. Therefore, rather than require all operators to sample quarterly, the quarterly monitoring requirement is triggered when airborne dust concentrations, as measured under MSHA's sampling program, exceed the applicable dust standard. This risk-based approach is more performance-oriented and minimizes unnecessary sampling. The purpose of operator quarterly sampling would be to monitor the adequacy and suitability of the approved dust control parameters under prevailing conditions.

Since operators have the responsibility for providing a workplace that is free of excessive dust, all operators are encouraged to design and implement a monitoring program suitable to their specific mine to ensure that the applicable dust standard is not exceeded. MSHA believes that operators have a number of incentives to monitor the quality of the air in each MMU on a regular basis to ensure they can (1) assess the effectiveness of their dust control parameters or need for adjustments to continually comply with the applicable dust standard and (2) avoid citations and penalties during MSHA sampling inspections.

Under the proposed rule, the sampling process would begin with the determination by the district manager of the particular MMUs which would be regularly sampled at the mine. In determining which MMUs at a mine should be sampled periodically, the district manager would, under the proposed rule, first review the results of respirable dust samples after each sampling inspection of a MMU. If a valid equivalent concentration measurement for any occupation exceeds the applicable dust standard by at least 0.1 mg/m^3, quarterly sampling would be required.

The proposal also provides for the suspension of quarterly sampling when all respirable dust samples submitted by the operator in accordance with this section, together with samples taken by MSHA during at least four consecutive quarters, demonstrated continuing compliance with the applicable dust standard. To ensure that the proper MMUs are exempted from quarterly sampling when miners are no longer at risk of being overexposed, each operator- and MSHA-collected sample must be at or below the applicable dust standard.

Under paragraph (a), the operator would begin quarterly sampling during the next full 3-month period following MSHA notification of the designation of a MMU for sampling. The proposed rule provides a schedule for quarterly sampling. For example, during the period January 1 through March 31, operators would be required to sample each designated MMU in producing status. When there is a change in the operational status of the particular MMU that affects operator monitoring, proposed § 70.219(a) requires the operator to report such status change to the district manager. Suppose, for example, a MMU has been in nonproducing status for 75 calendar days during the current quarterly sampling period, the operator would still be expected to satisfy the sampling requirements because there would be sufficient time remaining in the current period to sample the required one shift. Failure to submit the required number of valid respirable dust samples within a given quarterly period would constitute a violation of this provision. Operators would be encouraged to conduct the required sampling at the beginning of each quarterly sampling period. All samples submitted by the operator would be processed by MSHA.

To provide consistency and uniformity among operator-collected samples for purposes of monitoring plan effectiveness, the proposed monitoring program would require the operator to sample selected occupations in accordance with proposed § 70.206(b), (d) and (e) for one shift. Also, since the objective of quarterly sampling is to evaluate the continued adequacy of the approved plan parameters under the prevailing conditions, each sample must be collected under the operating conditions specified in proposed § 70.201(e) which specifies that the amount of material produced must equal or exceed the VPL, unless sampling in accordance with proposed § 70.220(d). Only the dust control parameters listed in the approved ventilation plan, at levels not exceeding 115 percent of the specified quantities, are to be in place during sampling. As in verification sampling, if the operator fails to attain the VPL on the shift sampled, all samples for that shift will be voided by MSHA. However, if any sample, regardless of production, is found to exceed the applicable dust standard by any amount, it would be used by MSHA to determine the equivalent concentration for that occupation. Also, if the MMU being sampled is authorized to use PAPRs under special circumstances (proposed

§ 70.212) and those circumstances prevent the MMU from achieving the VPL, all samples for that shift would be used to determine the equivalent concentration for the affected occupations.

Since these samples are for evaluation purposes, the operator would not be required to use a control filter in accordance with proposed § 70.201(d). The district manager may require the operator to reverify the adequacy of the plan parameters for a particular MMU based on these results and other compliance data if the data indicates that the parameters are no longer effective in maintaining compliance. If, on the other hand, the operator or MSHA is prevented from confirming the suitability of the approved dust control parameters to the current operating conditions because of repeated submission of invalid samples, reverification of the plan parameters would be required by the district manager.

Under proposed paragraph (c), when a valid equivalent concentration measurement exceeds the applicable dust standard by at least 0.1 mg/m^3, the operator must make approved respirators available to the affected miners in accordance with § 70.300, unless the occupations are under a PAPR protection program. The operator must determine the cause and correct the identified deficiency to reduce the concentration of respirable dust to within the applicable dust standard and avoid future overexposures. This requires the operator to review the dust control parameters and to determine what factors may have contributed to the overexposures. As discussed elsewhere in the preamble, if the sampled occupation is under an approved PAPR program, each valid concentration measurement would be adjusted in accordance with § 70.2. The equivalent concentration would be compared to the applicable dust standard. For example, assume the reported equivalent concentration of a sample is 2.56 mg/m^3 and the MMU is assigned a protection factor of 4. Then the equivalent concentration measurement, adjusted for the use of a PAPR, is 0.64 mg/m^3 [2.56 mg/m^3/4 = 0.64 mg/m^3].

Additionally, since the presence of excessive dust poses a significant health hazard to miners, proposed paragraph (c)(3) would require excessive dust conditions to be recorded in the same manner, but with some exceptions, as the hazards recorded under § 75.363(b) of this title. The record would include: (1) The date the sample was taken; (2) the location in mine and the occupation where the excessive dust condition occurred; (3) the equivalent concentration measurement of each sample collected; (4) the specific action taken to reduce the concentration of respirable dust to within the applicable dust standard. MSHA will be providing the operator with a respirable dust sample data report that contains much of the same information required under this paragraph. In order to reduce the operator's paperwork burden, the MSHA respirable dust sample data report could serve as this record, provided the operator includes the specific corrective action taken, certifies its accuracy and completeness, and retains the record for at least 12 months at a surface location as required by § 75.363(c) and (d). The dust record does not need to be countersigned, provided that the mine official certifying the record is aware of the monitoring results and directed or supervised the implementation of the corrective actions. These records provide notice to mine management that excessive dust conditions are recurring, the locations in the mine, and the effectiveness of the various corrective actions. For example, if an excessive dust condition occurs repeatedly and the same corrective action is taken, the corrective action may not be effective. Posting the record on the mine bulletin board will alert all affected miners of the particular dust hazards to which they have been exposed and the specific corrective action(s) being taken by the operator to reduce the dust concentration in the work environment to within the applicable dust standard to prevent similar occurrences in the future. The requirement to inform miners is necessary to assure miners that the operator is making efforts to provide a safe and healthful work environment. This is a new requirement and the Agency solicits comments on the proposed approach to require that excessive dust conditions and the corrective action taken be recorded, certified and retained as currently required for other hazards under § 75.363.

If the results of quarterly sampling indicate that the approved plan parameters are no longer adequate to control respirable dust under the prevailing operating conditions, the operator must revise the plan parameters and submit the proposed revision to the district manager for review and approval. For example, if any valid equivalent concentration measurement meets or exceeds the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard in effect, the plan parameters would need to be upgraded and verified under current conditions. Because the results indicate that miners are being overexposed, MSHA will conduct follow-up sampling whenever an operator's quarterly sample meets or exceeds the CTV and the plan parameters are not revised by the operator.

Under proposed paragraph (e), the results of operator quarterly sampling will not be used to determine compliance with the applicable dust standard. If any sample result exceeds the CTV, the operator would not be cited for a violation as would be the case if MSHA sampled. The operator would, however, be required to take corrective action. Failure to take such action to reduce the respirable dust concentration within the applicable dust standard would be citable under this section.

MSHA requests comments on the appropriateness of the criteria used to trigger operator monitoring of plan effectiveness and proposed frequency, especially with regard to the 3-month interval, that maximize the protection of miners' health. Also, whether a more performance-oriented requirement should be imposed on operators, requiring them to monitor at the frequency needed to assure, with reasonable accuracy, the continued adequacy of the approved plan parameters in preventing overexposures on individual shifts.

Section 70.216 Respirable Dust Samples; Transmission by Operator

MSHA is proposing no substantive changes to existing § 70.210, except for removing reference to § 70.202 (Certified person; sampling) from existing paragraph (c) to eliminate repetition since revised § 70.201 specifies that all sampling required under this part must be conducted by a certified person, and redesignating it as § 70.216. Existing paragraph § 70.210(e) would be removed since all samples submitted by the operator under this part would be processed by MSHA. The proposed rule, like the existing rule, requires all respirable dust samples collected in accordance with this part to be transmitted to MSHA within 24 hours after the end of the sampling shift in containers provided by the manufacturer of the filter cassette. The need to verify the adequacy of the dust control parameters for a particular MMU in the shortest possible time requires that samples be promptly transmitted to MSHA for analysis.

Each sample transmitted by the operator must be accompanied by a

properly completed dust data card. All dust data cards submitted must be signed by a person certified to collect samples and must include that person's certification number. By signing the card, that person certifies that the sample was collected in accordance with the requirements of this part.

To maintain program integrity, all samples collected by an operator would be considered by this proposed rule to fulfill the sampling requirements of this part. Samples to be used by operators for other purposes would have to be identified in writing or by electronic mail to the district manager, by each filter cassette identification number, prior to their intended use.

Operators that use PCDMs under proposed § 70.220 are exempt from the requirements of this section, except when transmitting samples for quartz analysis required by proposed § 70.220(c).

Information To Be Posted on the Mine Bulletin Board

Section 70.217 Respirable Dust Samples; Report to Operator; and Posting

Under the proposed rule, existing § 70.210 would be revised and redesignated as § 70.217. It specifies the type of sampling and other related information the operator would post on the mine bulletin board. The proposed posting requirements are intended to serve in the best interest of miners without being overly burdensome to operators. The continuation of posting requirements is intended to promote miner awareness of process of verifying the adequacy of the dust control parameters for each MMU specified in the mine ventilation plan and of the respirable dust conditions in the mine. This is consistent with the statutory intent that miners play a role in preventing unhealthy conditions and practices where they work. This approach is consistent with the recommendations of the Dust Advisory Committee regarding miner participation in the sampling process.

Paragraph (a)(1) through (6) of the proposed rule retains the existing requirement regarding the types of data MSHA would report on samples submitted by the operator. The results of all MSHA sampling would be reported to the operator. The data report would include the identification of the MMU or DA in the mine where each sample was collected; the equivalent concentration of respirable dust for each valid sample; the occupation code, where applicable; and the reason for voiding any sample. In addition to providing data on individual samples, the Agency would also furnish information on the dust control parameters that were in effect during MSHA sampling by providing a copy of completed MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data*.

Paragraph (b)(1) of the proposed rule retains the existing requirement that the operator post on the mine bulletin board the respirable dust sample data report provided by MSHA. The operator must post the end-of-shift exposure information if using a PCDM in accordance with § 70.220. The results of all respirable dust samples collected by federal mine personnel that MSHA would provide under revised paragraph (a) must be posted. Additionally, the operator would post a copy of MSHA Form 2000–86 for each MMU sampled by federal mine personnel. This requirement would ensure that miners and their representative(s) are provided information concerning the quality of the mine air where they work and the dust control parameters under which MSHA sampling was conducted.

MSHA recognizes the importance of input from the miners and their representatives in the plan approval process. To assure miners understand the verification process, proposed paragraph (b)(3) would require the posting of all written notifications received from the district manager pertaining to verifying the adequacy of the dust control parameters under this part. This includes all correspondence submitted in accordance with proposed §§ 70.209 and 70.212. The district manager would be available to discuss with the representative of miners as well as individual miners all aspects of the plan parameter verification process.

Proposed paragraph (c) specifies the length of time the information provided under paragraph (b) would be posted on the mine bulletin board. Results of operator verification sampling and all written notifications received from the district manager that pertain to the plan verification procedures could be removed immediately following notification of approval of the plan parameters for a particular MMU. Correspondence required under proposed § 70.212(c)(1) regarding the occurrence of special circumstances requiring the use of PAPRs must remain posted for the period of time that PAPRs are in use. The respirable dust sample data report provided by MSHA on operator sampling in accordance with proposed § 70.215 and MSHA sampling results, including the information specified in proposed paragraph (b)(2) of this section, must be posted for at least 31 calendar days following receipt. If using a PCDM, the end-of-shift exposure data along with the information specified in paragraph (b)(2) must be posted for at least 7 calendar days following the end of the sampling shift.

Section 70.218 Violation of Respirable Dust Standard; Issuance of Citation; Action Required by Operator; and Termination of Citation

Proposed § 70.218 addresses the circumstances under which MSHA would issue a citation for excessive dust and establishes the specific actions that an operator would be required to take within the time for abatement fixed in the notice. It also sets forth the conditions under which MSHA would terminate such citations.

Under proposed paragraph (a), the operator would be cited for a violation of either § 70.100(a) and (b), or § 70.101 when a valid equivalent concentration measurement for any occupation sampled by MSHA exceeds the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard in effect. As discussed in section III.A.4. of the preamble, these measurements will be based on single-shift samples collected with approved sampling devices that will be operated portal-to-portal. The devices will remain operational, during the entire shift or for 8 hours, whichever time is less, as has been the long-standing practice.

The CTVs and an explanation of how they were derived was originally published in **Federal Register** notice of February 3, 1998 (63 FR 5687), entitled ''Coal Mine Respirable Dust Standard Noncompliance Determinations.'' As explained in that notice and in Appendix C of the current notice of proposed rulemaking, each CTV was calculated so that citations would be issued only when a single-shift measurement demonstrates noncompliance at least at a 95 percent confidence level. Under this proposed rule, MSHA would issue no more than one citation based on the result of single shift samples from the same MMU, unless separate citations are warranted for occupations exposed to different dust-generating sources. The following examples illustrate how MSHA would apply the CTVs to make noncompliance determinations. Suppose that a measurement of 2.41 mg/m^3 is obtained for the DO, and measurements of 2.34, 1.54, 2.00, and 1.56 mg/m^3, are obtained for four other occupations exposed to the same dust-generating source as the DO during a single shift on a MMU required to comply with an applicable dust standard of 2.0 mg/m^3. Because at

least one measurement exceeds the 2.33-mg/m^3, CTV (the citation value for a 2.0-mg/m^3 standard), a citation would be issued for exceeding the applicable dust standard on the shift sampled. Even though two individual measurements (2.41 and 2.34 mg/m^3) exceeded the CTV, one of which is the DO, only one citation would be issued. The DO would be identified in the narrative of the citation as the affected working environment, because all occupations were exposed to the same dust-generating source. Since MSHA would assume responsibility for all compliance sampling under this proposed rule, these five occupations would be resampled by federal mine personnel during abatement sampling to verify that the condition causing the excessive dust levels has been corrected if the district manager concluded that a revised plan was not necessary.

Suppose that in the previous example the 2.34-mg/m^3 measurement was obtained for a roof bolter, and the MMU was being ventilated using a double-split ventilation system. This means that the roof bolter, working on a separate split of air from that of the continuous miner, is exposed to a different dust generating source than the DO. Therefore, the roof bolter may not be adequately protected by dust controls implemented for the DO. Consequently, two citations would be issued. Since MSHA samples would be used, all dust control parameters and mining activity would be documented on MSHA Form 2000–86. This information would be reviewed by MSHA along with the sample results to determine if the dust control parameters specified in the approved ventilation plan would need to be upgraded.

MSHA believes that, because of the large ''margin of error'' separating each CTV from the corresponding applicable dust standard, use of the CTV table would provide ample protection against erroneous citations, a concern raised by previous commenters. This matter was fully explored in the analysis published in Appendix C of the February 3, 1998 notice (63 FR 5703–5709). That analysis showed that for exceptionally well-controlled environments, the probability that any given citation is erroneous will be substantially less than 5 percent. The analysis also showed that this probability is even smaller in environments that are not well controlled. Therefore, any citation issued under this proposed rule in accordance with the CTV table would be much more likely the result of excessive dust concentration rather than measurement error. With regard to the risk of erroneous failures to cite, MSHA concluded that ''the probability of erroneously failing to cite a case of noncompliance at a given sampling location is less than 50 percent when the applicable dust standard is exceeded on a significant proportion of shifts at that location'' (63 FR 5709).

Furthermore, noncompliance determinations based on the results of single-shift samples would reduce the chances for failure to cite cases of noncompliance. According to the inspector sampling inspections of MMUs conducted between August and December 2001, only 14 MMUs were found to be in violation of the applicable dust standard. These MMUs were cited under the more recent enforcement policy of averaging measurements taken over multiple shifts, compared to 260 MMUs that would have been citable using single-shift measurements in combination with the CTV table. This clearly demonstrates that the proposed enforcement strategy would not compromise miners' health, instead it would have identified 246 additional instances of overexposure. Otherwise, these overexposures would continue to go undetected under the current policy of measurement averaging.

MSHA has also carefully considered suggestions from previous commenters that the Agency cite for noncompliance whenever any single-shift measurement exceeded the applicable dust standard as this would provide greater health protection to the miner. However, MSHA rejected these suggestions because an enforcement action might not be sustained at this level of confidence. The likelihood that a particular measurement exceeds the applicable dust standard, but not the CTV, due to measurement error, can actually exceed the likelihood that the measurement exceeds the standard due to excessive dust concentration. A thorough technical discussion of this issue is provided at 63 FR 5709–5712 (Appendix D of the **Federal Register** notice cited above).

MSHA has concluded that using single-shift measurements for noncompliance determinations in accordance with the CTV table neither increases nor decreases the applicable dust standard. Operators would continue to be required to maintain compliance with the applicable dust standard at all times. Also, the operator's dust control parameters must be verified as adequate to maintain dust concentrations at or below the applicable dust standard on all shifts, not merely at or below the CTV.

As explained in the notice regarding single-shift measurements of respirable coal mine dust published in today's **Federal Register**, the Mine Act requires MSHA to regulate exposures on each shift. Since MSHA does not track the number of shifts each miner works over a lifetime, MSHA must, protect miners by limiting their exposure on each shift. Furthermore, as explained in Parts VI and VII of today's notice, eliminating overexposures on individual shifts is beneficial to miners' health. For miners working where there is a pattern of recurrent overexposures on individual shifts, eliminating such overexposures is expected over a working lifetime, to significantly reduce the risk of CWP. Therefore, the Secretary has concluded that equivalent dust concentrations should be maintained below the applicable dust standard on each and every shift.

If an operator receives a citation for exceeding the applicable dust standard, proposed paragraphs (b)(1) through (4) would require the operator to take specific actions to immediately protect miners and to prevent them from being overexposed on subsequent shifts within the time period fixed in the citation. First, the operator would continue to make available approved respiratory equipment to affected miners in accordance with existing § 70.300 and encourage their use until the overexposure condition is corrected, unless the cited occupation is already under a PAPR protection program. The operator would then review the dust control parameters in effect to determine the cause of the excessive dust concentration and correct any deficiencies identified to reduce the equivalent concentration to within the applicable dust standard. If the corrective action the operator takes indicates that the dust control parameters originally approved for the MMU may no longer be adequate for the current conditions, the operator should revise the plan parameters.

Since MSHA would be assuming responsibility for all compliance sampling, proposed paragraph (a)(4) would require the operator to notify the district manager in writing or by electronic means, of what those corrective measures are within 24 hours after implementation. This would enable the district manager to determine whether MSHA should schedule sampling to assess the adequacy of the operator's corrective actions or whether to require the operator to initiate verification sampling. This determination would be based on (1) the review of the information the operator provides; (2) the latest MSHA inspection report documenting the measured quantities of the dust control

parameters that were in use and other conditions that were in effect at the time of sampling that resulted in MSHA issuing a citation for excessive dust; and (3) the operator's prior performance in complying with the plan parameters.

If the district manager concludes that the corrective measures taken are sufficient to achieve and maintain compliance, MSHA would conduct sampling to determine if the operator's actions were effective to gain compliance. For example, if the operator believes that the overexposure was caused by improperly following work practices, the proper course of action would be to review these work practices with the affected miners rather than require the operator to revise the plan. Since there would be no need to change the plan parameters, MSHA would initiate abatement sampling in this particular case. Like compliance sampling, federal mine personnel would sample five different occupations including the occupation originally cited for the entire shift or for 8 hours, whichever time is less. However, if this problem should recur, the district manager would inform the operator that the plan parameters are no longer adequate to provide the required level of health protection and require the operator to initiate verification sampling.

If, on the other hand, the district manager determines that dust control parameters may not maintain respirable dust levels at or below the applicable dust standard and requires the operator to upgrade the dust control portion of the mine ventilation plan, the operator would be required to initiate the plan verification process under proposed § 70.206.

Under proposed paragraph (c), an excessive dust citation would be terminated when the results of all valid respirable dust samples collected by MSHA were at or below the applicable dust standard. The subsequent action form would clearly and fully describe the action taken to abate the violation. If compliance was demonstrated, the operator may be required to revise the plan parameters depending on the type of corrective action taken to abate the violation. This would include, at a minimum, the actual dust control parameters that were in effect when MSHA sampled the MMU. If MSHA samples indicate continued noncompliance, then MSHA may proceed to revoke approval of the dust control provisions of the ventilation plan. The operator may be required to initiate the verification sampling if the district manager determines that the dust control parameters originally approved are no longer adequate to maintain respirable dust levels at or below the applicable dust standard under current operating conditions at the MMU.

If, instead of MSHA conducting sampling to determine whether the operator's actions were effective to gain compliance, the operator initiates verification sampling under proposed § 70.206, MSHA would terminate a citation for excessive dust after the revised plan parameters were verified by the operator to be adequate for the current mining conditions.

Reporting of Changes in Operation Status

Section 70.219 Status Change Reports

The proposed rule would retain the existing provision of § 70.220, which would be redesignated as § 70.119, with some revision. Not only would the operator continue reporting to the district manager changes in the operational status of a mine, MMU, or DA that affect the respirable dust sampling requirements of this part, but also when such status changes could potentially affect compliance sampling which will be conducted by MSHA. This would enable MSHA to carry out its sampling responsibilities more effectively and efficiently by avoiding unnecessary mine visits. Status changes would be reported either in writing or by electronic mail within three working days after the status change occurred.

Use of Personal Continuous Dust Monitors (PCDM) to Monitor Exposure

Section 70.220 Personal Continuous Dust Monitor (PCDM)

MSHA has long recognized that continuous monitoring of the work environment offers the potential to improve miner health protection. The current system of monitoring concentrations of respirable dust to which miners are exposed relies on periodic sampling and on corrective actions taken after the delay in obtaining the sampling results. Continuous monitoring, on the other hand, would allow mine operators and miners to be aware of the actual dust conditions on a real-time basis. This would provide mine personnel with current information on the performance and condition of the dust control parameters. Early indications of deteriorating conditions, when the dust levels approach the applicable dust standard, would enable mine personnel to take appropriate corrective measures, thus averting possible overexposure. The health benefits of continuous monitoring were also recognized by the Task Group and the Dust Advisory Committee both of which recommended accelerated development, field testing, and immediate deployment of such monitors once verified as reliable.

While such a monitor is not yet commercially available, significant progress has been made to advance the state of personal continuous monitoring technology, especially since MSHA published its proposed rule on plan verification on July 7, 2000. According to NIOSH, a one-piece personal dust monitor (called ''PDM–1'' for short) would be available for in-mine use by the end of 2003. This device is designed to provide continuously-measured exposure information in real-time during the shift, projected end-of-shift average concentration, and the time-weighted average dust concentration reading within 15 minutes after the end-of-shift.

Therefore, as recommended by the Dust Advisory Committee and urged by the mining community, MSHA is proposing a new standard under § 70.220 to encourage deployment of the PDM–1 or other approved PCDMs by permitting operators to use this technology in conjunction with engineering and administrative controls as part of a comprehensive dust control program to prevent overexposures on individual shifts.

Proposed paragraph (b) would permit the operator to use administrative controls without obtaining approval from the Administrator for Coal Mine Safety and Health under proposed § 70.209. The operator would be required to include in the proposed plan, the specific administrative controls to be used, how each would be employed and by whom, and the method for ensuring that such controls are complied with on each shift. In addition, the operator would be required to identify the miners or specific occupations to be monitored on each shift using PCDMs and to implement procedures to ensure that no miner will be exposed during any shift to dust concentrations in excess of the applicable dust standard.

Since the device is designed to display continuous real-time dust concentrations, the operator would be expected to develop written procedures for the proper use of this type of dust monitor. Key to the successful employment of this technology is the proper application of its capability to supply timely information on dust levels and miner exposure during the shift. The ability to be aware of the dust levels to which miners are exposed in real time would require the operator to develop specific guidelines regarding

the frequency with which the exposure measurements will be read and the types of action to be taken and by whom. The operator would need to specify how and by whom will the end-of-shift measurements be recorded and certified. The operator should also detail the role of the miner in this process. To ensure the continued reliability of the information supplied by the instrument, the operator must follow the calibration and maintenance procedures prescribed by the manufacturer. MSHA technical assistance would be available to assist any operator who elects to use this technology in developing an effective and reliable exposure monitoring program.

Proposed paragraph (c) would require the operator to demonstrate, as prescribed by proposed § 70.204, the adequacy of the proposed plan in controlling respirable dust by monitoring each miner's exposure under the operating conditions specified in proposed § 70.201(e). Since the objective is to verify the effectiveness of the operator's respirable dust control program, the PCDM would remain with a miner portal-to-portal and be operational for the entire shift or for 12 hours, whichever time is less to reflect maximum length of an extended shift.

Since the device is not designed to assess the quartz exposure of individual miners, the operator would be required to collect separate samples for quartz analysis. Samples would be collected in the same way as for individual miners assigned to the occupations identified in proposed § 70.206(a). Additionally, in accordance with proposed § 70.201(d), the operator would be required to use a control filter when collecting samples for quartz analysis. As discussed under proposed § 70.201(d), the weight gain of each exposed filter cassette will be adjusted by subtracting the weight gain or loss of the control filter cassette. These samples would be transmitted to MSHA in accordance with proposed § 70.216. Also, the end-of-shift exposure information for each miner along with production data must be posted on the mine bulletin board for 7 calendar days following completion of the shift.

As previously discussed under proposed § 70.207, approval of the operator's plan incorporating the use of PCDMs would depend on the results of verification sampling and the operating conditions in effect for each shift monitored. The district manager would approve the plan if (1) no valid equivalent concentration measurement exceeds the critical values listed in Table 70–1 that correspond to the number of shifts monitored, and (2) it incorporates the parameters that were in effect during verification sampling.

When approval is granted by the district manager, the operator would be required to monitor the exposure of each miner on a MMU on every shift under the prevailing conditions, unless the operator demonstrated during verification sampling that the exposure of each miner working on the same shift is represented by sampling only the DO and/or another occupation specified in § 70.206(a). If approved by the district manager, the operator would be permitted to conduct representative personal monitoring. Each PCDM would be operated portal-to-portal and remain operational the entire shift or for 12 hours, whichever time is less.

The end-of-shift exposure measurements would not be used by MSHA to cite an operator for exceeding the applicable dust standard. Instead, the operator would be required to take the actions required by proposed § 70.215(c), (d) and (e) whenever a valid end-of-shift measurement exceeds the applicable dust standard by at least 0.10 mg/m^3. Violations of either § 70.100(a) or § 70.101 would be cited when a valid sample taken by MSHA met or exceeded the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard in effect. When cited, the operator would be required to take the actions required by § 70.218(b). The district manager will consider the citation abated if the operator meets the requirements of proposed § 70.218(c).

Comments are solicited on the proposed monitoring approach and other alternative approaches using PCDMs to limit exposure of miners to respirable coal mine dust. Specifically, under what conditions should MSHA permit its use as part of the approved ventilation plan without requiring the adequacy of the operator's proposed exposure control program to be verified? If implementation of this technology is permitted as an alternative to plan verification, what specific provisions should be included in the ventilation plan to ensure that miners will not be overexposed on any particular shift? Should all miners be required to wear PCDMs or only specific occupations and, if so, which occupations? How frequently should PCDMs be used (*e.g.*, every shift, *etc.*)? Should the end-of-shift measurements be used by MSHA to enforce compliance with the applicable dust standard? Is it appropriate to use PCDMs only in the face areas or in outby areas as well? Is there an alternative to a continuous monitoring program that could provide equivalent protection? Should there be an alternative approach tailored to small mines? If so, what should it consist of (*e.g.*, monitor one shift each week)?

Since the PCDMs is capable of supplying timely information on dust levels, how should engineering and administrative decisions be based on readings of the PDM? For example, should a PCDMs reading trigger an immediate check of the dust control parameters or adjustments to operating conditions, such as the amount of air being delivered to the working faces? Who should be responsible for deciding on the proper course of action to be taken based on a PCDMs reading (*e.g.*, miner being monitored, section foreman, *etc.*)? Who should be empowered to make the determination to remove an individual so that their end-of-shift exposure is not above the applicable dust standard?

B. Part 75

Section 75.370 Mine Ventilation Plan; Submission and Approval

This proposed rule would amend § 75.370 by adding a new paragraph (h) that reflects the proposed change in § 70.2 and paragraph (d) of § 70.201 of this part. Under proposed paragraph (h), the operator would be required to record and maintain records of the total amount of material produced each production shift by each MMU during the previous six-month period, which would be made available for inspection by authorized representatives of the Secretary and the miners' representative. This is the same type of production information that the operator is currently reporting on the dust data card accompanying each bimonthly sample and which is subsequently posted by MSHA on the Internet. Paragraph (h) would not require an operator to record and maintain other information such as recovery and reject rate, inherent moisture of the product, sulfur content or other variables associated with each production level.

These production records are essential to demonstrate the adequacy of the dust control parameters in controlling respirable dust as required by § 75.370(a)(1) of this title. The records are needed to establish the verification production level (VPL), in accordance with revised § 70.2, under proposed § 75.371(f), and to confirm that the 30-shift period on which the VPL is based represents typical production conditions for the MMU. Additionally, MSHA and the miners' representative need these records to monitor changes in production levels as it directly impacts the continued effectiveness of the plan's dust control

provisions. Finally, because verification and subsequent quarterly monitoring of the adequacy of plan parameters is conditioned on the VPL, these records are necessary to determine if the VPL used in approving the operator's dust control parameters for a particular MMU continues to reflect typical production levels at the MMU.

The proposed rule would permit production records for each MMU to be maintained in any form utilized by the operator to measure the total amount of material produced, provided the method is the same as that used to establish the VPL under proposed § 75.371(f). For example: number of loaded shuttle cars, feet of advance, raw tonnage, or number of longwall passes would each be an acceptable method of recording production—provided the same method was consistently used.

Section 75.371 Mine Ventilation Plan; Contents

The proposed rule would revise paragraphs (f) and (t). Existing paragraph (f) would be revised to require the dust control provisions of the ventilation plan to include any specific work practices used to minimize the dust exposure of individual miners assigned to specific occupations, information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section. Also, the dust control provisions of every ventilation plan would be required to include the length of each normal production shift and the verification production level (VPL) as determined in accordance with revised § 70.2. This information would enable MSHA to more effectively assess the suitability of the operators's proposed plan parameters before determining whether or not to grant provisional approval. For example, the dust control parameters may be less protective if verified over an 8-hr shift when the length of the production shift is 9 hours. Also, since MSHA recognizes the critical role of miners in the implementation of the plan parameters at each MMU, this is intended to provide more information to miners concerning the specific conditions under which the adequacy of the plan parameters for each MMU was demonstrated. With this information, the miner will be able to bring problems to the attention of mine management or to request an inspection by MSHA under § 103(g) of the Act if operating conditions no longer reflect those in effect during verification sampling and there is concern about the dust conditions at a particular MMU.

Although a VPL and shift length for each MMU would be included in the ventilation plan, the operator would not be cited if the total amount of material produced or the length of the actual production shift is not as specified in the plan. MSHA considers these to be plan design criteria, not minimum plan parameters that must be in effect on every shift. MSHA would expect production on a MMU to exceed the VPL on about 33 percent of all production shifts. If the district manager determines that an operator's actual production exceeds the VPL on more than 33 percent of the production shifts over a six-month period, or the shift length no longer reflects the conditions under which the approved plan parameters were originally verified, and operator or MSHA samples exceed the applicable dust standard, the district manager may require that the adequacy of the plan parameters be verified under different operating conditions of production or shift length.

Since MSHA is proposing to revoke existing §§ 70.207 and 70.208, which require bimonthly sampling by mine operators, existing paragraph (t) would be revised to remove the provision that mine operators identify in the ventilation plan the locations where samples for designated areas (DA) would be collected, including the specific location of each sampling requirement, and the reference to § 70.208. However, to ensure that the mine atmosphere where miners normally work or travel is continuously maintained in compliance, proposed paragraph (t) would continue to require mine operators to identify in the mine ventilation plan the location of each DA, defined in revised § 70.2, and the particular dust control measures that would be used at the dust generating sources for these locations. These locations would continue to be sampled by MSHA personnel as discussed earlier (see Background Section) to monitor operator compliance with the applicable dust standard and to assess the adequacy of the operator's dust control measures at these locations.

C. Part 90

To maintain consistency with the proposed revisions to part 70, subpart A of this proposed rule also contains new definitions of identical terms. Included are definitions of new terms such as ''approved sampling device,'' ''citation threshold value,'' ''equivalent concentration,'' ''MRE,'' and ''quartz.''

Subpart B of the proposed rule would be revised by changing the procedures for determining the average quartz percentage used to calculate the applicable dust standard. These are identical to the procedures proposed under § 70.101. The proposed rule also clarifies the application of specific transfer and pay-protection provisions under special circumstances that reflect long-standing MSHA policy in effect since the rule became effective on December 5, 1980.

The proposed rule substantially revises the existing operator sampling requirements under Subpart C of part 90. Consistent with the proposed amendment to part 70, the proposed rule would revoke existing provisions concerning operator bimonthly and abatement sampling of part 90 miners. Consequently, §§ 90.201(d) and 90.208 would be removed. While MSHA would be assuming responsibility for all enforcement-based monitoring of part 90 miners in underground coal mines, operators would continue to play a vital role in assessing the quality of the mine atmosphere in positions to which new or transferred miners are assigned to work.

As under existing § 90.207, which has been revised and redesignated as § 90.204, the operator employing part 90 miners would be required to collect five valid samples within a prescribed time period for purposes of verifying the suitability of a new or transferred part 90 miner's assigned work position. To ensure that the part 90 miner is not personally overexposed, the duration of sampling would no longer be limited to 480 minutes, but would be carried out over the miner's entire work shift, regardless of the number of hours worked.

Another significant change is how the results of operator-submitted samples would be analyzed by MSHA and the type of action required based on those results. MSHA would abandon its long-standing practice of relying on averaged results to make compliance decisions. Because averaging can obscure specific instances of overexposures by diluting sample results taken over multiple shifts, each valid sample would be compared with the applicable dust standard. Therefore, to be confident that a part 90 miner is placed in an atmosphere which actually meets the applicable dust standard, all five valid samples must be at or below the standard. If the result of any sample exceeds the standard by at least 0.1 mg/m^3, the operator would be required to take corrective action and take an additional five valid samples for the affected part 90 miner.

Since the primary purpose for taking these samples is to assess the suitability of the part 90 miner's working environment, these samples would not

be used by MSHA to cite the operator for noncompliance with the applicable dust standard. As discussed below, only MSHA-collected samples would be used for that purpose. However, an operator would be cited for failure to take appropriate corrective action to place the affected part 90 miner in an atmosphere that meets the applicable dust standard within the specified time period.

Since MSHA would assume responsibility for compliance and abatement sampling, the proposed rule sets forth new procedures for determining noncompliance with the applicable dust standard; the specific actions that an operator would be required to take within the time for abatement fixed in a citation; and the conditions under which MSHA would terminate a citation for a violation of the standard. Under the proposed rule, citations for violations of §§ 90.100 or 90.101 would be issued only when a valid single-shift sample demonstrates noncompliance with at least 95-percent confidence. MSHA would consider a violation for excessive dust to be abated and terminate the citation when the result of a valid single-shift sample is at or below the applicable dust standard.

Although existing subpart D has been revised to reflect MSHA sampling of part 90 miners, the specific requirements are essentially the same. It now states that when approving an operator's dust control plan, the district manager would consider the results of MSHA sampling for compliance or abatement purposes. It also indicates that MSHA would, through compliance and abatement sampling, monitor the continued effectiveness of the operator's dust control measures. Finally, throughout Part 90, ''shall'' has been replaced by ''must.''

For ease of review, MSHA is republishing the entire regulatory text of subparts A, B, C and D of Part 90 as it will appear in the Code of Federal Regulations.

Sections 90.1 through 90.3

Scope, Definitions, and Part 90 Option

Section 90.1 Scope

This section would remain unchanged.

Section 90.2 Definitions

The proposed rule includes definitions virtually identical to corresponding definitions in proposed Part 70 for terms such as ''approved sampling device,'' ''citation threshold value,'' ''equivalent concentration,'' and ''MRE.'' Accordingly, as in Part 70, some existing definitions of terms such as ''certified person,'' ''concentration,'' ''mechanized mining unit,'' and ''respirable dust'' have been modified either to more clearly convey the intended meaning under the proposed rule, to reflect the conventional definition or to be consistent with the definition of identical terms in proposed Part 70 of this title. Most of the other definitions remain unchanged under the proposed rule. No discussion is included below if a definition would not change under the proposed rule.

Approved Sampling Device

''Approved sampling device'' would mean a sampling device approved by the Secretary and the Secretary of Health and Human Services under part 74 (Coal Mine Dust Personal Sampler Units) of this title; or approved by the Secretary when it has been demonstrated that a respirable dust concentration measurement can be converted to a concentration measurement equivalent to that obtained with an approved sampling device. Under the proposed rule, respirable dust sampling for Part 90 miners would continue to be collected using sampling devices approved by NIOSH pursuant to existing 30 CFR part 74. Also, to accommodate the adoption of advanced sampling technology in the future such as continuous respirable dust monitors, the proposed rule would permit the Secretary to approve and use any technologically advanced sampling devices that should become available in the future but could not be approved under the regulatory requirements of 30 CFR part 74.

Therefore, under the proposed rule, any newly developed sampling instrument would be considered an approved device pursuant to this definition when the Secretary demonstrates that the respirable dust concentration measured by the new instrument can be converted to a concentration measurement equivalent to that obtained by a device approved under 30 CFR part 74 of this title.

Certified Person

The existing definition would be modified by removing references to existing §§ 90.202 and 90.203. The provision requiring the use of a certified person to conduct sampling as required by this part is being transferred to revised § 90.201. Existing § 90.203 which requires approved sampling devices to be maintained and calibrated by a certified person would be retained and redesignated as § 90.202.

Citation Threshold Value (CTV)

''Citation threshold value'' would mean the lowest acceptable equivalent dust concentration measurement demonstrating that the applicable dust standard has been exceeded at a high level of confidence and at which MSHA would cite an operator for a violation of §§ 90.100 or 90.101 under proposed § 90.207. Since MSHA would be assuming responsibility for compliance sampling under the proposed rule or sampling currently being carried out by operators under existing § 90.208(a), a determination of noncompliance would be based solely on the results of single shift samples collected by MSHA in accordance with proposed § 72.500 of this title. Appendix C explains how each critical value listed in proposed Table 70.2 was derived. Each CTV is calculated to ensure that citations will be issued only when a single-shift measurement demonstrates noncompliance with at least 95 percent confidence.

Concentration

The existing definition would be modified by replacing the term ''substance'' with ''respirable dust'' to more clearly convey the meaning under the proposed rule.

Equivalent Concentration

''Equivalent concentration'' would mean the concentration of respirable dust, as measured by an approved sampling device, converted to an 8-hour equivalent concentration as measured by a Mining Research Establishment (MRE) sampler. This conversion is accomplished in two steps. First, the concentration measurement is multiplied by a constant factor prescribed by the Secretary specifically for the approved sampling device. The result is then multiplied by $t/480$, where t is the sampling time in minutes if longer than eight hours, to make it equivalent in dosage to the concentration as measured by an MRE sampler on an 8-hour work shift. Since sampling will be conducted over the course of the Part 90 miner's entire work shift, which includes travel to and from the assigned work position, t will also be equal to the length of the entire work shift of the miner being sampled. If the length of the Part 90 miner's work shift is eight hours or less, then t must equal 480 minutes.

The current U.S. coal mine applicable dust standard is based on epidemiologic studies of British coal miners. In these studies, miners routinely worked 8-hour shifts, and their respirable dust exposures were assessed based on 8-

hour measurements using a sampling device known as the MRE instrument. Work shifts in U.S. coal mines now frequently exceed eight hours. According to a recent survey of MSHA District Offices conducted in August of 2002, approximately 48 percent of underground mines work 9-hour shifts or longer. Therefore, to provide the intended level of protection to miners working longer than eight hours, it is necessary to convert coal mine dust concentration measurements to equivalent 8-hour values as measured by the MRE instrument.

The first step in the conversion from ''concentration'' to ''equivalent concentration'' is intended to make the measurement equivalent to the concentration measured by an MRE instrument. This instrument was designed to selectively collect airborne dust in a way that would approximate the deposition of inhaled particles in the lung. Because the MRE instrument was large and cumbersome, other, more portable samplers were developed for use in U.S. coal mines. Currently approved sampling devices use a 10-mm nylon cyclone to separate the respirable fraction of airborne dust, instead of the four horizontal plates used in the MRE sampler. Such differences in sampler design lead to systematic differences in the amount of dust collected. Since 1980, measurements made using the currently approved cyclone-based devices operating at a flow rate of 2.0 liters per minute (lpm) were multiplied by the constant factor of 1.38 prescribed by the Secretary for the approved sampling device used. Application of this factor compensates for the difference in dust collection characteristics and makes the measurements equivalent to what would be obtained using an MRE instrument.

Similarly, the second step in the conversion from ''concentration'' to ''equivalent concentration'' is intended to compensate for differences between current conditions and conditions under which the existing applicable dust standard was developed. Specifically, it is designed to ensure that miners working shifts longer than eight hours will be afforded the same level of protection as miners working an 8-hour shift. MSHA developed the existing standard from 8-hour shift exposure measurements. Therefore, MSHA will adjust the measured concentration to be equivalent, in its effect on cumulative exposure, to a concentration over an eight-hour exposure period. This is accomplished by multiplying the concentration measurement by *t/480,* where *t* is the sampling time (*i.e.,* length of the work shift) in minutes.

The formula for an equivalent concentration is:

$$\text{equivalent concentration (mg/m}^3) = 1.38 \times \left(\frac{\text{accumulated dust (mg)}}{t \times \text{airflow rate}} \right) \times \frac{t}{480\,\text{min}}$$

where t = sampling time in minutes (which will be the Part 90 miner's entire work shift) and airflow rate = 0.002 m^3/min). The product of t and the airflow rate is the total volume of air from which dust is accumulated on the filter.

The following example is meant to illustrate the effect of the second step in the conversion, multiplication by *t/480,* which adjusts for the full length of the work shift. In this example, it is assumed that the first step in the conversion, multiplication by 1.38 for equivalency with an MRE sampler, has already been performed.

Suppose a Part 90 miner sample is collected over a 9-hour work shift. Suppose that the amount of dust accumulated during the shift is 0.77 mg. If the concentration were not adjusted to an 8-hour equivalent concentration, the MRE-equivalent concentration would be calculated as 0.98 mg/m^3. Under the definition of ''equivalent concentration,'' this quantity is then multiplied by 540/480, yielding an equivalent concentration measurement of 1.10 mg/m^3.

This adjustment does not change the daily limit on the accumulated dose of respirable coal mine dust as intended by the existing exposure limit for coal mine dust. Since the current limit was based on an assumption that exposure occurs over an 8-hour shift, it corresponds to a daily cumulative dose of respirable coal mine dust of $8 \times 1.0 = 8$ mg-hr/m^3 as measured by the MRE instrument. The proposed definition of equivalent concentration will maintain this same MRE-equivalent 8 mg-hr/m^3 daily limit, regardless of the length of the working shift being sampled.

To continue the example, the exposure accumulated during the Part 90 miner's entire work shift is the same, whether over eight hours at an average of 1.10 mg/m^3 or over nine hours at an average of 0.98 mg/m^3. In either case, the MRE-equivalent exposure accumulated during the entire work shift is 8.8 mg-hr/m^3, which exceeds the intended limit of 8 mg-hr/m^3. Under the proposed definition of ''equivalent concentration'' provided here, this will be reflected by the fact that, when more than 8 mg-hr/m^3 (MRE-equivalent exposure) is accumulated over the course of the particular shift sampled, the equivalent concentration will exceed 1.0 mg/m^3, regardless of the shift's length.

MSHA originally proposed a different, but mathematically equivalent, method of adjusting concentrations to an 8-hour equivalent and solicited comments on the proposed method. The proposed method would have defined ''concentration'' to mean what is here defined as ''equivalent concentration.'' Instead of making an explicit adjustment to the concentration, using the factor of *t/480* as in the present definition, the earlier proposed rule would have substituted 480 for the actual sampling time in the definition of respirable dust concentration. The proposed definition of ''equivalent concentration'' is meant to both preserve the ordinary definition of ''concentration'' and to clarify the adjustment to an 8-hour equivalent.

MSHA believes that the proposed adjustment to an ''8-hour equivalent concentration'' is necessary to protect Part 90 miners from excessive exposures who normally work nontraditional or extended shifts. For example, a Part 90 miner working for ten hours at an average concentration of 1.0 mg/m^3 will inhale and retain more respirable coal mine dust as a result of that specific shift than a miner working for eight hours at the same average concentration. By comparing the adjusted concentration to the concentration limit originally intended for Part 90 miners working an 8-hour shift, the same cumulative exposure limit is applied on individual shifts for all Part 90 miners.

It should be noted that the ACGIH approach of reducing the permissible concentration to compensate for the extension of a shift beyond eight hours is similar in its effect to the approach taken here of adjusting the equivalent concentration upwards and comparing it to a fixed limit. MSHA makes similar adjustments for extended work shifts in the enforcement of exposure limits in metal and nonmetal mines under 30 CFR 56.5001 and 57.5001. Taking into account the reduced recovery time that results from an extended work shift

would have led to a numerically greater and more protective adjustment, but this would also have introduced additional complexities in the calculation of equivalent concentration measurements. The Secretary believes that the method chosen strikes a reasonable balance between no adjustment at all, and a far more complex adjustment that would attempt to model clearance, deposition, and retention mechanisms.

Mechanized Mining Unit (MMU)

The existing definition would be modified by removing the reference to § 70.207(e) (Bimonthly sampling; mechanized mining units), which will be deleted, and replaced with proposed § 70.206(d); and transfers the requirements for identifying each MMU specified in existing §§ 70.207(f)(1) and (f)(2), to revised § 70.2.

MRE

''MRE'' would mean Mining Research Establishment of the National Coal Board, London, England. This is a new definition which has been included to be consistent with revised § 70.2.

Quartz

The existing definition would be modified by specifying the analytical method that MSHA has been using since 1983 to determine the quartz content of respirable dust samples. The reason for this modification is to standardize the analytical procedure, thereby enabling other certified laboratories to reproduce quartz determinations made by MSHA. Also, to accommodate the adoption of improved or other quartz analytical techniques in the future, the definition of ''quartz'' has been expanded in the proposed rule to provide MSHA the flexibility to use alternative analytical techniques once these techniques have been demonstrated to provide quartz measurements that are equivalent to those obtained under current analytical method.

Respirable Dust

The existing definition has been modified by transferring the requirement regarding what constitutes an approved sampling device to the proposed new definition of the term ''approved sampling device'' above.

Transfer

The existing definition has been modified by clarifying when a change in work assignment would not constitute a transfer under proposed Part 90. MSHA recognizes that there may be circumstances which are beyond the control of the operator, such as equipment malfunction, that may interrupt work being performed by a Part 90 miner in his or her regular work assignment, necessitating the assignment of the Part 90 miner to another job temporarily. For example, if the Part 90 miner is regularly assigned as a shuttle car operator in a MMU and the continuous mining machine breaks down, that Part 90 miner could be temporarily assigned to work in a different position and location in the mine. Consistent with MSHA's longstanding policy, such a change in duties would not constitute a transfer under Part 90 if the assignment does not last more than one shift. If such an assignment lasts longer than one shift, the operator would be required to notify the district manager in writing. This notice would list the temporary duties and the reasons for the assignment. Also, to demonstrate compliance with the applicable dust standard, the operator would be required to collect five valid samples from the newly assigned work position under proposed § 90.204(a)(2). The 1.0-mg/m^3 standard remains in effect even if the operator is unable to collect the required number of samples because of the short duration of the temporary assignment.

Section 90.3 Part 90 Option; Notice of Eligibility; Exercise of Option

This section remains the same, with the exception of paragraphs (d) and (e) which have been revised to reflect the new address for mailing of the Exercise of Option Form or written request to re-exercise the option to work in a low-dust area of the mine.

Sections 90.100 Through 90.104

Dust Standards, Rights of Part 90 Miners

Section 90.100 Respirable Dust Standard When Quartz Is Not Present

MSHA is proposing no substantive changes in existing § 90.100, except for revising the section heading to correspond with the heading of proposed § 70.100, which is identical, and removing the reference to § 90.206 (Approved sampling devices; equivalent concentrations) and replacing it with § 90.2. The requirements contained in revised § 90.2 are similar to the standard in existing § 90.206. The proposed rule retains the applicable dust standard of 1.0 mg/m^3.

Section 90.101 Respirable Dust Standard When Quartz Is Present

The proposed rule would revise the section heading to correspond with the heading of proposed § 70.101, which is identical. MSHA would retain the existing formula (10 divided by the concentration of quartz, expressed as a percentage) for reducing the applicable dust standard below 1.0 mg/m^3 in proportion to the percentage of quartz when the quartz content of respirable dust in the mine atmosphere exceeds 10 percent, instead of 5 percent as contained in existing § 90.101. Since the maximum standard for a Part 90 miner is 1.0 mg/m^3, the quartz content must exceed 10 percent to cause a reduction in the applicable dust standard.

The Agency would change the procedures for determining the average quartz percentage used to calculate the applicable dust standard. Only the results of MSHA samples would be used to establish the applicable dust standard. The quartz results of the three most recent valid MSHA samples would be averaged and the resultant percentage used to set the new applicable dust standard. However, if the Part 90 miner is already assigned to an area of the mine under a reduced standard below 1.0 mg/m^3 when these revised procedures become effective, a new applicable dust standard would be established by averaging the results of the first two MSHA samples taken after the effective date with the quartz percentage associated with the applicable dust standard in effect. If fewer than two MSHA samples are taken, the existing standard would continue to remain in effect.

Application of the revised procedures will result in the setting of reduced standards in a timely manner that (1) more accurately represent the quartz percentage of respirable dust in the environment of the Part 90 miner at the time of sampling; (2) reflect the dynamics of the mining process and the changing geologic conditions of the mine strata; and (3) continue to protect Part 90 miners over multiple shifts.

Under the proposed rule, MSHA would also report the quartz percentage to the nearest tenth of a percent, instead of truncating the results to the nearest full percentage as has been the longstanding practice. While this change will have no impact on the setting of applicable dust standards below 1.0 mg/m^3, it will be more protective for other miners because it permits the setting of reduced standards at such levels as 1.1 mg/m^3, 1.4 mg/m^3, 1.6 mg/m^3, 1.8 mg/m^3, and 1.9 mg/m^3. Setting these particular standards currently is not mathematically possible using the above formula due to the practice of truncating the average quartz percentage. Another change involves removing the reference to § 90.206 (Approved sampling devices; equivalent concentrations) and replacing it with § 90.2. The requirements contained in revised § 90.2 are similar to the standard

in existing § 90.206. Also revised under the proposed rule is the example illustrating how a reduced standard is established when respirable dust associated with a Part 90 miner contains more than 10 percent quartz under the proposed revised dust-standard setting procedures.

Section 90.102 Transfer; Notice

MSHA is proposing no substantive changes in existing § 90.102, except to clarify in the regulatory text the application of the transfer provision in paragraph (a) when a Part 90 miner is assigned to a different shift. To conform with MSHA's long-standing policy, the proposed rule permits assigning a Part 90 miner to a different shift under certain circumstances without violating paragraph (a) of § 90.102(a). Unlike the pay protection afforded Part 90 miners by § 90.103(b) which would be applied ''*[w]henever* a Part 90 miner is transferred * * *'' (emphasis added), the job and shift protections provided by existing § 90.102(a) apply ''whenever a Part 90 miner is transferred in order to meet the respirable applicable dust standard * * *'' (emphasis added). The intent to limit the scope of job and shift protections under paragraph (a) of this section and the purpose of doing so were explained as follows in the preamble to the existing Part 90 rules:

> The operator may transfer a Part 90 miner without regard to these job and shift limitations if the respirable dust concentrations in the position of the Part 90 miner complies with the applicable dust standard, but circumstances require changes in job assignments at the mine. Reductions in workforce or changes in operational methods at the mine may be the most likely situations which would affect job assignments. Any such transferred Part 90 miner would still be protected by all other provisions under this part. (45 FR 80761)
>
> In instances where operators need to reassign employees to accommodate unforseen situations and unexpected mine and market conditions, MSHA believes that some leeway should be provided to assist operators in placement of a Part 90 miner. (45 FR 80766)

These explanations show that MSHA did not intend the provisions of existing paragraph (a) to apply when a Part 90 miner is working in a position that meets the applicable dust standard and, for legitimate business reasons, the operator assigns the miner to a new job or shift.[11] On the other hand, when the reasons for changing a Part 90 miner's shift or job involve maintaining compliance with the applicable dust standard, then the provisions of paragraph (a) apply and the miner is entitled to job and shift protections, unless these protections are waived in accordance with this standard. MSHA will continue to carefully scrutinize any changes in job or shift assignments for a Part 90 miner to determine whether paragraph (a) of § 90.102 applies because the change constitutes a transfer to meet the applicable dust standard and, if not, to determine if the change in the Part 90 miner's job or shift assignment was due in any part to action which could be characterized as improper under the Mine Act.

Section 90.103 Compensation

The proposed rule would redesignate existing paragraphs (c) through (f) as (d) through (g) and add new paragraph (c). Proposed new paragraph (c) clarifies MSHA's longstanding policy of not applying the Part 90 miner compensation provisions of existing paragraphs (a) and (b) of this section in situations where, after initial compliance with the applicable dust standard by the operator, the Part 90 miner on his or her own initiative applies for and accepts another job in a work area with an average respirable dust concentration at or below 1.0 mg/m3.[12] Under these circumstances, the miner has not waived Part 90 status.[13] Therefore, the issue being addressed by proposed paragraph (c) is how the Part 90 wage provisions of existing paragraphs (a) and (b), which would be retained under the proposed rule, should be interpreted when a Part 90 miner initiates and accepts a job change. For the following reasons, MSHA believes that the compensations provisions of Part 90 may be read to provide no compensation protection for a Part 90 miner under these circumstances.

Existing § 90.103, which would be retained in its entirety under the proposed rule, protects a miner from any immediate reduction in hourly wage as a result of exercising the option. Where no transfer of the miner occurs after the option is exercised, paragraph (a) prescribes:

> The operator must compensate each Part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3.

Existing § 90.103(b) addresses compensation protection for a Part 90 miner when there is a transfer of the miner. It prescribes:

> Whenever a Part 90 miner is transferred, the operator must compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

As defined by proposed § 90.2, a transfer, ''by the operator'' would include, but is not limited to, an operator-initiated job reassignment in order to meet the applicable dust standard or a reassignment due to a realignment or reduction in the workforce. However, a miner-initiated job change does not necessarily constitute a transfer for purposes of compensation under § 90.103(b). Accordingly, the compensation provision of § 90.103(b) may be interpreted as not applicable to a job change initiated by a Part 90 miner.

The above interpretations of §§ 90.103(a) and (b) are also consistent with statutory language. Section 101(a)(7) of the Mine Act addresses several specific matters relative to mandatory health and safety standards promulgated by MSHA and in relevant part provides:

> * * * Where appropriate, the mandatory standard shall provide that where a determination is made that a miner may suffer material impairment of health or functional capacity by reason of exposure to the hazard covered by such mandatory standard, that miner shall be removed from such exposure and reassigned. Any miner transferred *as a result of such exposure* shall continue to receive compensation for such work at no less than the regular rate of pay for miners in the classification such miner held immediately prior to his transfer. * * * (emphasis supplied)

Thus, section 101(a)(7) supports an interpretation that the compensation provisions of §§ 90.103(a) and (b) do not apply where a Part 90 miner initiates a job change for reasons of job preference and that § 90.103(b) is limited to job changes which are ''a result of'' exposure to respirable coal mine dust.

Accordingly when there is a Part 90 miner-initiated job change, the compensation provisions of §§ 90.103(a) and (b) would not be applicable in the Part 90 miner's new job and the miner would be paid whatever the new job usually pays. Thus, for example: A miner exercised the Part 90 option when his or her job paid $10 per hour. If the

[11] As noted above, however, the other protections provided by Part 90 would apply. For example, on the new shift or in the new job there could be no reduction in the miner's pay and compliance would have to be maintained with the applicable dust standard and the sampling requirements.

[12] At mines where a job bidding procedure is in effect, use of the bidding procedure is not dispositive of whether a job change is initiated by the miner. The job bidding procedure is applicable to all job changes, including operator-initiated changes. Thus, factors relating to the intent and actions of the miner and the operator must be evaluated.

[13] Existing §§ 90.104(a)(2) and (3) provide for waiver of Part 90 miner status when the miner applies for and accepts or retains a position known by the miner to exceed the applicable dust standard.

operator keeps the Part 90 miner in the same work position because compliance with the applicable dust standard is maintained, or if the operator transfers the miner to a new work position to achieve compliance, then the Part 90 miner cannot be paid less than the $10 per hour received immediately before exercising the option. If, then, the miner was to initiate and accept a change in work assignment to a job which paid $8.50 per hour, no pay protection would accompany the part 90 miner to the new position and the miner would receive $8.50 per hour.

The remainder of Part 90 provisions, however, would continue to apply to the Part 90 miner in the new work position. As noted earlier, a miner-initiated job change to a position which is at or below the applicable dust standard for a Part 90 miner does not constitute a waiver of Part 90 rights. Thus, in the new job the miner retains Part 90 status and all other requirements of Part 90 continue in effect, including the operator's obligations to continuously maintain the applicable dust standard and to give MSHA notice whenever the miner's work assignment changes last longer than one shift.

For purposes of consistency, redesignated paragraphs (e) and (g) have been revised to read as follows: ''* * * under paragraphs (a), (b) and (d) * * *'' and ''* * * in paragraphs (a), (b), (d), and (e) * * *,'' respectively.

Section 90.104 Waiver of Rights; Re-exercise of Option

The proposed rule would retain the existing provisions of § 90.104, with some minor revisions for purposes of simplification. In paragraph (a)(2), ''exceeds the applicable dust standard'' would replace the statement beginning with ''* * * has an average respirable dust concentration * * *'' Paragraph (a)(3) would be revised by replacing the statement beginning with ''* * * average respirable dust concentration * * *'' with ''existing work position exceeds the applicable dust standard.'' Lastly, the section heading for § 90.3(e) has been removed from existing paragraphs (b) and (c).

Sections 90.201 through 90.207

Sampling Procedures

Section 90.201 Sampling; General Requirements

MSHA is proposing to modify the general requirements for operator sampling of new or transferred Part 90 miners under existing § 90.201. Since MSHA would be responsible for collecting samples to determine if an operator has abated a noncompliant condition, the proposed rule would remove existing paragraph (d). The proposed rule would also revise and redesignate existing paragraphs (b) as (c), (c) as (f), and (e) as (d), revise paragraph (a), and add new paragraph (b).

Revised paragraph (a) specifies the purpose of operator sampling under this proposed rule. While MSHA would be assuming responsibility for most of the sampling currently being carried out by the operator, revised paragraph (a) would continue to require operators to conduct sampling to verify that the working environment of a new or transferred Part 90 miner complies with §§ 90.100 or 90.101 as required by existing § 90.207, which has been redesignated as § 90.204. Also, to minimize repetition and maintain consistency with virtually identical provisions in proposed amendments to Part 70, paragraph (a) would be modified by removing the reference to Part 74 approval (Coal Mine Dust Personal Sampler Units), and replacing it with ''approved sampling device,'' as defined under revised § 90.2.

Proposed new paragraph (b) would retain the requirements in existing §§ 90.202(a) and (b) that sampling required under this part be conducted by an individual certified by MSHA and the manner by which a person would be certified. Therefore, existing § 90.202(a), (b), and (c) would be removed.

Since the objective of operator sampling proposed under this part is to verify that the assigned position of a new or transferred Part 90 miner complies with the applicable dust standard, the sampling device would continue to be worn by each Part 90 miner as required by existing § 90.201(b). However, under redesignated paragraph (c), the requirement that sampling devices ''remain operational during the entire shift or for 8 hours, whichever time is less'' would be removed. Instead, the sampling device would be operated portal-to-portal and be operational during the Part 90 miner's entire work shift, regardless of the number of hours worked, to ensure that the sampled Part 90 miner is not personally overexposed. That is, the sampling device would be turned ''ON'' when the Part 90 miner enters the mine and remain operational while traveling to the assigned work position, while performing normal work duties, and while traveling back to the mine entrance, at which time the device would be turned ''OFF.'' It should be pointed out that the duration of MSHA sample collection will continue to be limited to 480 minutes as has been the longstanding practice. Simply stated, the sampling device would be operated portal-to-portal and remain operational during the entire shift or for 8 hours, whichever time is less. The Agency solicits comments on the duration of MSHA sampling under the proposed rule.

Unless otherwise directed by the district manager, the respirable dust samples will continue to be collected by placing the sampling device on the Part 90 miner; on the piece of equipment which the Part 90 miner operates within 36 inches of the normal working position; or at a location that represents the maximum concentration of dust to which the Part 90 miner is exposed.

Under redesignated paragraph (f), not only would the operator be required to submit the date but also the time when sampling required by this part would begin when requested by the district manager. This is necessary since operators may choose to sample any shift on the date provided to MSHA. Knowing the time of the scheduled sampling will enable MSHA to monitor operator sampling on a case-by-case basis to verify compliance with both the operating conditions and sampling requirements of this part.

Finally, the requirement that operators take corrective action during the time for abatement fixed in a citation for violation of §§ 90.100 or 90.101 specified in existing paragraph (d) of § 90.201 would be transferred to proposed § 90.207(b)(2). The requirement that the operator sample the affected Part 90 miner until five valid samples are taken under existing paragraph (d) would be removed since MSHA is proposing to revoke operator sampling requirements under existing § 90.208.

Section 90.202 Approved Sampling Devices; Maintenance and Calibration

In an effort to consolidate the requirements that address maintenance and calibration procedures of approved sampling devices, MSHA is proposing in § 90.202(a) through (e) to retain the requirements in existing § 90.203(a) and (b) and § 90.204(a) through (e), with minor changes. These standards require the sampling device be maintained as approved and calibrated only by a certified person in accordance with MSHA Informational Report IR 1240 (1996). The process of certifying an individual for maintenance and calibration would remain unchanged. It would continue to require an individual to successfully complete the applicable MSHA examination. Scheduling information for MSHA training courses and examinations would be available from MSHA District Offices.

These standards require approved sampling devices to be calibrated at a flowrate of 2.0 liters of air per minute. They also establish the flowrate and testing and examination requirements for approved sampling devices. Careful examination and testing of sampling devices would continue to be required immediately prior to the start of a shift during which samples would be collected for purposes of this proposed rule. This would include testing the battery voltage and examining all external components of the sampling devices to be used. Any necessary external maintenance to assure the sampling devices are clean and in proper working condition should be performed at this time by a certified person. Temporary certification of persons provided under existing § 90.203(c) would not be retained under the proposal.

Section 90.203 Approved Sampling Devices; Operation; Air Flowrate

Proposed §§ 90.203(a) through (c) retains the operation and flowrate requirements for approved sampling devices in existing §§ 90.205(a) through (d), with minor changes. Since MSHA has defined an approved sampling device in revised § 90.2 to mean a device approved in accordance with part 74 of this title, proposed paragraph (a) excludes reference to part 74. Similarly, for purposes of simplification, reference to § 90.202 (Certified person; sampling) would be removed and, wherever used, it would be replaced by certified person as defined in revised § 90.2.

MSHA believes that the two on-shift examinations of sampling devices under proposed paragraphs (b)(1) and (b)(2), which are identical to the examinations required under existing § 90.205(b) and (c), continue to be an important part of a reasonable and prudent sampling program. The first examination would be made by a certified person during the second hour after the sampling devices are placed in operation. This examination would assure that each sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments in the flowrate would be made at this time by the person certified to collect samples. The second examination would be made during the last hour of operation of the sampling devices. If the proper flowrate is not maintained, the certified person is required to make a notation on the dust data card for that sample stating that the proper flowrate was not maintained. Because it is unclear where on the dust data card such a notation should be made, proposed paragraph (c) would require all notations regarding failure to maintain proper flowrate or other events occurring during sampling that may impact the validity of the sample to be made on the back of the dust data card.

Section 90.204 Respirable Dust Sampling

This section, previously titled ''Compliance sampling'' under existing § 90.207, would be modified under the proposed rule and redesignated as § 90.204. Since the operator sampling requirement under existing § 90.208(a) would be revoked, the proposed rule would remove existing paragraph (b) and redesignate paragraph (a)(3) as (a)(2). The proposed rule would also add new paragraphs (b) and (c).

Consistent with the proposed operator sampling requirements contained in revised Part 70, MSHA would also be assuming responsibility for all sampling for compliance and abatement purposes. This sampling is currently being carried out by the operator under existing §§ 90.201(d) and 90.208(a). However, the proposed rule would continue to retain the existing provisions of § 90.207, with major changes under redesignated § 90.204. The objective of this provision is to maintain operator responsibility for verifying the suitability of the atmosphere in the position to which a new or transferred Part 90 miner would be assigned to work. This would assure that any new or existing Part 90 miner would be placed in an atmosphere which meets the applicable dust standard.

Therefore, to determine if a new Part 90 miner is working in an area of the mine where the dust concentration during each shift does not exceed 1.0 mg/m^3, the operator would be required to collect five valid samples within 15 calendar days after being notified by MSHA that a Part 90 miner is employed at the mine in accordance with proposed § 90.201. The operator would also be required to collect five valid samples under proposed paragraph (a)(2) to verify the suitability of a work position to which a Part 90 miner was transferred under § 90.102. Valid samples are defined in the proposed rule as respirable dust samples collected and submitted as required by this part, and not voided by MSHA. Voided or invalid samples would not satisfy the sampling requirements and operators would be required to collect and submit additional samples. In addition, all samples required by this part would be required to be taken while the Part 90 miner is performing normal work duties. Failure to take the required number of valid samples under proposed § 90.204 would constitute a violation. Consequently, it would be advantageous to collect and submit the samples required early during the specified 15-day period.

While the proposed rule continues the operator requirement to collect five valid samples, the results would no longer be averaged to determine whether the applicable dust standard is being continuously maintained. Instead, consistent with proposed § 72.500 of this title, each of the five valid sample will be compared to the applicable dust standard individually. Under this evaluation procedure, if all five samples are at or below the applicable dust standard, MSHA is confident that the Part 90 miner is being placed in an atmosphere which actually meets the standard. However, if any valid sample exceeds the applicable dust standard by at least 0.1 mg/m^3, the operator would be required to immediately take corrective action and take an additional five valid samples from the environment of the affected Part 90 miner within 15 days following receipt of notification from MSHA. The proposed rule permits the operator to meet the applicable dust standard in either of two ways: (1) By implementing control measures to lower the dust concentration in the Part 90 miners's existing assigned position; or (2) by transferring the Part 90 miner to another area of the mine that meets the standard.

Since these samples are used to verify the suitability of the assigned work position, no operator samples will be used to make determinations as to compliance with the applicable dust standard under §§ 90.100 or 90.101 of this part. Therefore, if any of the additional samples collected under proposed paragraph (b)(2) of this section exceed the applicable dust standard by at least 0.1 mg/m^3, the operator would be cited for failure to take corrective action under proposed paragraph (c) of this section.

Section 90.205 Respirable Dust Samples; Transmission by Operator

MSHA is proposing no substantive changes to existing § 90.209, except for removing reference to § 90.202 (Certified person; sampling) from existing paragraph (c) to eliminate repetition since revised § 90.201 specifies that all sampling required under this part must be conducted by a certified person, and redesignating it as § 90.205. Existing paragraph § 90.209(e) would be removed since all samples submitted by the operator under this part would be processed by MSHA. The proposed rule, like the existing rule, would require each Part 90 miner sample collected by

the operator to be transmitted to MSHA within 24 hours after the end of the sampling shift in containers provided by the manufacturer of the filter cassette. The need to verify the suitability of the Part 90 miner's assigned work position in the shortest possible time requires that samples be sent promptly to MSHA for analysis.

Each transmitted sample must be accompanied by a properly completed dust data card. All dust data cards submitted must be signed by a person certified to collect samples and must include that person's certification number. By signing the card, that person certifies that the sample was collected in accordance with the requirements of this part.

To maintain program integrity, all samples transmitted by an operator would be considered by this proposed rule to fulfill the sampling requirements of this part. However, if operators wish to collect samples for other purposes, they would need to notify the district manager in writing or by electronic means prior to the intended sampling shift and identify each filter cassette to be used by its identification number. This prior notification is not required if non-approved sampling devices and filter cassettes are used by an operator for non-regulatory purposes.

Section 90.206 Respirable Dust Samples; Report to Operator and Part 90 Miners

Under the proposed rule, reporting provisions of existing § 90.210 would be revised and redesignated as § 90.206. It specifies the type of sampling data and other related information the operator would be provided by MSHA on each Part 90 miner sampled by the operator or by MSHA. The Agency believes that the proposed reporting requirements are in the best interest of the Part 90 miner. These provisions promote miner awareness of the respirable dust conditions in the Part 90 miner's working environment by making available current information on the results of all sampling-related activities. This is consistent with the statutory intent that miners play a role in preventing unhealthy conditions and practices where they work. This approach is also consistent with the recommendations of the Advisory Committee regarding miner participation in the sampling process.

In proposed paragraph (a), the phrase ''The Secretary shall provide the operator'' has been replaced with ''MSHA will provide.'' Paragraphs (a)(1) through (6) of the proposed rule retains the existing requirement regarding the types of data MSHA would be reporting on samples submitted by the operator, except for paragraph (a)(4) which would be removed since averaging of multiple valid samples would no longer be permitted under the proposed rule. Also, since MSHA would undertake sampling for compliance purposes, currently performed by the operator under existing § 90.208, the results of MSHA samples would also be reported to the operator. The data report would include the location within the mine from which each Part 90 miner sample was collected; the equivalent concentration of respirable dust for each valid sample; the occupation code, and the reason for voiding any sample. In addition to providing data on individual samples, under proposed paragraph (7), the Agency would also furnish information on the dust control measures that were being used in the work position of the sampled Part 90 miner by providing a copy of completed MSHA Form 2000–86 (Revised).

Paragraph (b) of the proposed rule retains the existing provision of requiring the operator to provide a copy of the sample data report to the affected Part 90 miner but, for privacy reasons, prohibits the operator from posting the original or a copy of this report on the mine bulletin report.

Section 90.207 Violation of Respirable Dust Standard; Issuance of Citation; Action Required by Operator; and Termination of Citation

Proposed § 90.207 is a new requirement that addresses the circumstances under which MSHA would issue a citation for violation of the applicable dust standard. It also establishes the specific actions that an operator would be required to take within the time for abatement fixed in the citation. This proposed section also sets forth the conditions under which MSHA would terminate such citations.

Under proposed paragraph (a), the operator would be cited for a violation of § 90.100 or § 90.101 when the equivalent concentration of a valid Part 90 miner sample collected by MSHA meets or exceeds the citation threshold value (CTV) listed in Table 70–2 of this title that corresponds to the applicable dust standard in effect. As discussed in section III.A.4. of the preamble, these measurements will be based on single-shift samples collected with approved sampling devices that will be operated portal-to-portal. The devices will remain operational during the entire shift or for 8 hours, whichever time is less, as has been the long-standing practice.

The CTVs and an explanation of how they were derived was originally published in **Federal Register** notice of Feb. 3, 1998 (63 FR 5687), entitled ''Coal Mine Respirable Dust Standard Noncompliance Determinations.'' As explained in that notice and in Appendix C of the current notice of proposed rulemaking, each CTV was calculated so that citations would be issued only when a single-shift measurement demonstrates noncompliance at least at a 95 percent confidence level.

The following example illustrates how MSHA would apply the CTVs to make noncompliance determinations. Suppose that a measurement of 1.27 mg/m^3 is obtained for a Part 90 miner under a 1.0-mg/m^3 standard. Because the measurement meets or exceeds the CTV of 1.26 mg/m^3 (the citation value for a 1.0-mg/m^3 standard), a citation would be issued for exceeding the applicable dust standard on the shift sampled. The Part 90 miner's work position would be identified in the narrative of the citation as the affected working environment.

MSHA believes that, because of the large ''margin of error'' separating each CTV from the corresponding applicable dust standard, use of the CTV table would provide ample protection against erroneous citations. This matter was fully explored in the analysis published in Appendix C of the February 3, 1998 notice (63 FR 5703–5709). That analysis showed that for exceptionally well-controlled environments, the probability that any given citation is erroneous will be substantially less than 5 percent. The analysis also showed that this probability is even smaller in environments that are not well controlled. Therefore, citations issued in accordance with the CTV table would be much more likely the result of an excessive dust concentration rather than a measurement error. With regard to the risk of erroneous failures to cite, MSHA concluded that ''the probability of erroneously failing to cite a case of noncompliance at a given sampling location is less than 50 percent when the applicable dust standard is exceeded on a significant proportion of shifts at that location'' (63 FR 5709 above).

MSHA has also concluded that using single-shift measurements for noncompliance determinations in accordance with the CTV table neither raises or lowers the applicable dust standard. Operators would continue to be required under § 90.100 or § 90.101 to continuously maintain compliance with the applicable dust standard, not merely at or below the CTV.

As explained in the notice regarding single-shift measurements of respirable coal mine dust published elsewhere in today's **Federal Register**, the Mine Act requires MSHA to regulate exposures on

each shift individually. Since MSHA does not track the number of shifts each miner works over a lifetime, MSHA must, as a matter of practical necessity, protect miners by limiting their exposure on each shift. Furthermore, as explained in Sections VI and VII of the present notice, eliminating overexposures on individual shifts is beneficial to miners' health. For miners working where there is a pattern of recurrent overexposures on individual shifts, eliminating such overexposures is expected, over a working lifetime, to significantly reduce the risk of pneumoconiosis. Therefore, the Secretary has concluded that equivalent dust concentrations should be maintained at or below the applicable dust standard on each and every shift.

If an operator is cited for a violation of the applicable dust standard, proposed paragraphs (b)(1), (b)(2), (b)(2)(i) and (b)(2)(ii) would require the operator to take specific actions within the time for abatement fixed in the citation. First, in order to provide immediate health protection, the operator would be required to make available approved respiratory equipment to the affected Part 90 miner that complies with existing § 70.300. The operator would then determine the cause of the excessive dust concentration and take appropriate corrective action to gain compliance. As under the current Part 90 rule, the proposed rule would permit the operator to achieve compliance in either of two ways: (1) By implementing control measures to reduce the dust levels in the Part 90 miner's work position; or (2) by transferring the affected Part 90 miner to work in another location at the mine where the concentration of respirable dust does not exceed the standard. Any Part 90 miner who is transferred to another position would continue to remain a Part 90 miner at the new position, even if the job is at a surface mine.

If the operator chooses to lower dust levels in the Part 90 miner's assigned work position, proposed paragraph (b)(2)(i) would require the operator to notify the district manager in writing or by electronic means within 24 hours after implementing the control measures. Since MSHA would be assuming responsibility for compliance and abatement sampling under this proposed rule, this notice would enable MSHA to schedule and conduct follow-up sampling to determine whether the operator's corrective action(s) was effective to gain compliance.

The requirement of proposed paragraph (b)(2(i) would not apply if the corrective action involved transferring the Part 90 miner to another work position to achieve compliance. Instead, the operator would be required to comply with § 90.102(c) by giving the district manager written notice of the transfer and the date on which it is to be effective before such a transfer would be allowed to occur. This is necessary so that MSHA could (1) update its computerized management information system to permit the processing of the five operator samples taken from the Part 90 miner's new work position as required by proposed paragraph (b)(3) of this section and (2) schedule and conduct follow-up sampling for abatement purposes.

After complying with § 90.102(c), the operator would be required to sample the affected Part 90 miner until five valid samples were collected and submitted within the abatement period fixed in the citation. As discussed under proposed § 90.204, the purpose for taking these samples is to verify the suitability of the particular working environment in which the Part 90 miner was placed. Therefore, MSHA does not intend to take enforcement action based on the results of operator samples, only for failure to take corrective action under proposed paragraph (b)(2) of this section. Under this proposed rule, only valid samples collected by MSHA would be used to abate a violation of § 90.100 or § 90.101.

In order to determine if the operator abated the excessive dust violation, MSHA would collect one valid sample from the affected Part 90 miner's position while he or she is performing normal work duties. As discussed under § 90.201, the duration of MSHA sample collection would continue to be limited to 480 minutes as has been the long-standing practice. If the MSHA abatement sample exceeds the applicable dust standard but is less than the appropriate CTV, MSHA may sample additional shifts to confirm the adequacy of the operator's corrective action. MSHA would consider a violation of the applicable dust standard to be abated and terminate the citation when the result of a valid MSHA sample is at or below the applicable dust standard. The subsequent action form would clearly and fully describe the action taken to abate the violation. If the violation was abated by reducing the dust levels in the Part 90 miner's work position, proposed paragraph (c)(1) would require the operator to submit a respirable dust control plan to the district manager for approval in accordance with § 90.300 of this part, which has been retained under this proposed rule. A dust control plan would not be required to be submitted if compliance was achieved by transferring the Part 90 miner to another work position at the mine.

Section 90.208 Status Change Reports

The proposed rule retains the existing provision of § 90.220, which would be redesignated as § 90.208, with some revision. It would require the operator to report in writing or by electronic means any change in status of a Part 90 miner that affects sampling to a designated MSHA District office within three working days after a status change has occurred. Knowing the status of every Part 90 miner will enable the Agency to carry out its sampling and monitoring of operator sampling activities in the most efficient and responsible manner. The operator would be in violation of § 90.208 when the operator fails to comply with the sampling requirements of this part or MSHA was unable to carry out its sampling of a particular Part 90 miner for compliance purposes due to the unavailability of the Part 90 miner that was not reported by the operator as required.

Sections 90.300 and 90.301

Respirable Dust Control Plans

Section 90.300 Respirable Dust Control Plan; Filing Requirements; Contents

The proposed rule retains the existing provisions of § 90.300, which sets forth in detail when a dust control plan must be filed and the information that the operator must include in the plan. Although the language of part of paragraph (a) of the proposed rule differs from that of the existing section, the specific requirements are essentially the same. This change was made in the proposed rule for clarity and consistency with virtually identical provisions in existing § 71.300 of this title.

If an operator abates the violation by implementing control measures that lower the dust in the Part 90 miner's work position, proposed paragraph (a) requires the operator to prepare a respirable dust control plan applicable to the Part 90 miner in the position identified in the citation. Each plan must be designed to continuously maintain the respirable dust level, in the Part 90 miner's assigned work position, at or below the applicable dust standard. This plan must be submitted to the district manager for approval within 15 days after the citation is terminated. A copy of the approved plan must be provided to the affected Part 90 miner. However, the operator is prohibited from posting the original or

a copy of the plan on the mine bulletin board.

If, on the other hand, the operator abates a violation of the applicable dust standard by transferring the part 90 miner to another position at the mine, the operator is not required to submit a dust control plan to the district manager for approval.

As under existing paragraph (b), the operator would be required to include details on the control measures that were implemented to reduce the dust and abate the violation, as well as any other provisions required by the district manager. The plan must also include the specific time, place and manner that the control measures would be used. Failure to do so would constitute a violation of this section.

Section 90.301 Respirable Dust Control Plan; Approval by District Manager; Copy to Part 90 Miner

The proposed rule retains the existing provisions of § 90.301, which specifies the criteria MSHA would use to approve the operator's dust control plan. Since MSHA would assume sampling of Part 90 miners for compliance purposes, the following phrase was inserted towards the end of paragraph (a): * * * ''the results of MSHA sampling and.'' Also, the proposed rule would add the word ''continuously'' to paragraph (a)(1) for consistency with § 90.300(a), and replace the phrase ''MSHA may take respirable dust samples to determine whether'' in paragraph (b) with ''MSHA will monitor the continued effectiveness of'' to reflect MSHA's assumption of sampling for compliance purposes.

V. Health Effects

A. Introduction

For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. Long-term retention of coal mine dust in the lung causes chronic lung diseases including coal workers' pneumoconiosis (CWP), silicosis, and chronic obstructive pulmonary disease (COPD) (*e.g.*, chronic bronchitis, emphysema, and airways obstruction). Coal workers' pneumoconiosis occurs in two stages: simple and complicated pneumoconiosis. Simple CWP is categorized into three levels of severity: 1, 2, and 3. Miners with simple CWP, especially the more advanced categories, have a substantially increased risk of developing complicated pneumoconiosis (more typically known as progressive massive fibrosis (PMF)). Progressive massive fibrosis can cause significant loss of lung function and give rise to respiratory symptoms (*e.g.*, breathlessness, wheezing), and lead to disability and premature mortality. Overall, coal miners are at risk of increased morbidity and premature mortality arising from all of the chronic diseases associated with coal mine dust exposure.

Elimination or reduction of coal mine dust exposure is the only effective way to prevent or minimize occupational lung disease among coal miners. However, routine screening affords the potential to prevent further development of disease among those, who despite dust control measures, still develop CWP. Pursuant to 42 CFR part 37, the National Institute for Occupational Safety and Health (NIOSH) operates a program for underground coal miners designed to detect early CWP. This screening program for CWP is termed the Coal Workers' X-ray Surveillance Program (CWXSP).

In 1998, MSHA estimated that there were approximately 45,000 underground coal miners and 39,000 surface coal miners (Mattos, 1999). A small percentage of the mining involved anthracite coal, the highest rank coal, while most involved bituminous coal which is a medium rank coal.

There are complementary data sources, described below, which provide estimates of the prevalence of occupational respiratory disease among coal miners. Together these data demonstrate the progress over the last thirty years in the reduction of occupational respiratory disease among coal miners, as well as the need for further action to reduce occupational lung disease.

In accordance with 30 CFR part 50, both surface and underground coal mine operators must report any known cases of occupational illnesses to MSHA. Under this requirement, mine operators reported 224 cases of coal workers' pneumoconiosis in 1998 (Mattos, 1999). Of these, 138 cases occurred among coal miners who worked underground, while the remaining 86 cases occurred among surface coal miners (Mattos, 1999). There were also 14 cases of silicosis, eight in underground mines, reported to MSHA in 1998 in accordance with 30 CFR part 50 (Mattos, 1999).

In the 1990s, MSHA conducted a one-time medical screening and surveillance program in various regions of the country. This program was designed to help more coal miners, especially surface coal miners, learn whether or not they had CWP, and to provide a more accurate estimate of the prevalence of simple CWP and PMF among these coal miners. Through this special program, MSHA tried to minimize obstacles that may prevent some miners from participating in respiratory diagnostic procedures. Nine geographical groups of miners were encouraged to participate in this x-ray program that was independent of the CWXSP (MSHA, Internal Chart, 1999). The study groups included eight active surface coal mining communities in Pennsylvania, Kentucky and West Virginia, as well as Poteau, Oklahoma and Gillette, Wyoming. A ninth group included underground miners in Kentucky. The process was designed to encourage miner participation by providing for a greater degree of anonymity than may be available under the NIOSH x-ray program. Across the eight surface groups surveyed, the prevalence rate of CWP among participants was 5.6% (130/2,305). The CWP prevalence rate among the participating underground Kentucky miners was 9.2% (37/404).

Due to the different outreach initiatives number and type of participants in these various subgroups, relative to the population of today's coal miners, these data may not be representative of the overall prevalence of CWP among today's coal miners.

The Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers (Dust Advisory Committee, 1996) recommended that the CWXSP for pneumoconiosis include surface coal miners and independent contractors and that it increase underground coal miners' participation to at least 85 percent. In response, MSHA and NIOSH implemented the Miners' Choice Health Screening Program (Miners' Choice) in October 1999. The Miners' Choice program and Coal Workers' X-Ray Surveillance Program (CWXSP) identify cases of simple and complicated pneumoconiosis, including coal workers' pneumoconiosis and silicosis—hereafter referred to as ''CWP.'' All of the Miners'' Choice x-rays were processed using the same procedures and criteria used in the CWXSP in accordance with the requirements of 42 CFR part 37.

MSHA and NIOSH are conducting preliminary analyses of the first three years of the Miners' Choice program. These data and analyses are being handled, conducted, and reported pursuant to the DOL's and DHHS's respective Information Quality

Guidelines.[14] Preliminary analyses of these data are expected in Spring 2003. The analyses will be made available to commenters through the MSHA and NIOSH Web sites, *http://www.msha.gov* and *http://www.cdc.gov/niosh/homepage.html,* respectively.

As of the end of fiscal year 2002, more than 19,500 active coal miners from 20 states voluntarily participated in Miners' Choice. The overall CWP prevalence rate for radiographic categories of simple CWP categories 1, 2, 3, and PMF combined was 2.8% (546/19,517) among miners examined in Miners' Choice during the 2000–2002 period. This is similar to the CWP prevalence rate of 2.25% for initial participants in the Miners' Choice Program reported in the 2000 NPRM (65 FR 42100). Among Miners' Choice participants, the CWP prevalence rate was higher among underground coal miners at 3.8% (356/9,265), than it was for surface coal miners, 1.8% (188/10,184). The CWP prevalence rate for independent contractors was 2.9% (2/68). These findings show that CWP continues to occur among coal miners working under the current program to control respirable coal mine dust, including quartz.

Coal miners with simple CWP, particularly the advanced categories, are much more likely to develop life-threatening complicated CWP (*i.e.*, progressive massive fibrosis, or PMF), than those with category 0 (ILO profusion categories of 0/0 or 0/1) (Cochrane, 1962; Hurley *et al.*, 1987; Hurley and Jacobsen, 1986; Hurley and Maclaren, 1987; Jacobsen, *et al.*, 1971; McLintock, *et al.*, 1971; and Morfeld, *et al.*, 1992). In addition, epidemiological studies have shown that even among miners with category 0, those with a CWP profusion category suggesting pneumoconiosis (*i.e.*, 0/1) are at increased risk of developing PMF compared to miners with a CWP profusion category of 0/0 (Hodous and Attfield, 1990 and McLintock, *et al.*, 1971).

Several studies provide consistent information relevant to this issue. In a study of miners who participated in round six (1990–1995) of the Coal Workers' X-Ray Surveillance Program (CWXSP), Althouse *et al.* (1998) found an average prevalence rate of 2.2% for simple CWP category 1 and higher among the 8,210 miners who reported beginning work in underground coal mines in 1973 or later. Miners who reported other prior dusty work were excluded from the analysis. Althouse *et al.* (1998) also report an overall decline in the CWP prevalence rates between 1970 and 1995. While this result is encouraging, it also demonstrates that pneumoconiosis is still occurring among miners who have worked only under the current applicable dust standard, and for less than a full working lifetime. The Althouse *et al.* (1998) study did not include estimates of exposure concentration, but the prevalence rates were shown to increase with tenure in mining (up to 22 years). In an earlier study, NIOSH compared the observed prevalences of CWP among miners who participated in rounds 3 and 4 of the CWXSP with the predicted prevalences from the epidemiological study by Attfield and Morring (1992b) (NIOSH 1995, Appendix L). That analysis included coal miners in the CWXSP who had started work between 1969 and 1986 and who had worked 10 or more years; exposure concentrations were estimated at or below the current standard. NIOSH found that the observed and predicted prevalences were similar, thus supporting the validity of the predictions from that epidemiological study. The findings from the Attfield and Morring (1992b) study are consistent with the findings from other epidemiological studies, including Attfield and Seixas (1995). Comparing the effect of miners' exposures received either before or after 1970, Attfield and Seixas (1995) found that exposure during both time periods contributed to the development of pneumoconiosis.

In addition, the epidemiological studies are relevant to predicting the risks of occupational respiratory diseases among miners working today because the cumulative exposures of miners working at the current standard of 2.0 mg/m^3 for a full 45-year working lifetime are well within the range of the data examined in these studies (Attfield and Seixas, 1995; Attfield and Morring 1992a,b; Attfield and Hodous, 1992; Seixas et al. 1992, 1993). Thus, risk estimates based on these studies do not require extrapolation beyond the range of the data. These epidemiological studies included quantitative estimates of miners' exposures to respirable coal mine dust and found statistically significant relationships between cumulative exposure and prevalence of pneumoconiosis or COPD. Despite several differences in the surveillance and epidemiological studies (*e.g.,* exposure estimation and tenure, x-ray readers, miner participation rates, and mines), the observed prevalence rates from the surveillance studies confirm the predicted prevalences from the epidemiological studies.

The Mine Act of 1977 states:

> ''* * * in promulgating mandatory [health] standards which must adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standards for the period of his working life.'' Mine Act 101(a)(6)(A).

Findings from the CWXSP indicate an overall decline in the prevalence of CWP from 11% in the 1970s to 2.8% in the sixth round of CWXSP (1992–1996) (NIOSH, Work-Related Lung Disease Surveillance Report, Table 2–11, 1999). Even so, Miners' Choice, CWXSP, and MSHA's one-time medical surveillance programs in the 1990s consistently show prevalence of CWP to be at levels that cause concern. If patterns of overexposure to respirable coal mine dust remain unchanged for these coal miners, the prevalence of CWP would continue to increase, as their cumulative exposure to respirable coal mine dust increases over their coal mining careers.

Both MSHA and NIOSH (Re-opening notice for the Determination of Respirable Coal Mine Dust published elsewhere in today's **Federal Register**; Criteria Document, 1995) find the current program for preventing overexposures to respirable coal mine dust is not sufficient to adequately prevent overexposures to respirable coal mine dust and protect the health of the coal miners.

B. Hazard Identification

1. Agent: Coal

Coal is a fossil fuel derived from partial degradation of vegetation. Through its combustion, energy is produced which makes coal a valuable global commodity. It has been estimated that over one-third of the world uses energy provided by coal (Manahan, 1994). Approximately 1,800 underground and surface coal mines are in operation in the United States annually producing slightly over a billion short tons of coal (Mattos, 1999).

Coal may be classified on the basis of its type, grade, and rank. The type of coal is based upon the plant material (*e.g.,* lignin, cellulose) from which it originated. The grade of coal refers to its chemical purity. Although coal is largely carbon, it may also contain other elements such as hydrogen, oxygen,

[14] Specifically, the information is maintained in a confidential manner, all methodologies for data processing are transparent, and all available records were included. This information is reliable and accurate, and is presented in a clear and objective manner, as required by the Department of Labor's Information Quality Guidelines and the Department of Health and Human Services' Guidelines for Ensuring the Quality of Information Disseminated to the Public.

nitrogen, and sulfur. ''Hard'' coal refers to coal with a higher carbon content (*i.e.,* 90–95%) than ''soft'' coal (*i.e.,* 65–75%). Coal rank relates to geologic age, indexed by its fixed carbon content, down to 65%, and then by its heating value. Volatile matter varies inversely with the fixed carbon value. The most commonly described coal ranks include lignite (low rank), bituminous coal (medium rank), and anthracite (high rank) (Manahan, 1994).

2. Physical State: Coal Mine Dust

Aerosols are a suspension of solid or liquid particles in air (Mercer, 1973); they may be dusts which are solid particles suspended in the air. Coal dust may be freshly generated or may be re-suspended from surfaces on which it is deposited in mines. As discussed below, coal mine dust may be inhaled by miners, depending upon the particle size.

Coal mine dust is a heterogenous mixture, signifying that all coal particles do not have the same chemical composition. The particles are influenced by the type, grade, and rank of coal from which they were generated (Manahan, 1994). Irrespective of differences in coal characteristics, these dusts are water-insoluble, which is important biologically and physiologically. Unlike soluble dusts which may readily pass into the respiratory system and be cleared via the circulatory system, insoluble dusts may remain in the lungs for prolonged periods of time. Thus, a variety of cellular responses may result that could eventually lead to lung disease.

3. Biological Respirable Coal Mine Dust

The principal route of occupational exposure to respirable coal mine dust occurs via inhalation. As a miner breathes, coal mine dust enters the nose and/or mouth and may pass into the mid airways (*e.g.,* bronchi, terminal bronchioles) and lower airways (*e.g.,* respiratory bronchioles, alveolar ducts).

Coal mine dust has a size distribution that is estimated to range between 1 and 100 micrometers (μm) (1 μm = 10^{-6} m) (Silverman, *et al.,* 1971). The size of coal particles is critical in determining the level of the respiratory tract at which deposition and retention occur (American Conference of Governmental Industrial Hygienists, 1999; American Industrial Hygiene Association, 1997).

Particles that are greater than 10 μm are largely filtered in the nasal passages. However, it has long been known that some particles greater than 10 μm in size, can be inhaled, and that some of these particles can reach the alveoli of the lungs (Lippman and Albert, 1969). According to the British National Coal Board, ''particles as large as 20 microns (*i.e.,* micrometers (μm)) mean diameter may be deposited, although most 'lung dust' lies in the range below 10 microns diameters'' (Goddard, *et al.*, 1973). Particles less than 10 μm in size easily move throughout the respiratory tract. As particle size decreases from 10 to 5 μm, however, there is greater penetration into the mid and lower regions of the lung. Particles that are approximately 1–2 μm are the most likely to be deposited in the lung (American Conference of Governmental Industrial Hygienists, 1999; Mercer, 1973). During mouth breathing, there may be a slight upward shift in the particle deposition curve such that 2–3 μm-sized particles are the most likely to be deposited in the respiratory tract (Heyder, *et al.,* 1986). Irrespective of nasal or mouth breathing, the potential respiratory tract penetration of particles less than 10 μm in size is important because particles in the respirable size range deposit in the deep lung where clearance is much slower.

For the purposes of this rule, ''respirable dust'' is defined as dust collected with a sampling device approved by the Secretary of Labor and the Secretary of the Department of Health and Human Services (DHHS) in accordance with 30 CFR Part 74 (Coal Mine Dust Personal Sampler Units). In practice, the coal mine dust personal sampler unit has been used in the U.S. The particles collected with an approved sampler approximate that portion of the dust which may be deposited in the lung (West, 1990; 1992). It does not, however, indicate pulmonary retention (*i.e.,* those particles remaining in the lung). For those particles that are deposited in the lung, clearance mechanisms normally operate to assist in their removal. For example, within the thoracic (tracheal-bronchial) region of the lung, cilia (*i.e.,* hairlike projections) line the airways and are covered by a thin layer of mucus. They assist in particle clearance by beating rhythmically to project particles toward the throat where they may be swallowed, coughed, sneezed, or expectorated. This rhythmic beating action is effective in removing particles fairly quickly (*i.e.,* hours or days). Within the alveolar region of the lung, particles may be engulfed by pulmonary macrophages. These large ''wandering cells'' may remove particles via the blood or lymphatics. This process, unlike the movement of the cilia is much slower (*i.e.,* months or years). Thus, some particles, particularly those that are insoluble, may remain in the alveolar region for long periods of time, despite the fact that pulmonary clearance is not impaired. It is the pulmonary retention of coal mine dust which may be the impetus for respiratory disease.

It is also important to note that silica may be present in the coal seam, within dirt bands in the coal seam, and in rock above and below coal seams. Of the silica found in coal mines, quartz is the form which is found. Thus, quartz may become airborne during coal removal operations (Manahan, 1994). Miners may inhale dust that is a mixture of quartz and coal. MSHA is concerned with the inhalation of quartz since it may be deposited in the lungs of miners and produce silicosis. This is a restrictive lung disease which is characterized by a stiffening of the lungs (West, 1990; 1992). Silicosis has been seen in coal miners (*e.g.,* surface miners, drillers, roofbolters) (Balaan, *et al,* 1993). Silicosis may develop acutely (*i.e.,* 6 months to 2 years) following intense exposure to high levels of respirable crystalline quartz. Silicosis has also been observed in coal miners following chronic exposure (*i.e.,* 15 years or more), but may be accelerated (*i.e.,* 7–10 years) in some cases (Balaan, *et al,* 1993). Silicosis is irreversible and may lead to other illnesses and premature mortality. People with silicosis have increased risk of pulmonary tuberculosis infection and an increased risk of lung cancer (Althouse, *et al.,* 1995; International Agency for Research on Cancer, 1997). MSHA's current standard of 2.0 mg/m^3 for respirable coal dust requires that quartz levels in the respirable coal mine dust be 5% or lower. Otherwise, the 2.0 mg/m^3 respirable coal dust exposure limit does not apply and must be adjusted downward for percentage of quartz. If respirable coal mine dust contains more than 5% quartz, then the following formula is applied (30 CFR 70.101; 30 CFR 71.101).

Respirable dust standard (mg/m^3)= {(10)/(% Quartz)}

The intent of this formula, as prescribed by the Secretary of Health, Education, and Welfare in 1971, whenever the respirable coal mine dust in the mine atmosphere of the active workings contains more than five percent quartz, is to maintain miner exposures to quartz below 0.1 mg/m^3 (100 μg/m^3).[15]

[15] The applicable dust standard for intake air in § 70.100(b) and for miners who have exercised rights under Part 90 regulations in § 90.100 is 1.0 mg/m^3. Those standards are also lowered if the quartz content of the respirable coal mine dust

Continued

C. Health-Related Effects of Respirable Coal Mine Dust

1. Description of Major Health Effects

Consistently, epidemiological studies have demonstrated miners to be at risk of developing respiratory symptoms, a loss of lung function, and lung disease as a consequence of occupational exposure to respirable coal mine dust. As noted previously, risk factors include type(s) of dust, dust concentration, duration of exposure, age of the miner (often measured as age at time of medical examination), and coal rank.

a. Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF)

In earlier stages of pneumoconiosis the term, ''simple coal workers' pneumoconiosis'' (simple CWP), has been used, while in more advanced stages, the terms ''complicated CWP'' and PMF have been used interchangeably. Simple CWP and PMF involve the lung parenchyma and are produced by deposition and retention of respirable coal dust in the lung.

To determine if a miner has simple CWP or PMF, chest x-rays are taken and classified by a certified radiologist or reader. Opacities (both irregular and rounded) are identified on chest films and then classified using a scale of 0 through 3 (*e.g.,* simple CWP category 1), where higher category values indicate increasing concentration of opacities. In some instances, two category values may be given. For example, simple CWP category 2/3 signifies that the reader decided the film was category 2, but suspected that it might have been category 3. The International Labour Office (ILO) has provided a full description of the criteria for these classifications (ILO, 1980).

Studies have shown that the prevalences of both small rounded and small irregular opacities increase with increasing coal mine dust exposure (Amandus *et al.,* 1976; Cockcroft *et al.,* 1983; Collins *et al.,* 1988). Miners with small opacities (rounded and/or irregular) on their chest x-rays were more likely to report chronic cough and phlegm, and breathlessness, than miners without small opacities (category 0/0) (Collins *et al.,* 1988). This effect was more common among miners with predominately small rounded opacities (Collins *et al.,* 1988; Rae *et al.,* 1971). Small irregular opacities have been associated with impaired lung function (Amandus *et al.,* 1976; Cockcroft *et al.,* 1982b,c; Collins *et al.,* 1988). The pattern of lung function impairment reported by Collins *et al.* (1988) was consistent with that typically associated with dust exposure in coal miners, and was distinctly different from the pattern observed among smokers.

Because simple CWP represents an early stage of a progressive disease, miners who have had a chest x-ray classified as ILO category 1 or greater are more likely than those with a clear x-ray (category 0) to progress to the more severe stages of the disease, including the complicated form, PMF (categories A, B, or C) (Cochrane, 1962; Jacobsen, *et al.,* 1971; McLintock, *et al.,* 1971; Morfeld *et al.,* 1992; Balaan, *et al.,* 1993). In addition, miners with simple CWP were found to have an increased risk of dying from pneumoconiosis (as the underlying or a contributing cause on the death certificate), and this risk tended to increase with increasing radiographic category (Kuempel *et al.,* 1995).

Progressive massive fibrosis (PMF) is associated with decreased lung function and increased premature mortality (Rasmussen, *et al.,* 1968; Atuhaire, *et al.,* 1985; Miller and Jacobsen, 1985; Attfield and Wagner, 1992). Progressive massive fibrosis is also associated with increases in respiratory symptoms such as chest tightness, cough, and shortness of breath. Miners with PMF also have an increased risk of acquiring infections and pulmonary tuberculosis (Petsonk and Attfield, 1994; Yi and Zhang, 1996). Finally, miners with PMF have an increased risk of right-side heart failure (*i.e.,* cor pulmonale) (Cotes and Steel, 1987).

b. Other Health Effects

During a medical examination, a miner may be questioned by his/her physician about symptoms such as cough, phlegm production, chest tightness, shortness of breath, and wheezing. Occupational physicians may also conduct pulmonary function tests using spirometry or plethysmography. Pulmonary performance may be assessed via repeated measurements of lung volumes and capacities, such as the forced expiratory volume in one second (FEV1), vital capacity (VC), forced vital capacity (FVC), residual volume (RV), and total lung capacity (TLC) (West, 1990; 1992). Changes in lung volumes and capacities may indicate a loss of the integrity of the lung (*i.e.,* respiratory system). More importantly, they can provide information for diagnosis of diseases affecting the airways and/or elasticity of the lung (*i.e.,* obstructive vs. restrictive lung disease)(West, 1990; 1992).

The term, chronic obstructive pulmonary disease (COPD), refers to three disease processes that are often difficult to properly diagnose and differentiate: Chronic bronchitis, emphysema, and asthma (Coggon and Taylor, 1998; Garshick, *et al.,* 1996; West, 1990; 1992). As indicated by several studies, the exposure of miners to respirable coal mine dust places them at increased risk of developing COPD. Furthermore, COPD may occur in miners with or without the presence of simple CWP or PMF.

COPD is characterized by airflow limitations, and thus there is a loss of pulmonary function. As in simple CWP or PMF, a miner with COPD may have a variety of respiratory symptoms (*e.g.,* shortness of breath, cough, sputum production, and wheezing) and may be at increased risk of acquiring infections. COPD is associated with increased premature mortality (Hansen, *et al.,* 1999; Meijers, *et al.,* 1997).

Briefly, in chronic bronchitis and in asthma, there is excess mucous secretion in the mid to lower airways (West, 1990; 1992). In contrast, emphysema is characterized by dilatation (enlargement) of alveoli that are distal to the terminal bronchioles, which leads to poor gas exchange (*i.e.,* poor transfer of oxygen and carbon dioxide). Additionally, there is a breakdown of the interstitium between the alveoli. These pathological changes may be confirmed upon autopsy. With asthma, the airflow limitations may be partially or completely reversible, while they are only partially reversible with chronic bronchitis and emphysema.

The Mine Safety and Health Administration (MSHA) and the NIOSH recognize that respiratory symptoms, loss of lung function, and COPD may impair the ability of a miner to perform his/her job and may diminish his/her quality of life (65 FR 49215). Additionally, miners having such health effects are at increased risk of morbidity (*e.g.,* from cardio-pulmonary disease, infections) and premature mortality.

2. Toxicological Literature

To better understand the human health effects of exposure to respirable coal mine dust and to more fully characterize the associated risks, it is important to consider data that have been obtained in animal based toxicological studies. To date, sub-acute studies (a study with a duration of 30 days, or less, in which multiple exposures of the same agent are given) and chronic studies (a study with a duration of more than 3-months, in which multiple exposures of same agent are given) attempted to mimic miners'

exceeds 5 percent. However, no effect occurs until the quartz content exceeds 10 percent.

exposures. Inhalation was generally the route of exposure, although several studies have also employed instillation techniques (*i.e.,* a method which places a known quantity of dust into the trachea or bronchi).

Most recent toxicological studies have been short-term studies, largely focusing on ''lung overload'' (Sipes, 1996; Oberdorster, 1995; Morrow, 1988, 1992; Witschi, 1990), species-dependent lung responses (Nikula, *et al.,* 1997a,b; Mauderly, 1996; Lewis, *et al.,* 1989; Moorman, *et al.,* 1975), and particle size-dependent lung inflammation (Soutar, *et al.,* 1997). The data have shown that pulmonary clearance of particles may become impaired, potentially leading to inflammatory and other cellular responses in the lung. Although overloading has not been demonstrated in humans, the finding of reduced lung clearance among retired U.S. coal miners (Freedman and Robinson, 1988) is consistent with this possibility.

The data from Moorman, *et al.* (1975), Lewis, *et al.* (1989), and Nikula, *et al.* (1997a,b) are noteworthy for several reasons. First, these groups of investigators conducted chronic inhalation toxicity studies (*i.e.,* chronic bioassays). This is important since miners' exposures also occur via inhalation, and over a working lifetime. Secondly, the investigators used an exposure concentration of 2.0 mg/m^3 in their bioassays. As noted above, this is the current MSHA standard for respirable coal mine dust. Thirdly, the exposures involved nonhuman primates, whose responses are thought to closely mimic those of man. Some of the key findings of these studies included: deposition of coal dust in the animals' lungs, retention of coal dust in alveolar tissue, altered lung defense mechanisms, reduced pulmonary airflows, and hyperinflation of the lungs. One of the shortcomings of these studies is that complete dose-response relationships were not developed. However, at higher exposure concentrations, greater effects may be expected which is a basic tenet of toxicology. Thus, at exposure concentrations above 2.0 mg/m^3, MSHA and NIOSH believe that more severe obstructive lung disease may occur (65 FR 42078).

3. Epidemiological Literature

Epidemiological studies have consistently demonstrated the serious health effects of exposure to high levels of respirable coal mine dust (*i.e.,* above 2.0 mg/m^3) over a working lifetime. Table V–2 lists epidemiological studies since 1986 whose results will be discussed on the basis of the type of observed health effect. Studies completed even earlier including the early work of Cochrane (1962), McLintock, *et al.* (1971), and Jacobsen, *et al.* (1971) demonstrated the adverse health effects (*e.g.,* simple CWP, PMF) of respirable coal mine dust in British coal miners.

Both early and recent studies have shown that the lung is the major target organ (*i.e.,* organ in which toxic effects occur) when exposure to respirable coal mine dust occurs. As seen in Table V–2, numerous studies of miners have been conducted. Recent U.S. studies were conducted using data from one or more of the first four rounds of the National Study of Coal Workers' Pneumoconiosis (NSCWP), and have provided extensive data on miners' health. Many of these studies demonstrated that miners are at increased risk of multiple, concurrent respiratory ailments (Attfield and Seixas, 1995; Kuempel, *et al.*, 1997; Meijers, *et al.,* 1997; Seixas, *et al.*, 1992) .

TABLE V–2.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT

Studies	Reported outcomes
Meijers, *et al.*, 1997	PMF, SCWP, COPD, LLF
Bourgkard, *et al.*, 1998	PMF, SCWP, LLF, RS
Kuempel, *et al.*, 1997*	
Maclaren, *et al.*, 1989	
Kuempel, *et al.*, 1995*	PMF, SCWP, COPD
Love, *et al.*, 1997	PMF, SCWP, LLF
Love, *et al.*, 1992	
Althouse, *et al.*, 1998*	PMF, SCWP
Attfield and Morring,1992b*	
Attfield and Seixas, 1995*	
Goodwin and Attfield, 1998*	
Hodous and Attfield, 1990*	
Hurley and Jacobsen, 1986	
Hurley and Maclaren, 1987; 1988	
Hurley, *et al.*, 1987	
Morfeld, *et al.*, 1997	
Starzynski, *et al.*, 1996	
Yi and Zhang, 1996	
Collins, *et al.*, 1988	SCWP, COPD, LLF, RS
Morfeld, *et al.*, 1997	SCWP
Cockcroft and Andersson, 1987	SCWP, COPD, LLF
Wang, *et al.*, 1997	
Leigh, *et al.*, 1994	COPD, LLF, RS
Marine, *et al.*, 1988	
Seixas, *et al.*, 1993	
Soutar and Hurley, 1986	
Attfield and Hodous, 1992*	LLF, RS
Carta, *et al.*, 1996	
Henneberger and Attfield,1997*	
Henneberger and Attfield,1996*	
Lewis, *et al.*, 1996	
Seixas, *et al.*, 1992*	

TABLE V–2.—RESPIRABLE COAL MINE DUST EPIDEMIOLOGICAL STUDIES, BY REPORTED OUTCOMES FROM 1986 TO PRESENT—Continued

Studies	Reported outcomes
Hansen, *et al.*, ... Weiss, *et al.*, 1995	1999 LLF

COPD: Chronic obstructive pulmonary disease.
SCWP: Simple coal workers' pneumoconiosis.
LLF: Loss of lung function.
PMF: Progressive massive fibrosis.
RS: Respiratory symptoms.
* Studies of U.S. Miners Who Participated in the National Study of Coal Workers' Pneumoconiosis (NSCWP).

a. Simple Coal Workers' Pneumoconiosis (Simple CWP) and Progressive Massive Fibrosis (PMF)

Studies following Cochrane (1962) and McLintock *et al.* (1971) have confirmed that the risk of PMF increases with increasing category of simple CWP (Hurley and Jacobsen, 1986; Hurley, *et al.*, 1987; Hurley and Maclaren, 1988; Hodous and Attfield, 1990). However, the risk of PMF was greater than previously predicted among miners with simple CWP category 1 or without simple CWP (*i.e.*, category 0) (Hurley, *et al.*, 1987). The risk of PMF increased with increasing cumulative exposure, regardless of the initial category of simple CWP (Hurley, *et al.*, 1987), indicating that reducing dust exposures is a more effective means of reducing the risk of PMF than reliance on detection of simple CWP.

Attfield and Seixas (1995) have demonstrated a relationship between cumulative exposure to respirable coal mine dust and predicted prevalence of pneumoconiosis (*i.e.*, simple CWP, PMF). Two strengths of this study include the quantitative description of exposure-response among both miners and ex-miners (who had worked approximately 13–40 years in mining) and the fact that these data represent recent conditions experienced by miners in the U.S. They studied a group of approximately 3,194 men who worked in underground bituminous coal mines. The U.S. miners and ex-miners had participated in Round 1 (1970–1972) or Round 2 (1972–1975) of the NSCWP and were examined again in Round 4 (1985–1988). The study population excludes 86 miners for whom there was missing exposure data or unreadable x-rays. Chest x-rays were read to determine the number of cases of simple CWP and PMF. Attfield and Sexias (1995) used two or three B readers to identify the profusion of radiographic opacities based on the ILO classification scheme. The most inclusive category defined in their paper was CPW 1+ which includes simple CWP categories 1, 2, and 3, as well as PMF. Dust exposure estimates were generated from measurements of dust concentrations as well as from work history. A logistic (or logit) regression model was used to estimate prevalence of simple CWP and PMF. In this statistical analysis, proportions are transformed to natural logarithmic values, *i.e.*, $y = \ln [p/(1-p)$, before a linear model is fit to the data (Armitage, 1977). The logistic model assumes that the data have a binomial distribution (*e.g.*, presence or absence of PMF) for a given set of covariate values (*e.g.*, age, coal rank, dust exposure, pack-years of smoking). Using logistic modeling, relationships were developed between cumulative dust exposure and prevalence of simple CWP (category 1+, category 2+) and PMF. These relationships were the key strengths of the Attfield and Seixas study and serve as the basis for the quantitative risk assessment (QRA) of this rule.

The recent paper of Kuempel, *et al.* (1997) has provided a detailed discussion and quantitative presentation of excess risks associated with respirable coal dust exposures. Their study was based upon results from previous studies of some 9,000 underground coal miners who participated in the NSCWP (Attfield and Morring, 1992b; Attfield and Seixas, 1995). Kuempel, *et al.* estimated excess (exposure-attributable) prevalence of simple CWP and PMF (*i.e.*, number of cases of disease present in a population at a specified time, divided by the number of persons in the population at that specified time). Point estimates of excess risk of PMF ranged from 1/1000 to 167/1000 among miners exposed at the current MSHA standard for respirable coal mine dust. These estimates were based upon dust exposure that occurred over a miner's working lifetime (*e.g.*, 8 hours per day, 5 days a week, 50 weeks per year, over a period of 45 years). Actual occupational lifetime exposure may be more, due to extended work shifts and work weeks. The point estimates of PMF presented by Kuempel, *et al.* (1997) were related to coal rank, where higher estimates (*e.g.*, 167/1000) were obtained for high-rank coal (anthracite coal) and somewhat lower estimates were obtained for medium/low rank bituminous coal (*e.g.*, 21/1000). Within each coal rank, the estimates of simple CWP cases were at least twice as high as those for PMF (*e.g.*, 167/1000 PMF vs. 380/1000 simple CWP≥1).

The data of Attfield and Seixas (1995) and Kuempel, *et al.* (1995; 1997) were consistent with previous data of Attfield and Morring (1992b) who reported relationships between estimated dust exposure and predicted prevalence of simple CWP or PMF. They also noted that exposure-response relationships were steeper for higher ranks of coal such as anthracite, and concluded that the risks for anthracite miners appeared to be greater than for miners exposed to lower rank coal dust. Attfield and Morring (1992b) used similar methods as described above (*i.e.*, logistic modeling), but included miners from Round 1 of the NSCWP (1969–1971); thus representing an earlier time point in the NSCWP when the respirable coal mine dust concentrations were much higher than they are today.

Recently, Goodwin and Attfield (1998) reported that there were concerns regarding methodological inconsistencies across surveys given during the four rounds of the NSCWP. In particular, they noted the discordance in classification of simple CWP and PMF among readers of chest films. Despite potential discordance, Goodwin and Attfield (1998) have confirmed previous findings of a decline in simple CWP prevalence from 1969 to 1988. Yet, these analyses also demonstrated that simple CWP has not been eliminated. The Round 4 prevalence rates were 3.9 percent for simple CWP category 1 and higher, and 0.9 percent for category 2 and higher. This illustrates the need for continued efforts to reduce dust exposures.

Given the current system for monitoring exposures and identifying overexposures in the U.S., miners are at increased risk of developing simple

CWP and PMF from a working lifetime exposure to respirable coal mine dust (Althouse *et al.* 1998, Attfield and Seixas, 1995; Attfield and Morring, 1992b; Goodwin and Attfield, 1998; Kuempel, *et al.* 1997, 1995). Whenever overexposures (*i.e.*, excursions above the applicable dust standard) occur, the long-term mean exposure of miners may be increased, thereby causing an upward shift on the exposure-response curve. Such a shift then places these overexposed coal miners at increased risk of developing and dying prematurely from simple CWP and PMF.

The Attfield and Seixas epidemiological study (1995) is the most appropriate to use in estimating the benefit of reduction of overexposures. The authors applied scientific rigor to the collection, categorization, and analyses of the radiographic evidence for the group of 3,194 underground bituminous coal miners who participated in Round 4, 1985–1988, of the National Study of Coal Workers' Pneumoconiosis (NSCWP). Radiologic evidence was carefully collected and analyzed by multiple independent, NIOSH certified B readers to identify stages of simple CWP and PMF. In the targeted population of 5,557 miners, the participating miners (3,280) were similar to the non-participants (2,277) with regard to age at the first medical examination and prevalence of simple CWP category 1 or greater. The non-participants had worked slightly longer, yet had lower prevalence of simple CWP category 2 or greater, than the participants. This study describes the differences among current miners and ex-miners (health-related or job-related) in the relationships between the estimated cumulative exposure to respirable coal mine dust and prevalence of simple CWP category 1 or greater. Such data and relationships were not available in other U.S. studies and non-U.S. studies.

A potential limitation in the U.S. studies is the possible bias in the exposure data, which has been the subject of several studies (Boden and Gold, 1984; Seixas *et al.*, 1991; Attfield and Hearl, 1996). An advantage of the Attfield and Seixas 1995 study (and the earlier studies based on the same data set) is that the larger mines included in these epidemiological studies were shown to have exposure data with relatively small bias (Attfield and Hearl, 1996). Another limitation in exposure data used in the U.S. studies is that the airborne dust concentrations used to estimate individual miners' cumulative exposures to respirable coal mine dust were based on average concentrations within job category (these average values were combined with data of each individual miner's duration employed in a given job). The earlier U.S. exposure-response studies of miners participating in the first medical survey of the NSCWP (Attfield and Morring, 1992b; Attfield and Hodous, 1992; Kuempel, *et al.*, 1995) relied primarily on exposure measurements from a dust sampling survey during 1968–1969 to estimate miners' exposures before 1970 (Attfield and Morring, 1992a). An advantage of the Attfield and Seixas 1995 study is that, in addition to the pre-1970 exposure estimates, more detailed exposure data were available to estimate miners' exposures from 1970 to 1987, during which the mean airborne concentrations were stratified by mine, job, and year (Seixas, *et al.*, 1991).

The most complete exposure data available are those for coal miners in the United Kingdom (Hurley, *et al.*, 1987; Hurley and Maclaren, 1987; Soutar and Hurley, 1986; Marine, *et al.*, 1988; Maclaren, *et al.*, 1989). These studies include medical examinations and individual estimates of exposure for more than 50,000 miners for up to 30 years. The U.S. studies are consistent with these U.K. studies in demonstrating the risks of developing occupational respiratory diseases from exposure to respirable coal mine dust. These risks increase with increasing exposure concentration and duration, and with exposure to dust of higher ranked coal. The QRA and associated benefits for this rulemaking were based on the Attfield and Seixas (1995) study because, in addition to the advantages described above, it best represents the recent conditions experienced by miners in the U.S. The QRA, Significance of Risk discussion, and Benefits estimates follow in Sections VI, VII, and IV (a)(2), respectively. The international studies provide an important basis for comparison with the U.S. findings, and several of the recent international studies are described in detail here.

Bourgkard, *et al.*, (1998) conducted a 4-year study of a group of French coal miners who were employed in underground and surface mines. The investigators examined the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP and PMF. Bourgkard, *et al.*, (1998), through selection of a younger worker population (*i.e.*, 35–48 years old at start of study), attempted to focus on the early stages of simple CWP. In essence, they hoped to identify those miners who needed to be relocated to less dusty workplaces or who needed to be clinically monitored. Bourgkard, *et al.* (1998) found a significant association between cumulative dust exposure and what was termed chest x-ray ''worsening'' (*i.e.*, increase in reader-designated category signifying progression of simple CWP). In addition, they found that miners with pneumoconiosis, wheezing, decreased lung function, and high cumulative dust exposure at the first medical examination were those most likely to show worsening on their chest x-rays four years later.

Love, *et al.* (1997, 1992) reported on occupational exposures and the health of British opencast (*i.e.*, surface or strip) coal miners. They studied a group of approximately 1,200 miners who were employed at sites in England, Scotland, and Wales. The mean age of the men was 41; many had worked in the mining industry since the 1970s. To determine dust exposure levels, full-shift personal samples were collected. Most were respirable dust samples which were collected using Casella cyclones according to the procedures described by the British Health and Safety Executive (HSE). Thus exposure determinations would be comparable to exposure determinations obtained in U.S. surface coal mines since both measure respirable dust according to the British Medical Research Council (BMRC) criteria.

These investigators found a doubling in the relative risk of developing profusion of simple CWP category 0/1 for every 10 years of work in the dustiest jobs in surface mines. These respirable coal dust exposures were under 1 mg/m^3. Love, *et al.* (1992, 1997), like other investigators, emphasized the need for monitoring and controlling exposures to respirable coal mine dust, particularly in high risk operations (*e.g.*, drillers, drivers of bulldozers).

Meijers, *et al.* (1997) studied Dutch coal miners who were examined between 1952 and 1963, and who were followed until the end of 1991. They reported an increased risk of mortality from simple CWP and PMF among miners who had generally worked underground for 20 or more years. Their conclusions were based upon dramatic increases in standardized mortality ratios (SMRs). There were several limitations in this study, however.

Morfeld, *et al.* (1997) published a recent paper that investigated the risk of developing simple CWP in German miners and addressed the occupational exposure limit for respirable coal dust in Germany. Their study included

approximately 5,800 miners who worked underground from the late 1970s to mid-1980s. Morfeld, *et al.* observed increases in relative risks (RRs) of developing early x-ray changes, category 0/1, that were exposure-dependent. Relative risks (RRs) increased with higher dust concentrations.

Starzynski, *et al.* (1996) conducted a mortality study on a group of 11,224 Polish males diagnosed with silicosis, simple CWP, or PMF between 1970 and 1985. This cohort was subdivided by occupation into four subcohorts: Coal miners (63%); employees of underground work enterprises (8%) (*i.e.*,drift cutting and shaft construction jobs); metallurgical industry and iron, and nonferrous foundry workers (16%); and refractory materials, china, ceramics and quarry workers (13%). The investigators found that coal miners had a slight, statistically significant excess overall mortality (*i.e.*, all causes) as indicated by a standardized mortality ratio (SMR) of 105 (with a 95% confidence interval (C.I.) of 100–110). Also, excess of deaths from diseases of the respiratory system among coal miners was nearly four times that of the referent population (SMR of 383 with a 95% C.I. of 345–424). The study of Starzynski, *et al.* (1996) agrees with others that there is premature mortality among coal miners from simple CWP and PMF. Unfortunately, there is little or no information presented on miner work history, exposure assessment (*e.g.*, respirable coal mine dust, silica), and mine environment (*e.g.*, coal rank(s), underground vs. surface mining).

Yi and Zhang (1996) conducted a study to measure the progression from simple CWP to PMF or death among a cohort of 2,738 miners with simple CWP who were employed at the Huai-Bei coal mine in China. Relative risks (*i.e.*, RRs) were calculated for progression from simple CWP category 1 to simple CWP category 3 and for progression from simple CWP category 3 to death. Their results demonstrated that miners with simple CWP category 1 are at risk of developing simple CWP category 2 and simple CWP category 3 (*e.g.*, RRs of 1.101 and 2.360, respectively). They also found that miners with PMF had a decreased life expectancy. Other risk factors for development of PMF included long-term work underground, and drilling. This study was limited by a lack of exposure assessment, estimation of miner smoking histories, and use of a radiological classification system that differs from that of the ILO.

Hurley and Maclaren (1987) studied British coal miners who were examined between 1953 and 1978, over 5-year intervals. They have shown that exposure to respirable coal dust increases the risks of developing simple CWP and of progressing to PMF. As seen in their data analysis, these responses were dependent upon dust concentration and coal rank. That is, greater responses were seen at higher dust concentrations and with higher rank coal (*i.e.*, increasing percent carbon). The investigators also noted that estimated risks were unaffected by changes in the proportion of miners with simple CWP who transferred jobs. The authors concluded that ''limiting exposure to respirable coal dust is the only reliable way of limiting the risks of radiological changes to miners.''

b. Other Health Effects

As noted in Table V–2, there were 21 studies in which the loss of lung function (LLF) was examined in coal miners. Fourteen of these studies also included an evaluation of respiratory symptoms (RS) in the miners. There were nine studies describing chronic obstructive pulmonary disease (COPD) in miners.

Henneberger and Attfield (1997; 1996), Kuempel, *et al.* (1997), Seixas, *et al.* (1993), Attfield and Hodous (1992), and Seixas, *et al.* (1992) evaluated data from pulmonary function tests and standardized questionnaires to miners in the NSCWP. A common finding in their studies was an increase in respiratory symptoms such as cough, shortness of breath, and wheezing. The symptoms were dependent upon the dust concentration to which the miners had been exposed, with more pronounced symptoms occurring after long-term exposures to higher exposure levels. These studies also demonstrated that a loss of lung function occurred among miners.

Attfield and Hodous (1992) studied U.S. miners who had spent 18 years underground (on average) and who participated in Round 1 (1969–1971) of the NSCWP. They observed that greater reductions in pulmonary function were associated with exposure to higher ranks of coal (*i.e.*, anthracite vs. bituminous vs. lignite). Using linear regression models, Kuempel *et al.*, (1997) predicted the excess (exposure attributable) prevalence of lung function decrements among miners with cumulative exposures to respirable coal mine dust of 2 mg/m^3 for 45 years (*i.e.*, 90 mg–yr/m^3). The excess prevalence estimated were 315 and 139 cases per thousand for forced expiratory volume in one second (FEV_1) of <80% and <65% of predicted normal values, respectively, among never-smoking miners (a sub-group of 977 NSCWP participants studied in Seixas *et al.*, 1993). Such reductions in FEV_1 are clinically significant; FEV_1 <80% (of predicted normal values) is a measure that is used to determine ventilatory defects (American Thoracic Society, 1991). Three recent studies found impaired FEV_1 to be a predictor of increased pre-mature mortality (Weiss, *et al.*, 1995; Meijers, *et al.*, 1997; Hansen *et al.*, 1999).

Seixas, *et al.* (1993) conducted an analysis of 977 underground coal miners who began working in or after 1970 and were participants of both NSCWP Round 2 (1972–1975) and Round 4 (1985–1988). They found a rapid loss of lung function in miners and further declines in lung function with continuing exposure to coal mine dust. Collectively these studies have shown that the prevalence of decreased lung function was proportional to cumulative exposure. That is, with exposure to higher coal dust levels over a working lifetime, there were more miners who experienced a loss of lung function. Also, the types of respiratory symptoms and patterns of pulmonary function decrements observed by both Attfield and Hodous (1992) Seixas, *et al.* (1992;1993) are characteristic of COPD.

The U.S. findings on respiratory symptoms and loss of lung function in miners have agreed with those of previous British studies by Marine, *et al.* (1988) and Soutar and Hurley (1986). Marine, *et al.* (1988) analyzed data from British coal miners and focused their attention on respiratory conditions other than simple CWP and PMF. In particular, they examined the Forced Expiratory Volume in one second (FEV_1) among smoking and nonsmoking miners and, on the basis of reported respiratory symptoms, identified those miners with bronchitis. Using these data, logistic regression models were used to estimate the prevalence of chronic bronchitis and loss of lung function. Marine, *et al.* concluded that both exposure to respirable coal mine dust and smoking independently cause decrements in lung function; their contributions to COPD appeared to be additive in coal miners.

Soutar and Hurley (1986) examined the relationship between dust exposure and lung function in British coal miners and ex-miners. The men who were studied were employed in coal mines in the 1950s and were followed up and examined 22 years later. These miners and ex-miners were categorized as smokers, ex-smokers, or nonsmokers. The Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and the FEV_1/FVC ratios decreased in all study groups and these reductions in lung function were

inversely proportional to dust exposure. Thus, Soutar and Hurley concluded that exposure to respirable coal mine dust can cause severe respiratory impairment, even without the presence of simple CWP or PMF. They speculated that the pathology of coal dust-induced lung disease differs from that induced by smoking.

Centrivacinar emphysema in coal miners has been associated with the amount of dust retained in their lungs at the end of life and with their dust exposures during life and the years worked underground (Ruckley *et al.*, 1984; Leigh *et al.*, 1983, 1994). Emphysema in coal miners has also been associated with pathological measurements of pneumoconiosis (Cockcroft *et al.*, 1982a), and with lung function decrements and irregular opacities on chest x-rays (Cockcroft *et al.* 1982b,c; Cockcroft and Andersson, 1987).

Recent studies from China (Wang, *et al.*, 1997) and the European community (Bourgkard, *et al.*, 1998; Carta, *et al.*, 1996; Lewis, S., *et al.*, 1996) have also supported the British and U.S. findings which demonstrated the correlation between occupational exposure to coal dust and respiratory symptoms and loss of lung function in miners.

Wang, *et al.* (1997) examined lung function in underground coal miners and other workers from several factories in Chongqing, China. For their study, information was obtained on exposure duration, results of radiographic tests, and smoking history. Pulmonary function tests were performed, providing the Forced Expiratory Volume in one second (FEV_1), the Forced Vital Capacity (FVC), and FEV_1/FVC data. Additionally, the diffusing capacity for carbon monoxide (DL_{CO}) was measured. This is an indicator of diffusion impairment at the ''blood-gas barrier'' which may occur, for example, when this barrier becomes thickened (West, 1990; 1992). Wang, *et al.* (1997) found that there was impairment of pulmonary function among the coal miners and they had evidence of obstructive disease. Like other studies, such effects were observed among coal miners even in the absence of simple CWP. Pulmonary function was further decreased when simple CWP was present. This study did not provide exposure measurements and there was no consideration of exposure-response relationships. Also, silica exposures and their potential effects were not examined in the underground coal miners.

As noted above, Bourgkard, *et al.* (1998) was interested in the earlier stages of simple CWP (*i.e.*, Categories 0/1 and 1/0) and the prognostic role of cumulative dust exposure, smoking patterns, respiratory symptoms, lung CT scans, and lung function indices for chest x-ray worsening and evolution to simple CWP category 1/1 or higher. Over a 4-year period, they studied French coal miners who were employed in underground and surface mines. Bourgkard, *et al.* (1998) found that, at the first medical examination, the ratio of the Forced Expiratory Volume in one second (FEV_1) to the Forced Vital Capacity (FVC) (*i.e.*, FEV_1/FVC) and other airflows determined from a forced expiration (West, 1990; 1992) were lower among miners who later developed simple CWP category 1/1 or higher. These miners also experienced more wheezing at the first medical examination. Thus, the results of their study suggested that lung function changes may serve as an early indicator of miners who are at increased risk of developing simple CWP and PMF and who should be monitored more closely.

Carta, *et al.* (1996) have examined the role of dust exposure on the prevalence of respiratory symptoms and loss of lung function in a group of young Italian coal miners (*i.e.*, mean age at hire 28.9 years, mean age at first survey 31.2 years). These miners worked underground and were exposed to lignite (*i.e.*, low rank coal) which had a 5–7% sulfur content. They were followed for a period of 11 years, from 1983 and 1993. Carta, *et al.* (1996) found few abnormalities on miner chest x-rays taken throughout the 11-year study. However, there was an increased prevalence of respiratory symptoms and loss of lung function. This was particularly noteworthy since dust exposures were often below 1.0 mg/m^3; the cumulative dust exposure for the whole cohort was 6.7 mg-yr/m^3 after the first survey. Thus, Carta, *et al.* (1996) demonstrated that miners experience respiratory effects of exposure to dust generated from a lower rank coal and at lower concentrations. They have recommended yearly measurements of lung function for miners.

Lewis, *et al.* (1996) studied a group of British miners, many of whom entered the coal industry in the 1970s. Based upon chest x-rays, the miners had no evidence of simple CWP or PMF. The objective of this study was to determine whether coal mining (*i.e.*, exposure to respirable coal mine dust) is an independent risk factor for impairment of lung function. Lewis, *et al.* (1996) found that there was a loss of lung function in miners (smokers and nonsmokers), particularly among miners who were under approximately 55 years of age. For miners who smoked, there was a greater loss of lung function than in nonsmoking miners with the same level of exposure to respirable coal mine dust. Above age 55, the loss of lung function was similar for miners and their controls, although all smokers continued to exhibit a greater loss of lung function than nonsmokers. Lewis, *et al.* (1996) concluded that the deficits in lung function may occur in the absence of simple CWP and PMF, and independent from the effects of smoking.

There have been two recent mortality studies that have demonstrated a relationship between exposure to respirable coal mine dust and development of COPD. This association was reported by Kuempel, *et al.* (1995) in the U.S., and by Meijers, *et al.* (1997) in the Netherlands. These two groups of investigators have reported that occupationally-induced COPD (*e.g.*, chronic bronchitis, emphysema) can occur in miners, with *or without* the presence of simple CWP or PMF. They also found that the risk of premature mortality from COPD was elevated among miners and could be separated from the effects of smoking and age.

Kuempel, *et al.* (1995) found an increase in relative risk (RR) of premature mortality from COPD among U.S. coal miners who participated in the NSCWP from 1969 through 1971. In their data analysis, the exposure-response relationship was evaluated using the Cox proportional hazards model. This model assumes that the hazard ratio between nonexposed and exposed groups does not significantly change with time. When fitting a curve to the data (*e.g.*, log-linear), cumulative exposure was expressed as a categorical or continuous variable. Due to model limitations (*e.g.*, less statistical power, influence of category scheme, use of lowest exposure group for comparisons vs. use of non-exposed group), Kuempel, *et al.*, (1995) believed that the exposure data should be expressed as a continuous variable. If, for example, the cumulative exposure was 90 mg-yr/m^3 (*i.e.*, 2 mg/m^3 for 45 years), then the relative risk of mortality from chronic bronchitis or emphysema was 7.67. Kuempel, *et al.* (1995) also showed that relative risk decreased with lower cumulative exposures (*i.e.*, below 90 mg-yr/m^3) and increased with higher cumulative exposures (*i.e.*, above 90 mg-yr/m^3). Thus, these investigators demonstrated a statistically significant exposure-response relationship for COPD.

Meijers, *et al.* (1997) have shown, among Dutch miners, reductions in lung volumes and capacities are good predictors of the increased risk of

premature mortality from COPD. For example, a diminished forced expiratory volume in one second (FEV_1) or a diminished ratio of the FEV_1 to the forced vital capacity [16] (FVC) (*i.e.*, FEV_1/FVC) upon medical examination was associated with a significantly increased standardized mortality ratio (SMR) for COPD (322 and 212, respectively). In other words, miners with diminished lung capacity based on FEV_1 were two to three times more likely to die prematurely due to COPD than miners who had normal lung function. In contrast, SMRs for COPD were not significantly increased in miners with normal lung volumes and capacities. These data support prior conclusions of Seixas, *et al.* (1992, 1993) and Attfield and Hodous (1992) based on morbidity studies.

VI. Quantitative Risk Assessment

Having reviewed the reported health effects associated with exposure to respirable coal mine dust, MSHA has evaluated the evidence to determine whether the current regulatory strategy can be improved. The criteria for this evaluation are established by section 101(a)(6)(A) (30 U.S.C. 811(a)(6)(A)) of the Mine Act, which states that:

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on Court interpretations of similar language under the Occupational Safety and Health Act, there are three questions that must be addressed: (1) Whether health effects associated with the current pattern of overexposures on individual shifts constitute a material impairment to miner health or functional capacity; (2) whether the current pattern of overexposures on individual shifts places miners at a significant risk of incurring any of these material impairments; and (3) whether the proposed rules will substantially reduce those risks.

The statutory criteria for evaluating the health effects evidence do not require absolute certainty. Under section 101(a)(6)(A) of the Mine Act, MSHA is required to proceed according to the ''best available evidence'' (30 U.S.C. 811(a)(6)(A)). Furthermore, the need to evaluate risk does not mean that an agency is placed into a ''mathematical straightjacket.'' In *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute (448 U.S.),* otherwise known as the ''Benzene'' decision, the court ruled that:

> So long as they are supported by a body of reputable scientific thought, the Agency is free to use conservative assumptions in interpreting the data * * * risking error on the side of overprotection rather than underprotection. (448 U.S. 607, 100 S.Ct 2844 (1980) at 656)

As explained earlier, MSHA's objective in strengthening the requirements for verifying the effectiveness of dust control plans, and in enforcing effective plans through the new enforcement policy proposed, is to ensure that no miner is exposed to an excessive concentration of respirable dust on any individual shift (*i.e.*, a concentration in excess of the applicable dust standard). MSHA's samples, combined with the more frequent bimonthly operator samples reveal recent overexposures on individual shifts in many mines. Furthermore, these dust samples demonstrate that, in many mines, dust concentrations exceed the applicable dust standard on a substantial percentage of the production shifts. This pattern has persisted for many years; and, since the existing program permits individual shift excursions above the applicable dust standard, a similar pattern can be expected to continue over the working lifetime of affected miners—unless an effort is made to eliminate excessive exposures on individual shifts.

In this quantitative risk assessment (QRA), MSHA will demonstrate that reducing respirable coal mine dust concentrations to no more than the applicable dust standard on each and every shift would, over a 45-year occupational lifetime, significantly bring down the cumulative exposure to respirable coal mine dust, thereby significantly reducing the risk of both simple CWP and PMF among miners. This reduction in risk would result from reducing concentrations on just that percentage of shifts currently showing an excess.

MSHA has estimated health benefits of the two rules based on eliminating excessive exposures at only those MMUs and roofbolter designated areas (RB–DAs) currently exhibiting a pattern of recurrent overexposures on individual shifts. In the previous proposed rule, MSHA used operator sampling data from the year 1999 to identify and characterize such MMUs. In the current proposed rule, MSHA has updated the analysis to 2001, included MSHA DO sampling data in addition to operator data, and expanded the quantitative analysis to include the reduction in risk expected for certain miners not previously considered (*i.e.*, miners working in RB–DAs). As a result, MSHA believes it has now more comprehensively quantified the reduction in risk expected for the most highly exposed miners currently subject to recurrent overexposures.

By ''exhibiting a pattern of recurrent overexposures,'' MSHA means that, for the same DO or RB–DA, at least two valid MSHA or bimonthly operator samples have exceeded the applicable dust standard during a year. MMUs exhibiting such a pattern are highly likely to have experienced excessive exposures on at least six shifts during the year under consideration.[17]

Based on 2001 MSHA and operator data, there were 716 MMUs (out of 1,256 total) at which dust concentrations for the DO exceeded the applicable dust standard on at least two of the sampling shifts (MSHA, datafile: DO_2001.ZIP). MSHA considers these 716 MMUs, representing 57 percent of all MMUs and more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Valid DO samples were collected on a total of 20,905 shifts at these 716 MMUs, and the applicable dust standard was exceeded on 4,028 of these shifts, or 19.3 percent. For this 19.3 percent, the mean excess above the standard, as measured for the DO only, was 1.04 mg/m^3.

These results are based on a large number of shifts (an average of nearly 30 at each of the 716 MMUs). Therefore, assuming representative operating conditions on these shifts, the results can be extrapolated to all production

[16] Forced vital capacity (FVC) is the total volume of gas that can be exhaled with a forced expiration after a full inspiration; The vital capacity measured with a FVC may be less than that measured with a slower exhalation (West, 1992).

[17] MSHA estimates a MMU average of 384 production shifts per year. At MMUs exhibiting a pattern of recurrent overexposures in 2001, valid DO samples were obtained on an average of about 30 of these 384 production shifts. If dust concentrations on two or more of the sampled shifts exceed the standard, then it follows, at a 95-percent confidence level, that the standard is exceeded on at least six shifts over the full year.

If a different definition of ''exhibiting a recurrent pattern of overexposures'' had been used in the QRA, the estimate of the reduction in risk and associated benefits would have been different. For example, if the criterion were that four or more bimonthly DO exposure measurements exceeded the applicable dust standard then overexposures would be expected, with 95% confidence, to occur on at least 20 shifts in a year of 384 shifts. Using more than two recorded overexposures as the criterion would arbitrarily reduce the population for which MSHA is estimating benefits and decrease the estimated number of prevented cases.

shifts, including those that were not sampled, at these same 716 MMUs. With 99-percent confidence, the overall percentage of production shifts on which the DO sample exceeded the standard was between 18.6 percent and 20.0 percent for 2001. At the same confidence level, again assuming representative operating conditions, the overall mean excess on noncompliant shifts at these MMUs was between 0.96 mg/m^3 and 1.11 mg/m^3. If, as some commenters on the earlier single sample proposed rule and the Dust Advisory Committee proceedings have alleged, operators tend to reduce production and/or increase dust controls on sampled shifts, then the true values could be higher than even the upper endpoints of these 99-percent confidence intervals.

The available data suggest that, unless changes are made to enforce the applicable dust standard on every shift, the same general pattern of overexposures observed in 2001 will persist into the future.[18] Therefore, MSHA concludes that without the proposed changes:

- More than half of all MMUs would continue to have a pattern of recurrent overexposures on individual shifts;
- At those MMUs with recurrent overexposures, full-shift average respirable dust concentrations for the DO would continue to exceed the applicable dust standards on about 20 percent of all production shifts;
- Among those shifts on which DO exposure exceeds the applicable dust standards, the mean excess for the DO would continue to be approximately 1 mg/m^3.

If all overexposures on individual shifts are eliminated, the reduction in total respirable coal mine dust inhaled by a miner over a working lifetime will depend on three factors: (1) The average volume of air inhaled on each shift that would otherwise have exceeded the applicable dust standard, (2) the degree of reduction in respirable dust concentration in the air inhaled on such shifts, and (3) the number of such shifts per working lifetime. While the inhaled dose (mg) could not be measured directly, it is biologically and quantitatively related to the accumulated exposure (*i.e.*, airborne concentration multiplied by duration, summed across jobs for each miner) used to predict CWP and PMF prevalences in the Attfield-Seixas models. If a miner inhales ten cubic meters of air on a shift (U.S. EPA, 1980), reducing the respirable coal mine dust concentration in that air by 1.04 mg/m^3 will result in 10.4 mg less dust inhaled on that shift alone. Assuming the miner works 240 shifts per year, then reducing inhaled respirable dust by an average of 10.4 mg on 19.3 percent of the shifts will reduce the total respirable coal mine dust inhaled by 482 mg per year, or nearly 22,000 mg over a 45-year working lifetime:

1.04 mg less respirable coal mine dust per m^3 of inhaled air
$\times$ 10 m^3 inhaled air per shift
$\times$ 46.32 affected shifts (*i.e.*, 19.3% of 240) per work year
$\times$ 45 work years per working lifetime
= 21,678 mg less respirable coal mine dust inhaled per working lifetime.

In Section V, the strengths and weaknesses of various epidemiological studies were presented, supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material health impairment with respect to CWP. Two strengths of this study are its quantitative description of exposure-response among both miners and ex-miners (who had worked as miners for approximately 13–40 years) and the fact that it reflects recent conditions experienced by coal miners in the U.S. Using the exposure-response relationship it is possible to estimate the health impact of bringing dust concentrations down to or below the applicable dust standard on every shift. This is the only contemporary epidemiological study of CWP in U.S. miners providing such a relationship.

Attfield and Seixas (op cit) used two or three B readers to identify the profusion of opacities based on the ILO classification scheme.[19] The most inclusive category defined in their paper was CWP 1+, which include simple CWP categories 1, 2, and 3, as well as PMF. The second category CWP 2+, does not include simple CWP, category 1, but does include the more severe simple CWP categories, 2 and 3, as well as PMF. The third category used in their report was PMF, denoting any category (A, B, or C) of large opacities. The authors applied logistic regression models to the prevalence of CWP 1+, CWP 2+, and PMF as a function of accumulated coal mine dust exposure calculated for each miner included in the study. In the absence of data differentiating the inhalation rates of individual miners, the accumulated exposures in these models were expressed in units of mg-yr/m^3.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures), bringing dust concentrations down to no more than the applicable dust standard on each and every production shift would reduce DO exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 19.3 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the DO level, by 0.20 mg-yr/m^3 over the course of a working year (*i.e.*, 19.3 percent of shifts in one year, times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected miner would, on average, amount to a reduction in accumulated exposure of approximately 9.0 mg-yr/m^3 (*i.e.*, 45 years times 0.20 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples submitted to MSHA tend to under-represent the frequency or magnitude (or both) of individual full-shift excursions above the applicable dust standard, then eliminating such excursions would provide a lifetime reduction of even greater than 9.0 mg-yr/m^3 for each affected miner.

The Attfield-Seixas models predict the prevalence of CWP 1+, CWP 2+, and PMF for miners who have accumulated a given amount of exposure, expressed in units of mg-yr/m^3, by the time they attain a specified age. Benefits of reducing cumulative exposure can be estimated by calculating the difference between predictions with and without the reduction. For example, suppose a miner at one of the MMUs under consideration begins work at age 20 and retires at age 65. At these MMUs, the mean DO concentration reported in 2001 was 1.15 mg/m^3; so, after 45 years, a miner exposed at this level can be expected to have accumulated a total exposure of nearly 52 mg-yr/m^3 (*i.e.*, 45 yr $\times$ 1.15 mg/m^3). By the year of retirement, such a miner is expected to accumulate, on average, 9.0 mg-yr/m^3 less exposure if individual shift excursions are eliminated. For 65-year-old miners, reducing an accumulated total dust exposure of 52 mg-yr/m^3 by 9.0 mg-yr/m^3 reduces the predicted prevalence of ''CWP 1+'' by more than 16 per thousand (see the entry for affected DO miners in Table VI–1).[20]

[18] Appendix VI.1 compares the pattern observed in 2001 to that in earlier years.

[19] If three readings were available, the median value was used. If two readings were available, the higher of the two ILO categories was recorded. Eighty radiographs were eliminated because only one reading was available.

[20] The Attfield-Seixas model predicts a higher prevalence of CWP, and consequently a greater risk reduction (35 per thousand DO miners at age 65), after 45 years of occupational exposure to coal mine dust in central Pennsylvania or southeastern West Virginia. (Attfield and Seixas attribute this effect to

Continued

This result, however, applies only to DO miners at age 65. The Attfield-Seixas models provide different predictions for each year of age that a miner attains. The predicted benefit turns out to be smaller for younger miners and larger for older miners. This is partly because younger miners will have accumulated less exposure reduction as a result of today's final changes, and partly because the Attfield-Seixas models depend directly on age as well as on cumulative exposure. The health effects of recurrent overexposures can occur long after the overexposures occurred. Even after a miner retires and is no longer exposed to respirable coal mine dust, the additional risk attributable to an extra 9.0 mg-year/m^3, accumulated earlier, continues to increase with age. Consequently, the benefit to be gained from eliminating individual shift excursions also continues to increase after a miner is no longer exposed. For example, assuming no additional exposure after age 65, the predicted reduction in average prevalence of CWP 1+ increases from 16.6 per thousand at age 65 to 21.4 per thousand at age 70. Presumably, the increasingly greater predicted reduction in risk of disease after age 65 is due to the latent effects of the reduction in earlier exposure and the progressive nature of CWP.

To quantify benefits expected from eliminating overexposures on each and every shift, MSHA applied the Attfield-Seixas models to a hypothetical population of miners who, on average, begin working at age 20 and retire at age 65, assuming different lifetimes.[21] To show the range of potential reductions in risk depending on a miner's lifetime, Table VI–1 presents the risk reductions predicted at three different attained ages: 65, 73, and 80 years. The projected benefit increases with attained age. However, MSHA's best estimate of the benefit to exposed miners is expressed by the reduction in prevalence of disease predicted at age 73.[22]

Since not all underground coal miners are overexposed to dust with the same frequency or at the same level, Table VI–1 shows the risk reductions projected for three different categories of affected miners: (1) DO miners, (2) NDO miners who are faceworkers neither classified as a DO nor subject to a separate applicable dust standard applicable to a RB–DA, and (3) DA roofbolters. The reduction in risk predicted for each of these three categories will now be discussed in turn.

(1) *DO Miners.* As explained earlier, for DO miners the predicted lifetime exposure reduction accumulates at a rate of 0.20 mg/m^3 of reduced exposure per year during the 45 ''working years'' between 20 and 65, reaching a maximum of 9.0 mg-yr/m^3 upon retirement at age 65. Between ages 65 and 80, the accumulated reduction in dust exposure remains at an estimated average of 9.0 mg-yr/m^3, but (as also explained previously) the benefit in terms of both simple CWP and PMF risk continues to increase.

The first row of Table VI–1 presents the reductions in risk expected among affected DO miners who work at a MMU exhibiting a pattern of recurrent overexposures. For this group of miners, the calculation at an average lifetime of 73 years shows that bringing dust concentrations down to no more than the applicable dust standard on each shift would:

- Reduce the combined risk of simple CWP and PMF by 24.4 cases per 1000 affected DO miners;[23]
- Reduce the combined risk of simple CWP (category 2 and 3) and PMF by 15.5 cases per 1000 affected DO miners;
- Reduce the risk of PMF by 7.6 cases per 1000 affected DO miners.

When the dust concentration measured for the DO exceeds the applicable dust standard, measurements for at least some of the other miners in the same MMU may also exceed the standard on the same shift, though usually by a lesser amount. Furthermore, although the DO represents the occupation most likely to receive the highest exposure, one or more of these other miners may be exposed to even higher concentrations than the DO on some shifts. Therefore, the second category of affected miners addressed in Table VI–1 is the population of non-DO faceworkers other than those working in roofbolter DAs (who are addressed as a separate, third category).

(2) *NDO Miners.* This category covers all faceworkers other than the DO, except those roofbolters for which a separate DA applicable dust standard has been established. (Roofbolters *not* coming under a DA standard are included in the NDO category). To estimate how NDO miners (other than those subject to a DA standard) would be affected by the proposed rules, MSHA examined the results from all valid dust samples collected by MSHA in underground MMUs during 2001 (MSHA, data file: Insp2001.zip). Within each MMU, MSHA typically takes one sample on the DO and, on the same shift, four or more additional samples representing other occupations. In 2001, there was an average of 1.0 NDO measurement in excess of the standard on shifts for which the DO measurement exceeded the standard.[24] For NDO measurements that exceeded the standard on the same shift as a DO measurement, the mean excess above the standard was approximately 0.6 mg/m^3.[25]

Combining these results with the 19.3 percent rate of excessive exposures observed for the DO on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1 other miner, in addition to the 1 classified as DO, is currently overexposed on at least 19 percent of all production shifts. In 2001, the mean of the highest dust concentration reported for any non-DO miner on sampled shifts was 1.08 mg/m^3. Over the course of each working year, the reduction in exposure expected for such miners as a result of implementing the proposed rules is 0.12 mg-yr/m^3 (*i.e.*, 19.3 percent of one year, times 0.6 mg/m^3).

To assess the reduction in risk expected from eliminating all single-shift exposures for these NDO miners, MSHA again applied the Attfield and Seixas models to miners who begin working at age 20 and retire at age 65, assuming lifetimes of 65, 73, and 80 years. This time, however, the resulting decrease in predicted prevalence was multiplied by 1.0/6 = 0.167, to reflect the fact that the assumed rate of overexposure applies, on average, to

the type of coal mined in those geographic areas). However, few underground coal mines in central Pennsylvania or southeastern West Virginia are still operating. In fact, only about 29 of the 716 MMUs exhibiting a pattern of recurrent overexposures in 2001 were from those areas. Therefore, the risk assessment presented here, along with projected benefits of the rule, are based on the lower risks predicted for miners working outside central Pennsylvania and southeastern West Virginia.

[21] Appendix VI.2 contains a technical description of the Attfield-Seixas models and an explanation of how MSHA applied them to obtain the results shown in Table VI–1. The method used in applying the models differs slightly from that used in the previous proposed rule, and Appendix VI.2 also explains this difference. In addition, an EXCEL workbook entitled ''RiskRdxn.xlw'' showing the formulas used in the calculations has been placed into the public record for these proceedings.

[22] The expected lifetime for all American males, conditional on their having reached 20 years of age, is 73 years (calculated from U.S. Census, March 1997, Tables 18 and 119).

[23] ''Affected DO miners'' include all miners who work at MMUs with a pattern of recurrent overexposures and who are exposed to dust concentrations similar to the DO over a 45-year working lifetime.

[24] With 95-percent confidence, on shifts for which the DO measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 0.91.

[25] With 95-percent confidence, the mean excess is at least 0.59 mg/m^3.

about one-sixth of the faceworkers not classified as the DO.[26]

The second row of Table VI–1 contains the risk reductions for NDO miners expected as a result of eliminating all individual shift overexposures. Over an occupational lifetime, the average reduction in risk for simple CWP and PMF combined, and for PMF alone, increases with age. However, the risk reduction at each age is smaller for the affected NDOs than for the affected DOs. This is expected because the estimated probability that a NDO (other than a RB–DA) will, under current conditions, be overexposed on a given shift is only 16.7 percent of the corresponding probability for the DO. For the MMUs under consideration, the predicted reduction in risk for faceworkers other than the DO who live an expected lifetime of 73 years is: 2.3 fewer cases of ''CWP 1+'' per thousand affected NDO miners; 1.5 fewer cases of ''CWP 2+'' per thousand affected NDO miners; and 0.7 fewer cases of PMF per thousand affected NDO miners.

(3) *Roofbolter DA (RB–DA) Miners.* Because roofbolters are often exposed to higher quartz concentrations than other miners, the applicable dust standard for them is frequently different from the standard applicable to other miners working in the same MMU. Therefore, many roofbolters are classified as working in a ''roofbolter designated area'' (RB–DA). For purposes of this QRA, such roofbolters were excluded from the analysis of NDO miners presented above. Based on 2001 MSHA and operator data, 194 out of a total 659 RB–DAs met MSHA's criterion for exhibiting a pattern of recurrent overexposures—*i.e.*, dust concentrations exceeded the applicable dust standard on at least two of the sampled shifts (MSHA, datafile: RBDA2001.ZIP). Valid RB–DA samples were collected on a total of 3477 shifts at these 194 RB–DA MMUs, and the applicable dust standard was exceeded on 837 of these shifts, or 24.1 percent (95% confidence interval: 22.7 to 25.5). For this 24.1 percent, the mean excess above the standard, as measured for the RB–DA only, was 0.72 mg/m^3 (95-percent confidence interval: 0.64 to 0.80).

At these RB–DAs (*i.e.*, those exhibiting a pattern of recurrent overexposures), the mean concentration reported in 2001 was 0.94 mg/m^3; so, after 45 years, an RB–DA miner can be expected, if there is no change in current conditions, to have accumulated a total exposure of more than 42 mg-yr/m^3. By retirement at age 65, such a miner would be expected to accumulate, on average, 7.8 mg-yr/m^3 less exposure if overexposures on all individual shifts were eliminated. (45 years $\times$ 24.1% of 0.72 mg/m^3). The third row of Table VI–1 shows the estimated impact of the proposed rules on the risk predicted for RB–DA roofbolters. At age 73, reducing an accumulated total dust exposure of 42 mg-yr/m^3 by 7.8 mg-yr/m^3 reduces the predicted prevalence of ''CWP 1+'' by 19.6 per thousand, of ''CWP 2+'' by 12.1 per thousand, and of PMF by 6.0 per thousand.

TABLE VI–1.—BY AGE, AVERAGE REDUCTION IN CASES OF OCCUPATIONAL RESPIRATORY DISEASE EXPECTED TO RESULT FROM IMPLEMENTATION OF SINGLE SAMPLE AND PLAN VERIFICATION RULES

Type of miner	Reduction in cases of occupational respiratory disease per 1,000 affected miners								
	Simple CWP[a] (categories 1, 2 or 3) or PMF[b] (''CWP 1+'')			Simple CWP(categories 2 or 3) or PMF (''CWP 2+'')			PMF		
	Age			Age			Age		
	65	73	80	65	73	80	65	73	80
Affected Designated Occupation Miners[c] (DO)	16.6	24.4	30.6	6.3	15.5	28.0	2.8	7.6	16.1
Affected Non-Designated Occupation Miners[d] (NDO)	1.6	2.3	2.9	0.6	1.5	2.7	0.3	0.7	1.5
Affected Roof Bolter Designated Areas Miners[e] (RB–DA)	13.0	19.6	25.3	4.8	12.1	22.5	2.2	6.0	12.8

[a] Simple CWP: simple coal workers' pneumoconiosis.
[b] PMF: progressive massive fibrosis.
[c] Affected Designated Occupation (DO) Miners: includes all miners who work at the 57 percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime. Risk reduction estimates are based on reducing the mean dust concentration of 1.15 mg/m^3 (Std. Error = 0.018) observed in 2001 for DOs at the MMUs under consideration.
[d] Affected Non-Designated Occupation (NDO) Miners: includes all underground faceworkers under consideration who are not classified as the DO or a ''designated area roofbolter.'' Risk reduction estimates are based on reducing the mean dust concentration of 1.08 mg/m^3 (Std. Error = 0.011) observed in 2001 for the NDO sample showing the highest dust concentration on a given MSHA sampling day within a MMU.
[e] Affected Roofbolter Designated Area (RB–DA) Miners: includes all miners working as roofbolters in the 29.4 percent of RB–DAs exhibiting a pattern of recurrent overexposures. Risk reduction estimates are based on reducing the mean dust concentration of 0.94 mg/m^3 (Std. Error = 0.025) observed in 2001 for the RB–DAs under consideration.

MSHA acknowledges that the assumptions and data used in this QRA are subject to various caveats, but the Secretary believes that, on balance, MSHA's analysis probably underestimates the increased risk of material impairment attributable to individual shift overexposures accumulated over an occupational lifetime. Some previous commenters, however, have disagreed with this assessment or argued that some aspects of it ''need further consideration.'' The only commenter offering specific criticisms was the NMA, which submitted a critique by M.J Nicolich and J.F. Gamble (September, 2000) along with general comments from Richard Lawson. Nicolich and Gamble brought up four points that, in the NMA's view, cast doubt on our conclusions. These four points will be discussed in turn.

(1) According to Nicolich and Gamble, ''[t]he QRA has made some

[26] There are an estimated 6 NDO miners for each DO miner, and an average of 1.0 of these 6 miners is overexposed. This does not include roofbolters working in designated areas, who are treated as a separate group in the present analysis.

assumptions that have led to incorrect estimates of the percent of miners who would be at reduced risk on the new plan, and have misrepresented the degree of risk reduction among the miners who would have reduced risk.'' In support of this position, Nicolich and Gamble argued that (a) the sample data on which the QRA was based were not independent and (b) that the distribution of values by which concentrations exceeded the applicable dust standard was likely to be skewed and would, therefore, be better represented by its median than by its mean. They argued, further, that as a consequence of (a), the estimated ''number of workers that will have reduced risk will likely be too high and the degree of risk among these fewer workers will be under-estimated * * *'' and that, as a consequence of (b), ''the degree of risk reduction among the miners experiencing over-exposure will likely be too large (because of an overestimate of the intensity of the exposure of the over-exposed miners).''

Both parts of this argument are flawed. The discussion that Nicolich and Gamble offer in support of (a) has nothing to do with independence of sample data and provides no basis for concluding that MSHA has overestimated the percentage of miners expected to experience reduced risk if overexposures on individual shift are eliminated. It should also be noted that this part of their argument involves an apparent misunderstanding of how MSHA estimated the number of miners that would be affected by this rule. Contrary to Nicolich and Gamble's line of reasoning, the estimated percentage of shifts exceeding the applicable dust standard at MMUs exhibiting a pattern of recurrent overexposures was not used to estimate the size of the mining population at risk. It is true that the number of affected miners used in calculating benefits was estimated from the proportion of MMUs exhibiting a pattern of recurrent overexposures (see section IX.A.2. Benefits). However, this estimate would remain the same, regardless of the overexposure rate observed for MMUs defined as exhibiting a pattern. It is also true that if a more stringent criterion were used to define MMUs exhibiting a pattern, then fewer MMUs (and, therefore, fewer miners) would be included in the benefit estimates. The rule, however, applies to all MMUs, not just those defined as exhibiting a pattern of recurrent overexposures for purposes of the QRA. Therefore, adopting a more stringent criterion for recurrence would simply mean that additional miners benefitting from the rule would be left out of the benefit estimates.

Furthermore, the second part of their argument (b) is not relevant to the calculation of the accumulated effect of individual shift exposures, as modeled by the Attfield/Seixas model being employed. In support of their position, Nicolich and Gamble present the example of nine laborers who earn $10,000 per year and a boss who earns $100,000 per year and point out that the mean income ''is not a good measure of the 'typical value.' '' They then propose (based on no supporting data other than that of this example) that the median would be a better measure of the ''typical'' degree by which individual shift overexposures exceed the applicable dust standard.

Nicolich and Gamble fail to consider that the objective is not to estimate a ''typical'' degree of excess but, rather, to estimate the total degree of excess, accumulated over an occupational lifetime. The variable used in the Attfield/Seixas model is cumulative exposure, defined by the product of exposure duration and mean ''intensity'' (*i.e.*, dust concentration), not median intensity. In the example of nine laborers and a boss, the total annual payout is ten times *mean* salary, not median salary. Similarly, cumulative exposure is given by the product of exposure duration and *mean* intensity regardless of the shape of the statistical distribution of excess dust concentrations. Since MSHA's use of the mean value fully accords with the Attfield/Seixas model employed, the commenters have provided no basis for concluding that MSHA has overestimated the degree of risk reduction to be expected among miners experiencing individual shift overexposures.

(2) According to Nicolich and Gamble, ''[t]he Attfield and Seixas model does not take into account the over-exposures identified by MSHA.'' Based on this premise, they argue that ''the estimates of exposure in the model are less than actual exposure and the E–R [*i.e.*, exposure-response] slope is steeper than the actual slope.'' More specifically, they attempt to show that Attfield and Seixas should have estimated the mean concentration for face occupations to be 1.57 mg/m^3 rather than 1.46 mg/m^3. From this, they conclude that ''[t]he toxicity of coal mine dust is therefore over-estimated.''

This argument is based on the false premise that individual shift overexposures were not included in the data from which the Atffield/Seixas model was generated. Contrary to Nicolich and Gamble, however, neither MMUs with a pattern of recurrent overexposures nor individual shift overexposures *per se* were excluded from the data used by Attfield and Seixas. Therefore, contrary to their argument, the existence of such overexposures does not create a ''bias in exposure estimates'' that ''produces an overestimate in the toxicity of coal mine dust.'' Specifically, the value of 1.46 mg/m^3 used by Attfield and Seixas to represent the mean concentration for faceworkers already includes those measurements exceeding the applicable dust standard. Therefore, the corresponding value (1.57 mg/m^3) proposed by Nicolich and Gamble essentially double-counts those measurements.

(3) According to Nicolich and Gamble, ''[t]here is a background prevalence of CWP that is not related to coal mine dust exposure'' and ''prevalences that occur at zero exposure should be subtracted from the observed prevalence.'' Nicolich and Gamble failed to note that background prevalences have no bearing on the expected reductions in risk as calculated and presented in this risk assessment. All estimates of expected risk reduction in this QRA are based on calculating a difference between two estimated risks: with and without the elimination of individual shift overexposures accumulated over an occupational lifetime. Both of these estimated risks include the same background effect that is not attributable to coal mine dust exposure. Therefore, any background effect is canceled out when the difference is calculated. The estimated reduction in risk is, according to the Attfield/Seixas model, free of any background effect.[27]

(4) Nicolich and Gamble criticized the use of irregular opacities as indicating coal workers' pneumoconiosis. However, studies have shown that the prevalences of both small rounded and small irregular opacities increase with increasing years worked underground (Amandus *et al.*, 1976; Cockcroft *et al.*, 1983) and with increasing coal mine dust exposure (Collins *et al.*, 1988). The relationship between irregular opacities and coal mine dust exposure has been observed among both smokers and nonsmokers (Cockcroft *et al.*, 1983). Amandus *et al.* (1976) found that smoking, age, and years underground

[27] Although it is canceled by subtraction when estimating the effect of reducing cumulative exposure, the Attfield/Seixas model does, in fact, incorporate an age-dependent background effect. Therefore, since the model allows for a positive response at zero exposure, the slope of the exposure-response relationship is not artificially inflated.

were all significant predictors of irregular opacities. Irregular opacities were most common among miners who were older than 30, had bronchitis, and smoked, but exposure to coal mine dust was still a significant factor. Collins *et al.* (1988) found that the small irregular opacities were statistically significantly associated with both dust exposure and age in U.K. coal miners, but did not find a significant relationship with smoking. The exposure-response relationship was less steep for small irregular opacities than for small rounded opacities (Collins et al, 1988). Therefore, the use of combined opacities rather than rounded opacities only may actually dampen the exposure-response relationship for pneumoconiosis (*e.g.*, in Attfield and Seixas, 1995), which is in contrast to the Nicolich and Gamble comment that the inclusion of irregular opacities would over-estimate the risk of pneumoconiosis. Nonetheless, the use of combined opacities is supported by the fact that statistically significant exposure-response relationships have been observed for both types of small opacities (rounded and irregular) in coal miners, and both types have been associated with adverse health effects.

Miners with small rounded opacities on their chest x-rays were more likely to report symptoms of chronic bronchitis (cough and phlegm) than were miners without small opacities (category 0/0) (Rae *et al.*, 1971). In Collins *et al.* (1988), both small rounded and small irregular opacities were associated with symptoms of chronic cough and phlegm, and breathlessness, compared to miners with no opacities observable on chest x-ray. Small irregular opacities have been associated with impaired lung function (Amandus *et al.*, 1976; Cockcroft *et al.*, 1982b,c; Collins *et al.*, 1988). As Nicolich and Gamble state in their comments, the lung function impairment reported by Collins *et al.* (1988) was in addition to that attributable to dust exposure. However, Collins *et al.* (1988) found that the observed pattern of lung function abnormalities was distinctly different from the pattern observed among smokers. Specifically, the mean FEV1 and mean FVC were significantly lower among miners with small irregular opacities compared to those with no observable opacities (*i.e.*, chest x-ray category 0/0), and this is the pattern of lung function abnormality typically associated with dust exposure in coal miners (Collins *et al.*, 1988). In contrast, smokers generally had more severe reductions in FEV1 than in FVC (resulting in a reduction in the FEV1/FVC ratio). The authors suggest that the irregular opacities in coal miners may represent damage to the lungs that causes airways obstruction at different lung locations than that caused by cigarette smoke. Irregular opacities in coal miners may have also been associated with emphysema (Cockcroft *et al.*, 1982 b, c).

Because simple CWP represents an early stage of a progressive disease, miners who have had a chest x-ray classified as ILO category 1 or greater are more likely than those with a clear x-ray (category 0) to progress to the more severe stages of the disease, including the complicated form, PMF (categories A, B, or C) (Cochrane 1962; McLintock *et al.* 1971; Hurley *et al.* 1987; Morfeld *et al.*, 1992). PMF has been associated with impaired lung function, disability, and early death (Rasmussen *et al.*, 1968; Parkes *et al.*, 1983; Miller and Jacobsen, 1985), and miners with PMF qualify as totally disabled due to pneumoconiosis under the Department of Labor's Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis under the criteria set forth at (20 CFR 718.304(a)). Miners with simple CWP were also found to have an increased risk of dying from pneumoconiosis (as the underlying or a contributing cause on the death certificate), and this risk tended to increase with increasing radiographic category (Kuempel *et al.*, 1995). Nicolich and Gamble are incorrect in stating that an implication of that study is ''no increased mortality associated with exposure''. Instead, Kuempel *et al.* (1995) showed a statistically significant exposure-response relationship for cumulative exposure to respirable coal mine dust and pneumoconiosis mortality.

After due consideration of the questions posed by Nicolich and Gamble, we have concluded that the development of CWP, as detected on chest x-ray as rounded and/or irregular opacities, poses a significant health risk to miners. Miners who have developed simple CWP have a materially altered risk status, which is a medically and scientifically reasonable measure of material impairment. Miners who have a chest x-ray with small opacities (rounded and/or irregular) are also more likely to report respiratory symptoms and/or to have lung function decrements. The use of radiographic evidence of pneumoconiosis (combined opacities), both by Attfield and Seixas (1995) and in MSHA's risk assessment, is appropriate for assessing the risk that coal miners will suffer material impairment of health or functional capacity as a result of their respirable dust exposures accumulated over a working lifetime.

Appendix VI.1 DO Overexposure Patterns

In 1998, MSHA attempted to enforce compliance on individual shifts. Therefore, to compare the 2001 pattern of excess exposures on individual shifts to that of previous years, MSHA examined the regular bimonthly DO sample data submitted by mine operators in the 10 years from 1990 through 1997 and 1999–2000. The same three parameters were considered as discussed above for 2001: (1) The percentage of MMUs exhibiting a pattern of recurrent overexposures, as indicated by at least two of the valid measurements being above the applicable dust standard in a given year; (2) for those and only those MMUs exhibiting recurrent overexposures, the overall percentage of production shifts on which the DO was overexposed, as estimated by the percentage of valid measurements above the applicable dust standard; and (3) for the MMUs identified as exhibiting recurrent overexposures, the mean excess above the applicable dust standard, as calculated for just those valid measurements that exceeded the applicable dust standard in a given year.

Although MSHA found minor differences between individual years, there was no statistically significant upward or downward trend in any of these three parameters over the 1990–1997 time period (see Table VI–2). Beginning in 1999, however, there was a significant and persistent decrease in the average excess above the applicable dust standard (Parameter #3) for MMUs exhibiting recurrent overexposures. MSHA attributes this decrease to two important changes in the Agency's inspection program, beginning near the end of 1998. These changes, which both resulted in increased MSHA personnel presence, were: (1) An increase in the frequency of MSHA dust sampling at underground coal mines; and (2) initiation of monthly spot inspections at mines that were experiencing difficulty in maintaining consistent compliance with the applicable dust standard.

TABLE VI–2.—PARAMETERS DESCRIBING OVEREXPOSURE TO RESPIRABLE COAL MINE DUST, BASED ON OPERATOR DO SAMPLES

1990–1997 1999–2000	Parameter #1 (Percent)	Parameter #2 (Percent)	Parameter #3 (mg/m³)	
			1990–1997	1999–2000
Number of Years	10	10	8	2
Median	52.6	20.1	1.24	1.00
Mean (Std. Error)	51.0 (1.36)	20.5 (0.30)	1.26 (0.023)	1.00 0.07
2001	51.6	20.8	1.08	

Parameter #1: Percentage of MMUs exhibiting a pattern of recurrent overexposures.
Parameter #2: For those MMUs exhibiting a pattern of recurrent overexposures, the percentage of production shifts on which the DO was overexposed.
Parameter #3: for those MMUs exhibiting a pattern of recurrent overexposures, the mean excess above the applicable dust standard among valid DO measurements that exceeded the applicable dust standard.

Appendix VI.2 Application of the Attfield-Seixas Models

Attfield and Seixas (1995) provide separate logistic regression models for CWP1+, CWP2+, and PMF as a function of cumulative dust exposure (mg-yr/m³). These models all have the following form:

$$\frac{p}{1-p} = e^{a_0 + a_1 \times age + a_2 \times exposure + a_3 \times rank \times exposure} \qquad \text{(Eq. 1)}$$

where p is the probability of disease at a specified age and cumulative exposure. The constant e is the base of the natural logarithms. The empirically estimated coefficients a_0 (the intercept), a_1, a_2, and a_3 differ for the three health effects considered and are presented in Table IV of Attfield and Seixas (op cit). The values for these coefficients are also shown in the Excel workbook (RiskRdxn.xlw) MSHA has placed into the public record as part of these proceedings. The coefficient (a_3) of ''rank'' refers to an additional effect of cumulative exposure to coal mine dust in central Pennsylvania or southeastern West Virginia, which the authors attribute to the rank of the coal mined in those areas. Since few mines in those areas are currently operating, MSHA did not employ this additional effect in its application of the Attfield-Seixas models (*i.e.,* MSHA assumed that the value of the indicator variable for ''rank'' is zero).

From equation 1, assuming exposure outside central Pennsylvania and southeastern West Virginia, it follows that the prevalence of disease, assuming continued exposure at current levels and approximate linearity of the exposure effect, is (per thousand miners):

$$P_y = 1000 \times \frac{y}{1+y}$$
$$\text{where } y = e^{a_0 + a_1 \times age + a_2 \times (\text{years of exposure}) \times (\text{current mean annual exposure})} \qquad \text{(Eq. 2)}$$

Similarly, the prevalence of disease, assuming reduced cumulative exposure attributable to implementation of the proposed rules is (per thousand miners):

$$P_x = 1000 \times \frac{x}{1+x}$$
$$\text{where } x = e^{a_0 + a_1 \times age + a_2 \times (\text{years of exposure}) \times (\text{reduced mean annual exposure})} \qquad \text{(Eq. 3)}$$

Note that the ''reduced mean annual exposure'' is the current mean annual exposure (based on 2001 data) reduced by eliminating overexposures on just that percentage of shifts for which overexposures have been shown to currently occur. MSHA then estimated the impact of eliminating all overexposures on individual shifts by calculating (for ages 65, 73, and 80) the differences:

$$\Delta = P_y - P_x \qquad \text{(Eq. 4)}$$

It is these differences that are presented in Table VI–1. The calculations for each specific entry are detailed in the EXCEL workbook, RiskRdxn.xlw, which has been placed into the public record.[28]

[28] The method used here provides an approximation of the expected risk reduction (Δ), assuming approximate linearity of the exposure-response relationship over the exposure range of interest. This differs from the method used in the

VII. Significance of Risk

The proposed single sample and plan verification rules prevent respirable coal mine dust overexposures by identifying them and then requiring corrective actions. As discussed in the Health Effects Section, CWP is a progressive disease that develops after many years of cumulative exposure to respirable coal mine dust, which may include quartz, and is associated with material impairment of health and pre-mature death (see Health Effects Section). The joint promulgation of the proposed single sample and plan verification rules would significantly reduce the risk of development of CWP over an occupational lifetime. The best available data were used to conduct the QRA.

(A) Through the ''Benzene decision,'' the U.S. Supreme Court provided further guidance on determining and interpreting the significance of risks.

> It is the Agency's responsibility to determine, in the first instance, what it considered to be a ''significant'' risk. Some risks are plainly unacceptable. If, for example, the odds are one in a billion that a person will die from cancer by taking a drink of chlorinated water, the risk clearly could not be considered significant. On the other hand, if the odds are one in a thousand that regular inhalation of gasoline vapors that are 2% benzene will be fatal, a reasonable person might well consider the risk significant and take appropriate steps to decrease or eliminate it. Although the Agency has no duty to calculate the exact probability of harm, it does have an obligation to find that a significant risk is present before it can characterize a place of employment as 'unsafe' (448 U.S. at 655).

The industry recognizes the health significance of maintaining exposures at or below the applicable dust standard. For example, at the August 16, 2000 public hearing, the National Mining Association's representative Mr. Watzman, stated ''* * * (MSHA,) we don't want to see any miner overexposed. Our objective has been and will always be to maintain dust levels below the applicable dust standard.'' The United Mine Workers of America's written comments echoed the importance of reducing overexposures, ''Miners'' exposure to unhealthy levels of coal mine dust leads to the disabling and life shortening ''black lung'' disease [CWP].''

The best estimates of reduction in risk for all categories of CWP, for miners who live to age 73, after a 45-year occupational exposure to respirable coal mine dust were: 2.3 per 1,000 affected non-designated occupation miners; 19.6 per 1,000 affected roofbolter designated areas miners; and, 24.4 per thousand affected designated occupation miners. These estimates quantitatively demonstrate MSHA's policy determination that there would be a significant reduction in risk of CWP as a consequence of the promulgation of these proposed rules.

(B) There are many elements that compile a QRA. For each element of a QRA, there may be multiple assumptions (*e.g.*, values of variables and sources of data) that could be applied. Various assumptions will differ in the extent to which they are less or more likely to occur (*i.e.*, be representative). Assumptions may also have relative degrees of impact on the risk estimate, either increasing or decreasing it. To the extent that miners experience conditions that differ from the assumptions in the QRA, their risk of developing CWP will consequently be higher or lower. A ''conservative'' assumption in the QRA is one that results in a higher estimate of risk than a less ''conservative'' assumption would. Estimated benefits (*i.e.*, the number of prevented cases of the outcome of concern, *e.g.*, CWP) are greater under QRA assumptions that are ''conservative'' in this sense.[29]

The discussion below identifies various elements of the QRA and how these choices may have affected the estimates in reduction of risk.

i. The quantitative risk estimates are contingent on the representativeness of the exposure data in describing the exposures experienced by miners on all shifts. Currently, both operator and MSHA samples[30], may be taken on production shifts that may not reflect production levels on the majority of non-sampled shifts.

Factors, such as mine ventilation and water sprays, mediate the amount of airborne respirable dust. Higher production is correlated with increased quantities of airborne respirable coal mine dust (Webster, *et al.*, 1990; Haney, *et al.*, 1993; O'Green, *et al.*, 1994). Some earlier commenters, in these proceedings and before the Dust Advisory Committee, have asserted that production is reduced and/or dust controls are increased on sampled shifts.

The estimates of risk reductions for affected miners are based on averages across those MMUs exhibiting a pattern of recurrent overexposures. In the QRA, the agency assumed representative operating conditions on those shifts sampled and extrapolated the results to all production shifts, including those that were not sampled. If there is diminished production and increased engineering controls on sampled shifts compared to the majority of non-sampled shifts, then this would mean that MSHA is underestimating the reduction(s) in risk to be expected from these proposed rules. (This is further discussed in the Benefits sections of the PREA and PV preamble).

ii. The QRA applies the traditional coal miner work schedule of 8-hours per day, 5-days per week, 48-weeks per year. Many of today's miners work longer hours per day, month, and year than the traditional work schedule. These longer work hours increase miners' cumulative exposure to respirable coal mine dust beyond what MSHA assumed in its risk estimates. Similarly, shorter work hours would decrease cumulative exposure below the values assumed in the QRA.

iii. In their comments on the 2000 proposed rules, the National Mining Association (NMA) criticized MSHA's use of a 45-year occupational lifetime, stating ''the work experience of the vast majority of miners is far less than 45 years.'' Irrespective of the specific duration of a working lifetime of an individual worker or cohort of workers, health standards are promulgated to protect all workers from adverse health outcomes due to occupational exposure for an occupational lifetime. Under the Mine Act standards are set to protect miners for up to a full working lifetime (101 (a)(6)(A) (30 U.S.C. 811(a)(6)(A)):

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previous proposed rule, where lower bounds on the risk reduction were calculated. The calculations in the previous proposed rule defined

$\Delta' = P_{y'}, - P_{x'}$,

where $y' = y/x$ and $x' = e^{a_0 + a_1 \times age}$

The previous method results in lower values than those shown in Table VI–1. For example, for ''CWP 1+'' among affected DO miners at age 73, applying the previous method to 2001 operator and MSHA data would have resulted in a calculated risk reduction of 16.3 per thousand instead of the 24.4 per thousand presented in Table VI–1. MSHA believes the method used in the current proposed rule more accurately represents the reduction in risk that can be expected if all individual shift overexposures are eliminated.

[29] For example, in a hypothetical QRA there is a reduction in risk estimate for CWP of 2.4 per 1,000 affected miners, based on a relatively conservative assumption for a particular element (holding all other assumptions constant). A reduction in the risk estimate for CWP based on an equally likely although less conservative assumption is 1.0 per 1,000 affected miners, holding all other assumptions constant. Assuming that the population of affected miners is 20,000. The more conservative assumption would result in an estimated 48 (2.4/1,000 * 20,000) prevented cases of CWP compared to the less conservative assumption's 20 prevented cases of CWP.

[30] Valid MSHA samples require production to be at least 60 percent of the average production for the last 30 days. Valid operator bimonthly samples must be taken on a normal production shift (*i.e.*, a production shift during which the amount of material produced in a MMU is at least 50 percent of the average production reported for the last set of five valid samples) (30 CFR 70.100 (k)(1)).

The Secretary * * * shall set standards which most adequately assure on the basis of the best available evidence that *no* miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life. (emphasis added)

Similarly, the Occupational Safety and Health Act, Public Law 51–956 section 6(b)(5) states:

The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has a regular exposure to the hazard dealt with by such a standard for the period of his working life. (emphasis added).

A 45-year ''working life'' (occupational lifetime) has conventionally been used in QRAs for occupational settings. For example, MSHA used a 45-year lifetime in its risk assessment for diesel particulate (66 FR 5526 and 66 FR 5706). Similarly, OSHA has used a working-life of 45 years in its QRAs to support health standards (see, for example, Benzene (52 FR 34460); Bloodborne Pathogens (65 FR 64004); Methylene Chloride (62 FR 1494); and 1,3-Butadiene, (61 FR 567467)). To the extent the proportion of miners' careers are shorter than 45 years, the actual benefits may be lower.

iv. Due to the progressive nature of CWP even after occupational exposure has stopped (see Health Effects Section), the best estimate of the occupational-lifetime benefit of preventing respirable coal mine dust overexposures is based on the expected lifetime for all American males, 73 years of age.[31] In the future, the extent to which coal miners have a greater life expectancy, the realized benefits would increase. For example, since females have a greater life expectancy than males, expected benefits will increase if the proportion of female miners increases substantially in the future.

v. Applicable dust standards for RB–DAs are determined separately from the applicable dust standard shared by DOs and NDOs, even though they are on the same MMU. Since RB–DAs are often exposed to higher quartz concentrations than other miners on the same MMU, frequently, the RB–DA's applicable dust standard is lower than that for other miners working on the same MMU. Therefore, RB–DAs have their own percentage that exhibit a pattern of recurrent overexposures. Roofbolter DA MSHA samples were defined as samples with entity code 900–0 through 999–9 and as a type 03 sample. Some MSHA RB–DA samples may have been incorrectly coded as a type 02 sample—an occasional problem with the data. Those incorrectly coded samples would not have been included in the QRA and therefore the number of RB–DAs with a pattern of recurrent overexposures may be underestimated.

vi. Although the effect cannot be readily quantified, these rules would also reduce the cumulative exposure to respirable coal mine dust for those miners working on MMUs currently not exhibiting patterns of recurrent overexposures for either DOs and/or RB–DAs. Thus, the health benefit for all miners is expected to be greater than estimated for the sub-populations of miners in the QRA.

MSHA has taken steps in the QRA to conduct a balanced analysis using available data. The data in the QRA have limitations, preventing MSHA from fully quantifying the frequency and average magnitude of overexposure of respirable coal mine dust for the entire population of underground coal miners whose cumulative exposure to respirable coal mine dust would be reduced due to the proposed rules. To the extent that MSHA has underestimated overexposure levels among underground coal miners, it has underestimated the reduction in risk for CWP and the number of prevented cases of CWP that would be realized through these proposed rules, over an occupational lifetime (For further discussion, see Benefits section of PREA and preamble).

VIII. Feasibility Issues

A. Technological Feasibility

MSHA believes that the plan verification rule would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA,* (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA,* (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson,* 499 F.2d 467,478 (D.C. Cir. 1974).

In designing the plan verification rule, MSHA has taken into account its experience and that of the operators to ensure that the rule provides additional protection from occupational exposure to respirable coal mine dust using current compliance technology (while encouraging technological improvements). For this reason, MSHA believes the proposed plan verification rule is technologically feasible. MSHA requires mine operators to utilize all feasible engineering or environmental controls, which are specified in the mine ventilation plan, to maintain concentrations of respirable dust in the work environment of MMUs at or below the applicable dust standard. Mine operators therefore would not be required to implement engineering or environmental controls that were not technologically feasible.

B. Economic Feasibility

MSHA believes that the proposed Plan verification rule would be economically feasible for the underground coal mining industry. The proposed Plan verification rule would result in net compliance cost savings of approximately $2.1 million yearly. (Although implementing the proposed Plan verification rule would cost about $4.5 million yearly, there would be offsetting yearly savings of about $3.8 million from reduced citations and the elimination of operator abatement sampling; $2.2 million from the elimination of operator bi-monthly sampling; $0.3 million resulting from a reduction in MSHA-ordered mine closures; and $0.3 million from reduced payout by operators for Black Lung cases). Underground coal operators would also obtain a yearly cost savings of approximately $3.0 million in reduced penalty costs associated with the reduction in operator citations arising from the proposed plan verification rule. The proposed plan verification rule would therefore provide a total yearly cost savings (including net reduced penalty costs) of $5.1 million to the underground coal mining industry.

IX. Preliminary Regulatory Economic Analysis

A. Costs and Benefits: Executive Order 12866

1. Compliance Costs

The proposed plan verification rule would impose a yearly net compliance cost savings to underground coal operators of about $2.1 million. Although implementing the proposed plan verification rule would cost about $4.5 million yearly, there would be offsetting yearly savings of $6.6 million. The cost savings consist of: $3.8 million due to reduced citations and the elimination of operator abatement

[31] Conditional on their having reached 20 years of age (calculated from: the U.S. Census March 1997, Table 18; U.S. Census March 1997, Table 11).

sampling; $2.2 million resulting from the elimination of bi-monthly sampling; $0.3 million resulting from a reduction in MSHA-ordered mine closures; and $0.3 million resulting from reduced Black Lung payouts by underground coal operators. These costs include net first year compliance costs of approximately $2.1 million.

2. Benefits

This benefits analysis is in support of the proposed single sample and plan verification rules, and updates information used in the single-shift sample (65 FR 42068) and plan verification proposed rules (65 FR 42122). It has been updated to include the revised QRA;[32] the reduction in the number of active mines (and miners); and more recent information on the DOL's Black Lung Compensation Program. As a result, MSHA believes it has more comprehensively quantified the expected reduction in risk of CWP and the associated benefits (*i.e.*, the number of prevented cases of CWP) for those miners currently subject to a pattern of recurrent overexposures to respirable coal mine dust.[33]

MSHA notes that the methodology will almost certainly lead to an underestimate of the number of MMUs with recurrent overexposures. This is due to the fact that the agency must rely on samples taken for 30 or fewer shifts each year for each MMU. MSHA estimates that each MMU averages 384 production shifts per year, so samples are taken for only about 8 percent of all shifts. An MMU exhibits a pattern of recurrent overexposure when valid samples at the MMU exceed the applicable dust standard on at least two shifts during a year. MSHA uses data for those MMUs exhibiting such a pattern to estimate miners' overexposures and the reduction in dust that would be inhaled by miners if dust levels were reduced to the exposure limit on every shift.

Due to the fact that only a small fraction of shifts are sampled, this approach will very likely underestimate the total number of shifts with excessive exposures. There is no straightforward way to determine the extent of the underestimate, but the following illustrates the likelihood of not identifying MMUs that experience excessive exposures. The table below shows the probability that an MMU will *not* exhibit a pattern of recurrent overexposures (*i.e.*, 2 or more overexposures on 30 randomly sampled shifts out of 384 working shifts in a year) when there are actually ''n'' noncompliant shifts during the year. For example, if an MMU exceeds the applicable standard on 25 shifts during a year, there is a 40 percent probability that fewer than two of the 30 samples for that MMU would be taken on those 25 shifts. Therefore, there is a good chance that such an MMU would not be identified as having a pattern of recurrent exposures. It should also be noted, however, that only 6.5 percent (*i.e.*, 25/384) of production shifts would, on average, be out of compliance at such an MMU. This is substantially below the average of 20 percent of shifts found out of compliance at MMUs MSHA has identified as exhibiting a recurrent pattern.

TABLE IX–2–1.—RELATIONSHIP BETWEEN THE NUMBER OF NONCOMPLIANT SHIFTS AND THE PROBABILITY OF NOT DETECTING A PATTERN OF RECURRENT OVEREXPOSURES FOR A SINGLE MMU

Number of noncompliant shifts [34]	Probability (%) of not being identified [35]
5	94.9
10	82.0
15	67.0
20	52.5
25	40.0
30	29.7
35	21.6
40	15.4
45	10.9
50	7.5
55	5.1
60	3.5
65	2.3
70	1.5
75	1.0
80	0.6
85	0.4
90	0.3
95	0.2
100	0.1

[34] Number of individual shift overexposures out of 384 shifts in a year.

[35] Probability (%) that an MMU will fail to display a pattern of recurrent overexposures, based on 30 sampled shifts, given ''n'' individual shift overexposures out of 384 shifts in a year.

Occupational exposure to excessive levels of respirable coal mine dust, which includes quartz in varying proportions, imposes significant health risks. These include the following adverse health outcomes: simple coal worker's pneumoconiosis (simple CWP), progressive massive fibrosis (PMF), silicosis, and chronic obstructive pulmonary disease (COPD) (*e.g.*, asthma, chronic bronchitis, emphysema) (See the *Health Effects,* section V., of the plan verification proposed rule and section VII of the single-shift sample proposed rule (65 FR 42068) for a more complete discussion). Cumulative exposure to respirable coal mine dust is the main determinant in the development of both simple CWP and PMF although other factors, such as the percentage of quartz in the respirable dust and the type of coal, also affect the risk of miners developing simple CWP and PMF (Jacobsen, *et al.*, 1977; Hurley, *et al.*, 1987; Kuempel, *et al.*, 1995; Attfield and Morring, 1992; Attfield and Seixas, 1995). The true magnitude of occupationally induced simple CWP and PMF among today's coal miners is unknown, although prevalence estimates are available from various surveillance systems. The overall prevalence rate of simple CWP, Categories 1, 2, 3, and PMF combined was 2.8 percent among all miners examined in the Miners' Choice program during FY 2000–2002 (see Health Effects discussion). The combined prevalence rate of simple CWP and PMF for underground coal miners was 3.8 percent during the same time period. Studies from the Coal Workers X-ray Surveillance Program (CWXSP) indicate a decline in the prevalence of CWP from 11 percent in the 1970s to 2.8 percent in the sixth round of CWXSP (1992–1996)(NIOSH, Table 2–11, 1999).

The proposed single sample and plan verification rules present MSHA's strengthened plan to meet the Mine Act's requirement that a miner's exposure to respirable coal mine dust be at or below the applicable dust standard on each and every shift.

The QRA estimates the reduction in risk for CWP as a result of reducing respirable coal mine dust concentrations over a miners' 45-year occupational lifetime to be no more than the applicable dust standard on just that percentage of shifts currently exhibiting a pattern of recurrent overexposures.[36] The term ''affected'' is used to identify those miners who work on a MMU or RB–DA where there is a recurrent

[32] The revised QRA is published in full in section IV.b of the 2003 single sample reopening notice and section VI of the 2003 plan verification NPRM. The revised QRA has been expanded to include quantitative estimates of the reduction in CWP for affected roofbolters working in designated areas (RB–DA).

[33] The pattern of recurrent overexposure is defined by a MMU having any combination of two or more samples in excess of the applicable dust standard within a one-year period.

[36] MMUs with a recurrent pattern of overexposure are defined as those MMUs with two or more of the DO samples exceeding the applicable dust standard. RB–DAs with a recurrent pattern of overexposure are defined as those with two or more RB–DA samples exceeding the applicable dust standard. (See the QRA section IV.b of the 2003 single sample reopening notice and section VI of the 2003 plan verification NPRM for details).

pattern of overexposure to respirable coal mine dust. There are three types of affected miners for whom reduction in risk estimates were calculated:

- *DOs:* Designated Occupation Miners.
- *NDOs:* Faceworkers neither classified as a DO nor subject to a separate applicable dust standard applicable to a Designated Area.
- *RB–DA:* Roofbolter Designated Area Miners.

Since DOs and NDOs share the same applicable dust standard, the definition of recurrent pattern of overexposure for DOs and NDOs is the same. It is determined by the pattern of recurrent overexposures observed for DOs. This pattern of recurrent overexposure is sometimes referred as the MMU's pattern of recurrent overexposures.

Applicable dust standards for RB–DAs are determined separately from the applicable dust standard shared by DOs and NDOs on the same MMU. Since RB–DAs are often exposed to higher quartz concentrations than other occupations (miners) on the same MMU, frequently, the RB–DA's applicable dust standard is more stringent (*i.e.*, a lower applicable dust standard) than that for other occupations working on the same MMU. A separate pattern of recurrent overexposure is defined for the RB–DAs.

To predict the benefits, MSHA applied its best estimate of reduction in risk of CWP for each type of affected miner (DO, NDO, and RB–DA) to estimated sub-populations of those affected miners.

The factors taken into account to estimate each of the sub-populations are:

- A recent snapshot of the number of active MMUs and RB–DAs. (MSHA, Table, May 14, 2002)
- The pattern of recurrent overexposures for affected MMUs and RB–DAs.
- The distribution of MMUs by mine size (*i.e.*, fewer than 20 employees; 20 to 500 employees; and, more than 500 employees) and the number of production shifts (*i.e.* 1, 2, or 3) (MSHA, Table, July 10, 2002 for DOs and NDOs; and MSHA, Table, September 4, 2002).
- The average number of miners on a shift for each category.
- One DO on each MMU.
- Six NDOs for each MMU.
- The number of RB–DAs on a shift, varied by mine size. (See Table IX–2–3 for specific numbers).

Since NDOs and the DO on the same MMU share the same pattern of recurrent overexposures (*i.e.*, 57.0 percent) and the same distribution of MMUs by mine size and number of production shifts, the estimates of affected populations of DOs and NDOs are both included in Table IX–2–2. The estimated sub-populations of affected miners working in DOs and NDOs are calculated as follows:

(1) The distribution of active MMU entities was determined by mine size and number of production shifts (MSHA, Table, July 10, 2002).

(2) The number of MMU entities that exhibited a pattern of overexposures for DOs (57.0 percent) was determined using operator and MSHA samples for respirable coal mine dust collected during the calendar year 2001 (MSHA data file: DO_2001.zip).

(3) MSHA estimated the number of DOs to have been affected by recurrent overexposures by simultaneously applying the percentage of MMUs found to have patterns of recurrent overexposure (57.0 percent) to the number and type of active MMU entities by mine size (833 active MMUs; MSHA, Table May 14, 2002) and the distribution of production shifts by mine size mentioned in steps (1) and (2). MSHA estimates there would be 475 affected active MMUs.

(4) The number of miners working in the DO position is proportional to the number of shifts each MMU is in production per day. The distribution of the number of affected MMU entities by production shifts (from step 3) is applied to the estimated number of DOs per MMU entity. Typically, there is one miner for each DO for each shift.

(5) Typically, six other miners operating as NDOs simultaneously work on the same MMU. Therefore, the number of affected NDOs is six times the number of affected DOs.

(6) Table IX–2–2 presents the estimated number of affected MMUs, DOs, and NDOs, by mine size and number of production shifts. The total number of affected DO and NDO miners is estimated to be 6,307.

Since RB–DAs and the combination of DOs and NDOs do not share the same pattern of recurrent overexposures, nor the distribution of MMUs by mine size, the estimates of affected populations of RB–DAs are presented in their own table (Table IX–2–3). The estimated sub-populations of affected miners working in the RB–DAs are calculated as follows:

(1) The distribution of active RB–DA entities was recently determined by mine size and number of production shifts (MSHA, Table September 4, 2002).

(2) The number of RB–DA entities that exhibit a pattern of overexposures (29.4 percent, 194/659 RB–DAs) was determined using operator and MSHA samples for respirable coal mine dust collected during the calendar year 2001 (MSHA data file: RB–DA2001.zip)

(3) MSHA estimated the number of RB–DA entities affected by recurrent overexposures by simultaneously applying the percentage of RB–DAs found to have patterns of recurrent overexposure (29.4 percent) to the number and type of active RB–DA entities by mine size (449 active RB–DAs; MSHA, Table May 14, 2002) and the distribution of production shifts by mine size mentioned in steps (1) and (2). MSHA estimates there would be 132 affected active RB–DAs.

(4) The number of miners working in an RB–DA entity is proportional to the number of shifts each RB–DA is in production per day. The distribution of the number of affected RB–DA entities by production shifts (determined in step 3) is applied to the estimated number of roofbolters per RB–DA entity. The typical number of miners per RB–DA varies by mine size. It is MSHA's experience that, on average, one roofbolter works within the RB–DA in coal mines with fewer than 20 employees, one and one half in coal mines with 20 to 500 employees, and two in coal mines with more than 500 employees.

(5) Table IX–2–3 presents the estimated number of affected RB–DAs and miners by mine size and number of production shifts. The total number of affected miners working within an RB–DA is estimated to be 368.

The total number of affected miners working within the specified DO, NDO, and RB–DA positions among the faceworkers in underground coal mines is estimated to be 6,675.

TABLE IX–2–2.—ESTIMATED NUMBER OF AFFECTED MECHANIZED MINING UNITS [a] (MMUS) AND AFFECTED UNDERGROUND COAL MINERS, BY PRODUCTION SHIFTS AND MINE SIZE

Number of production shifts	Mine size by number of employees									Totals			
	Less than 20 employees			20 to 500 employees			Greater than 500 employees			NMUs n=	DOS [b] n=	NDO [c] n=	Total affected miners on NMUs
	NMUs n=	DOS [b] n=	NDO [c] n=	NMUs n=	DOS [b] n=	NDO [c] n=	NMUs n=	DOS [b] n=	NDO [c] n=				
One	98	98	588	24	24	144	0	0	0	122	122	732	854
Two	16	32	192	264	528	3,168	0	0	0	280	560	3,360	3,920
Three	0	0	0	55	165	990	18	54	324	73	219	1,314	1,533
Totals	114	130	780	343	717	4,302	18	54	324	475	901	5,406	6,307

[a] Affected MMUs in production are estimated by applying the observed percentage of MMUs' production shifts by mine size (as of July 10, 2002) to the snapshot of active MMUs as of May 14, 2002, by mine size, and multiplied by 0.570 (since fifty-seven percent of MMUs have a pattern of recurrent overexposures) (MSHA Table, July 10, 2002; MSHA Table, May 14, 2002).

Where:

[b] DO = Designated Occupational Miners = (MMUs * 1 * production shifts).

[c] NDO = Non-designated Occupational Miners = (MMUs * 6 * production shifts).

TABLE IX–2–3.—ESTIMATED NUMBER OF AFFECTED ROOFBOLTER DESIGNATED AREAS (RB–DAS) AND AFFECTED UNDERGROUND COAL MINERS, BY PRODUCTION SHIFTS, AND MINE SIZE

Number of Affected RB–DAs [a]	Mine Size by Number of Employees						Totals	
	Less Than 20 Employees		20 to 500 Employees		Greater than 500 Employees			
Number of production shifts	RB–DAs n=	Miners n=	RB–DAs n=	Miners n=	RB–DAs n=	Miners n=	RB–DAs n=	Total miners on affected RB–DAs
1	22	22	6	9	0	0	28	31
2	5	10	83	249	0	0	88	259
3	0	0	12	54	4	24	16	78
Total	27	32	101	312	4	24	132	368
Number of Miners per RB–DA	1.0		1.5		2.0		.....	.....

[1] Affected Roofbolter Designated Areas (RB–DAs) in production are estimated by applying the observed percentage of RB–DAs' production shifts by mine size (as of September 4, 2002) to the snapshot of active RB–DAs as of May 14, 2002, by mine size, and multiplied by 0.294 (since 29.4 percent of RB–DAs have a pattern of recurrent overexposures) (MSHA Table, July 10, 2002; MSHA Table, May 14, 2002). The number of miners per RB–DA varies with mine size and is applied to the estimated number of RB–DAs and the number of production shifts to determine the total number of affected faceworkers.

The total number of cases of simple CWP categories 1, 2, 3 or PMF that would be prevented is determined by applying the estimated number of affected miners to our best estimates of reductions in risk. The estimates of reductions in risk for the three sub-populations of affected miners (24.4 per thousand DOs, 2.3 per thousand NDOs, and 19.6 per thousand RB–DAs) are applied to the respective estimates of affected sub-populations of faceworkers (901 DOs, 5,406 NDOs, and 368 RB–DAs).[37] Table IX–2–4 presents a summary of the estimated number of cases among groups of simple CWP and PMF that would be prevented among the affected miners working at the 57.0 percent of MMUs and the 29.4 percent of RB–DAs determined to exhibit a pattern of recurrent overexposures, by limiting their exposures to respirable coal mine dust to no more than the applicable dust standard on each and every shift. For all categories of simple CWP and PMF combined, MSHA estimates a minimum of 42 fewer cases among affected miners than would otherwise occur without the promulgation of the proposed single sample and plan verification rules. Thirteen of these cases would be the most severe form of coal miner's pneumoconiosis, PMF, and as such, these cases could be interpreted as prevented premature deaths due to occupational exposure to respirable coal mine dust. Since simple CWP is a progressive disease and predisposes the development of PMF, it is important that simple CWP also be prevented (Balaan, *et al.,* 1993).

The benefits that would accrue to coal miners exposed to respirable coal mine dust and to operators, and ultimately to society at large, are substantial and take a number of forms. These proposed rules would reduce a substantial health risk to underground coal miners, lowering the potential for illnesses and premature death and their attendant costs to miners, their employers, their families, and society.

These rules should realize a positive economic impact on the Department of Labor's (DOL's) Black Lung Program and relatedly on operators. The Black Lung Program compensates eligible miners and their survivors for benefits under the Black Lung Benefits Act. This program provides monthly payments and medical benefits (diagnostic and treatment) to miners who are determined to be totally disabled by black lung disease, including cases of PMF and simple CWP. In 1986, DOL's Employment Standards Administration

[37] See the *Quantitative Risk Assessment* (section VI. of the Plan Verification Notice of Proposed Rule Making in today's **Federal Register**) for details describing the methodology used to calculate the reduction of risk among the affected sub-populations and Table VI–1 for a summary of reduction in risk estimates.

reported that 12 percent of approved cases to receive benefits within the Black Lung Program were identified as cases of PMF based on chest radiographs, while 64 percent had simple CWP based on chest radiographs (ESA, 1986). For miners who stopped working in coal mines after 1969 and for whom DOL can establish that the miner worked for the same operator for at least one calendar year, and that miner had at least 125 working days in that year, that operator is financially responsible for the miner's black lung benefits payments. If a responsible operator cannot be identified for an eligible miner, benefits payments are made by the Black Lung Disability Trust Fund.

To the extent that the proposed single sample and plan verification rules reduce overexposures to respirable coal mine dust (which includes quartz), there should be fewer Black Lung Program cases. Therefore, over time, the associated financial outlay by responsible operators through either payments made into the Black Lung Disability Trust Fund, insurance premiums, or direct payments of black lung benefits should be lower than would otherwise occur. A decrease in black lung beneficiaries could help reduce the financial obligation of the Black Lung Program (see discussion in Chapter IV of the accompanying PREA for details: *http://www.msha.gov/FLEX.HTM).* In fiscal year 2000, 386 claims for Black Lung Benefits were accepted as new cases; 71 percent (273 cases) are the financial responsibility of coal operators (ESA, OWCP 2000 Annual Report).[38]

MSHA's quantitative estimate of benefits demonstrates and qualitative discussions punctuate that these proposed rules will have a significant positive impact on the health of the nation's coal miners when promulgated. Yet, due to the limitations in these data, MSHA believes its benefits estimates are likely to understate the number of cases of simple CWP and PMF that would be prevented over an occupational lifetime. As discussed in the significance of risk sections of the previously published single-shift sample (65 FR 42068) and plan verification (65 FR 42122) notices and as revised in the plan verification NPRM, the data used to estimate the average overexposure which will be prevented may not represent typical environmental conditions and the associated respirable coal mine dust exposure levels in underground coal mines.

The degree to which the exposure level of respirable coal mine dust on sampling shifts may not be representative of typical exposure levels is affected by the following factors:

(1) There exists a positive relationship between coal production and generation of respirable coal mine dust. While other factors may mediate the amount of airborne respirable dust, such as ventilation and water sprays, on average, higher production is correlated with increased quantities of airborne respirable coal mine dust (Webster, *et al.*, 1990; Haney, *et al.*, 1993; O'Green, *et al.*, 1994);

(2) Current sampling procedures permit sampling measurements to be taken at the mid-range of the distribution of the level of production—MSHA sampling measurements must be taken on shifts with production at least 60 percent of the average production during the last 30 days and the operator must have at least 50 percent of average production for the last valid set of five bimonthly samples for MSHA and operator samples, respectively;

(3) Miners have reported, and MSHA data have demonstrated lower levels of production on sampling shifts versus non-sampling shifts;[39]

(4) On some sampling shifts, miners have reported that more engineering controls may be engaged than on other shifts, thus reducing the measured amount of respirable coal mine dust;

(5) MSHA analyses have demonstrated, even when controlling for production, in mines with fewer than 125 employees, on continuous mining MMUs, respirable coal mine dust exposures were much higher during the unannounced Spot Inspection Program (SIP) sampling shifts than on shifts operators sampled—this is consistent with the effect of increasing engineering controls on shifts during which bimonthly samples are conducted compared to the level of use of engineering controls on shifts for which the operator does not expect sampling to be conducted, given the same production level;[40]

(6) Across mine size, designated area samples have had greater dust levels for shifts on which unannounced compliance sampling occurred compared to operator sampling shifts—in one study they differed by at least a factor of 40 percent in large mines and 100 percent in the smallest mines;[41]

(7) Existing MSHA technical information indicates that some reduction in production levels occurs during some sampling periods on longwalls (Denk, 1990);

(8) Longer work hours increase miners' cumulative exposure to respirable coal mine dust, which includes quartz, beyond what was assumed in our risk estimates (''Length of Shift'' survey, MSHA Office of Coal Mine Safety and Health); and

(9) Because of heavy, physical work, some miners may have higher breathing rates and inhale more respirable coal mine dust, including quartz, than other miners exposed to the same airborne dust concentrations.

Although the effects cannot readily be quantified, to the extent that these rules will also reduce the cumulative exposure to respirable coal mine dust among some miners working in those MMUs currently not exhibiting a pattern of overexposures, it is reasonable to expect an incremental benefit among that sub-population of coal miners. Likewise, to the extent that the cumulative exposure to respirable coal mine dust affects other adverse health outcomes, such as silicosis and chronic obstructive pulmonary disease, it is reasonable to expect a reduction in the number and/or severity of cases for these diseases among underground coal miners.

Further, MSHA firmly believes that non compliance determinations based on single-sample measurements will significantly improve working conditions for miners because overexposures will be more readily identified and appropriate corrective action will be taken to reduce respirable dust levels. This is because individual sample results will not be masked due to the averaging of multiple samples. The health effects of individual shift overexposures was addressed in *Consolidation Coal Company* versus *Secretary of Labor* 8 FMSHRC 890, (1986), *aff'd* 824 F. 2d 1071, (D.C. Cir. 1987). In that case, the Commission found that each episode of a miner's overexposure to respirable dust significantly and substantially contributes to the health hazard of contracting chronic bronchitis or coal workers pneumoconiosis, diseases of a fairly serious nature.

Since the proposed single sample rule would also apply to surface coal mines, it is reasonable to expect that the cumulative exposure of some surface coal miners would also be lowered, providing them with increased health protection.

As indicated elsewhere in this preamble, three significant studies have been published in the last 10 years that examined the current federal program to control respirable coal mine dust in U.S. mines. They include the MSHA Respirable Dust Task Group Report, NIOSH's Criteria Document on Occupational Exposure to Respirable

[38] The OWCP 2001 report is not representative of current trends because of recent changes to rules governing OWCP proceedings effective January 20, 2001 (Peed, September 12, 2002). Therefore, MSHA used information from the OWCP 2000 report.

[39] Mine Safety and Health Administration. ''Report of the Statistical Task Team of the Coal Mine Respirable Dust Task Group.'' September 1993.

[40] Mine Safety and Health Administration. ''Report of the Statistical Task Team of the Coal Mine Respirable Dust Task Group.'' September 1993.

[41] Mine Safety and Health Administration. ''Report of the Statistical Task Team of the Coal Mine Respirable Dust Task Group.'' September 1993. Pp. 211–212.

Coal Mine Dust, and the Report of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers. The individuals that contributed to these reports represented a wide spectrum of society including health professionals, mine operators, miners and their representatives, academia, engineers, lawyers, physicians, and health and safety specialists. While recognizing that significant progress has been made to reduce respirable dust levels in coal mines, these reports all concluded that there are existing practices in the federal program that should be changed to provide miners with improved health protection. This rulemaking was initiated to address many of the recommendations outlined in those studies.

The primary benefit of the changes recommended by the authors of the various studies, and subsequently in this proposal, is to reduce occupational lung disease among coal miners by improving the existing federal program to control exposure to respirable coal mine dust and quartz. That benefit is addressed in detail in this section. There are, however, other significant intangible benefits that will result from these program improvements.

As stated in the report of the Advisory Committee, one of MSHA's primary objectives must be to restore the confidence of individual miners that the federal program to control respirable dust will protect their health. The testimony of miners and their representatives made during the deliberations of at least two of the study groups found that coal miners believe that MSHA and operator sampling results are not representative of the mine environment to which they are exposed during normal mining operations. Consequently, many miners believe that overexposures are not being identified and corrected. This belief is attributable to several factors including, MSHA's policy of accepting as valid samples that were taken at production levels significantly below normal; the use of dust control measures during sampling that are not incorporated in the approved ventilation plan; and the averaging of multiple-shift sample results which can mask individual overexposures and prevent action from being taken to correct the condition. All of these practices are addressed in this proposal and, therefore, should significantly improve miner confidence that MSHA and operator sampling results are typical of the operating conditions to which they are routinely exposed.

The requirement that operator sampling results be used by MSHA to make compliance determinations has been unfairly perceived by some as fundamentally flawed because operators allegedly have conflicting objective of avoiding citations and protecting miner health. This perception is difficult to address. As recommended by the Advisory Committee, this proposal eliminates the requirement that operator samples be used for compliance purposes. Operators will only be subject to enforcement action on their sample results if they fail to take action to correct any overexposure. Since only MSHA samples taken during unannounced inspections will be used to make compliance determinations, any real or perceived opportunity by mine operators to inappropriately impact sampling results will be eliminated or significantly reduced.

All of the studies recognized that significant improvements in preventing overexposure can occur if real-time continuous monitors were available. Such devices would allow exposure levels to be monitored during the production shift and action could be taken during the shift to prevent overexposure as miners approached the upper limit. This is in contrast to the current system that requires samples to be sent to a laboratory for analysis and, as a result, only allows for overexposures to be recorded rather than prevented. This proposal recognizes that the potential for the introduction of such continuous monitoring devices is likely in the near future. As a result, provisions are included for the use of such instruments in lieu of the current approved sampling devices. Accordingly, this proposal encourages the development and introduction of this new technology into coal mines to benefit miner health.

MSHA's belief that the projected 42 prevented cases of simple CWP and PMF over a 45-year working life likely understates the true number of cases of simple CWP and PMF is further supported by the fact that during the past few years, the Black Lung Benefits Program has been approving roughly 400 claims each year. Most of these claims come from individuals whose occupational exposure to respirable coal mine dust occurred under the current respirable coal mine dust program, including the 2.0 mg/m^3 standard, which began in 1972 (ESA, September 19, 2002). The observation that roughly 400 claims have been approved each year, for the past several years, supports MSHA's belief that the true lifetime occupational health benefits of the proposed rules are higher than MSHA has been able to quantify. Even assuming that over time, the number of new claims would decline in future years simply due to the continuing decline in the number of coal miners, MSHA expects that assuring future exposures are maintained below the applicable dust standard would reduce the number of new cases of CWP than would otherwise occur.

In addition to the cases of simple CWP and PMF that would be prevented among the miners working on affected MMUs and RB–DAs, other health benefits would also be realized because the cumulative exposure to respirable coal mine dust would be limited to no more than the applicable standard on each and every shift. Health benefits associated with a reduction in exposures to respirable coal mine dust would include a decrease in incidence of silicosis, asthma, chronic bronchitis, and emphysema.

All cases of simple CWP and PMF, which MSHA expects to be prevented through promulgation of the single sample and plan verification rules and attributable to eliminating individual shift overexposures, are not expected to materialize immediately after overexposures have been substantially reduced or eliminated. Because these diseases typically arise after many years of cumulative exposure, allowing for a period of latency, and the pre-existing occupational exposure histories of members of the current coal mining workforce, the beneficial effects of reducing exposures are expected to become evident only after a sufficient time has passed so that the reduction in cumulative exposure could have its effect. The total realized benefits would not be fully evident until after the youngest of today's underground coal miners retire. If the size of this workforce substantially changed in the future and the projected pattern of prevented overexposures remained the same, the number of cases of prevented simple CWP and PMF would need to be adjusted to account for the change.

Various data, assumptions and caveats were used to conduct the benefits analyses. Therefore, MSHA requests any information which would enable it to conduct more accurate analyses of the estimated health benefits of the single sample and plan verification rules, both individually, and in combination.

TABLE IX–2–4.—OVER A WORKING LIFETIME AMONG AFFECTED MINERS, ESTIMATED NUMBER OF CASES OF CWP[a] AND PMF[b] PREVENTED DUE TO THE IMPLEMENTATION OF SINGLE SAMPLE AND PLAN VERIFICATION

Type of miner	Affected miners, n=	Simple CWP categories 1, 2, 3 or PMF		Simple CWP categories 2 or 3 or PMF		PMF	
		Reduction in risk[c]	Prevented cases, n=	Reduction in risk	Prevented cases, n=	Reduction in risk	Prevented cases, n=
Affected Designated Occupational Miners[d]	901	24.4/1000	22.0	15.5/1000	14.0	7.6/1000	6.8
Affected Non-Designated Occupational Miners[e]	5,406	2.3/1000	12.4	1.5/1000	8.1	0.7/1000	3.18
Affected Roofbolters in Designated Areas[f]	368	19.6/1000	7.2	12.1/1000	4.5	6.0/1000	2.2
Total[g]	6,675	na	42	na	27	na	13

[a] Simple CWP: simple coal workers' pneumoconiosis.
[b] PMF: progressive massive fibrosis.
[c] Reduction in Risk per 1,000 affected miners, over a 45-year working lifetime, at age 73.
[d] Affected Designated Occupation (DO) Miners: includes all miners who work at the 57.0 percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime.
[e] Affected Non-Designated Occupation (NDO) Miners: includes all underground faceworkers under consideration who are not classified as the DO or a designated area roofbolter.
[f] Affected Roofbolter Designated Area (DA) Miners: includes all miners working as roofbolters in the 29.4 percent of roofbolter designated areas exhibiting a pattern of recurrent overexposures.
[g] The total miners affected (6,675) is a sub-population of the estimated number of underground coal miners (12,317) working at the mine face.

B. Regulatory Flexibility Certification and Regulatory Flexibility Analysis

MSHA has consulted with the Chief Counsel for Advocacy on this proposed rule and on the Agency's certification of no significant economic impact on a substantial number of small entities covered by this rule. Consistent with Agency practice, notes of any meetings with the Chief Counsel's office on these rules, or any written communications, will be placed in the rulemaking record.

Using both definitions of small mines, one with fewer than 20 employees and one with 500 or fewer employees, the estimated compliance costs of the proposed rule is either negative or substantially less than 1 percent of estimated coal revenues, well below the level suggesting that they might have a significant economic impact on a substantial number of small entities. Accordingly, MSHA has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this proposed rule.

TABLE IX–3.—ESTIMATED YEARLY COSTS OF THE PROPOSED PLAN VERIFICATION RULE RELATIVE TO YEARLY REVENUES FOR UNDERGROUND COAL MINES

[dollars in thousands]

Mine size	PV rule net yearly costs[a]	Underground coal mine revenues[b]	Costs as percentage of revenues
< 20 emp.	($685)	$201,700	N/A
≤500 emp.	($2,535)	5,644,194	N/A

[a] Estimated yearly costs are composed of ''adjusted'' first year costs that have been annualized plus annual costs.
[b] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, 2000 PEIR data; and U.S. Department of Energy, Energy Information Administration, *Coal Industry Annual 2000,* January 2002, p. 206.

X. Other Statutory Requirements

A. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

B. Paperwork Reduction Act of 1995

The proposed plan verification rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The proposed plan verification rule has first year only burden hours (those that occur only in the first year) and annual burden hours (which occur in the first year and every year thereafter).

In the First Year of the Plan Verification Proposed Rule

In the first year the proposed plan verification rule is in effect, there would be a *net* decrease of 34,929 burden hours and a related cost reduction of $704,474.

Table VII–2 in the PREA shows that with respect to first year-only burden hours and costs, there would be a net increase of 7,609 burden hours and related costs of $371,273. Table VII–2(a) in the PREA shows that with respect to every year that the proposed plan verification rule is in effect (including the first year), there would be a *net* decrease of 42,538 burden hours and a related cost reduction of $1,075,747.

In the Second Year of the Proposed Plan Verification Rule and for Every Year Thereafter

After the first year of the proposed plan verification rule, those burden hours and related costs occurring only in the first year would no longer occur, and what remains are only the annual burden hours and related costs.

Therefore, in the second year of the proposed plan verification rule and for every year thereafter, there would be a *net* decrease of 42,538 burden hours and a related cost reduction of $1,075,747.

We invite public comments and are particularly interested in comments which:

1. Evaluate whether the proposed collection of information (presented here and in Chapter 7 of the PREA for the proposed plan verification rule) is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on respondents, 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.

We have submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, if under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA; or by email to: *cathomas@omb.gov.* All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, OMB New Executive Office Building, 725 17th St., NW., Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Please send a copy of your comments to MSHA at the address listed in the **ADDRESSES** section of the preamble. Submit written comments on the information collection not later than June 4, 2003.

Our paperwork submission summarized above is explained in detail in Chapter 7 of the PREA. The PREA includes the estimated costs and assumptions for each proposed paperwork requirement related to the proposed plan verification rule. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The PREA is located on our Web site at *http://wwww.msha.gov/REGSINFO.HTM.*

C. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. MSHA has reviewed the proposed standard in accordance with the requirements of the NEPA (42 U.S.C. 4321 *et seq.*), the regulation of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, MSHA has preliminarily determined that this proposed standard will have no significant environmental impact.

Commenters are encouraged to submit their comments on this determination.

D. 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 does not involve implementation of a policy with takings implications.

E. Executive Order 12988: Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation 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.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, MSHA has evaluated the environmental health or safety effects of the proposed rule on children. The Agency has determined that this proposed rule would not have an adverse impact on children.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

MSHA certifies that this proposed rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13132: Federalism

MSHA has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

I. Executive Order 13211: Energy

MSHA has reviewed this proposed rule in accordance with Executive Order 13211 regarding the energy effects of Federal regulations and has determined that this proposed rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the Plan Verification 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.

XI. Public Hearings

MSHA plans to hold public hearings on the proposed rule. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977. The hearings will be held in the following cities:

(a) Evansville, Indiana;
(b) Charleston, West Virginia;
(c) Grand Junction, Colorado;
(d) Birmingham, Alabama;
(e) Lexington, Kentucky;
(f) Washington, Pennsylvania, and

The specific dates, times and facilities for the hearings will be announced by a separate notice in the **Federal Register**.

Appendix A—Derivation of the Critical Values

All measurements of respirable dust concentration are subject to potential sampling and analytical errors. Because of such errors, a measurement may fall slightly below the verification limit even when the true concentration of

respirable coal mine dust or respirable quartz dust does not. Therefore, to ensure that the verification limits have actually been met, it is necessary to provide for a margin of error in each measurement. The critical values provide this margin of error. MSHA can be confident that the verification limits have not been exceeded at the sampled locations. When valid measurements do not exceed the appropriate critical values listed in Table 70–1, corresponding to the number of shifts sampled.

To explain how the verification limits were derived, it is helpful to define some symbolic notation. Let X represent a measurement, and let μ represent the true value of whatever quantity is being measured *i.e.*, the full-shift average concentration, at a specific sampling location, of either respirable coal mine dust or respirable quartz dust. The difference between X and μ is the measurement error and is denoted by ε $X = \mu + \varepsilon$.

In accordance with standard statistical and industrial hygiene practice, ε (but not μ) is assumed to be normally distributed. Since the approved sampling and analytical methods for measuring concentrations of respirable coal mine dust and respirable quartz dust are both statistically unbiased, ε has a mean value of zero and a degree of variability represented by its standard deviation, denoted by σ_ε. The ratio of σ_ε to μ is called the measurement *coefficient of variation* (CV) due to sampling and analytical errors.[42] The CV relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

For respirable coal mine dust, the value of CV used in calculating critical values was chosen to be consistent with the value proposed at $\mu = 2.0$ mg/m³ in the Notice of Final Policy published in the **Federal Register:** Coal Mine Respirable Dust Standard Noncompliance Determinations (63 FR 5700, February 3, 1998):

$$CV = \sqrt{(7\%)^2 + (5\%)^2 + (5\%)^2} = 10\%$$

The 7-percent term in this formula accounts for uncertainty due to potential weighing error, and the two 5-percent terms account for differences between individual cyclones and for variability in the exact volume of air pumped through the filter during a 480-minute shift.

For respirable quartz dust, the value of CV used in calculating critical values is:

$$CV = \sqrt{(5.3\%)^2 + (4.2\%)^2 + (5.6\%)^2} = 9\%$$

The 5.3-percent term in this formula accounts for imprecision in the Infrared (Infrared Spectrophotometer or IR) measurement of quartz mass deposited on the filter, the 4.2-percent term represents variability in air volume, and the final 5.6-percent term accounts for uncertainty due to variability between individual cyclones, given the size distribution of quartz dust encountered in mining environments (Bartley, November 1999).

Each critical value (c) was calculated to provide a confidence level of at least 95 percent that the dust control parameters specified in the ventilation plan were effective in preventing dust concentrations from exceeding the verification limits. Using a confidence coefficient of 1.645, based on the standard normal probability distribution, knowledge of the CV makes it possible to calculate a 1-tailed, 95-percent upper confidence limit (UCL) for μ, given a single measurement X. The UCL is $X \cdot (1 + 1.645 \cdot CV)$. When $X \leq c$, the UCL for μ is less than or equal to the verification limit. When $X > c$, the UCL for μ exceeds the verification limit.

For example, suppose $X = 1.71$ mg/m³ respirable dust. Then the UCL for μ would be $1.71 \cdot (1 + (10\% \text{ of } 1.645)) = 1.99$ mg/m³, which is less than the verification limit for respirable coal mine dust. If, however, $X = 1.72$ mg/m³, then the UCL for μ would be $1.72 \cdot 1.1645$ mg/m³, which slightly exceeds the verification limit. Similarly, for respirable quartz dust, the UCL for μ is $87 \cdot (1 + (9\% \text{ of } 1.645)) = 99.9$ μg/m³ when $X = 87$ μg/m³ and slightly above the verification limit of 100 μg/m³ when $X = 88$ μg/m³.

If more than one measurement is available, then the confidence coefficient changes to reflect multiplication of the tail probabilities for independent measurement errors. When n measurements are available, the objective is to calculate a critical value (c) such that if each of the n measurements is ≤ c, then the 1-tailed 95-percent UCL for μ is ≤ the verification limit. Since the product of the n individual tail probabilities must equal 0.05, the appropriate 1-tail probability for each measurement individually is the nth root of 0.05.

For example, if n = 3, then the appropriate 1-tail probability for each measurement is the cube root of 0.05, or 0.3684. The standard normal confidence coefficient corresponding to this tail probability is 0.336. Therefore, when all three measurements have the same value (X), the UCL is $X \cdot (1 + 0.336 \cdot CV)$. Substituting the appropriate CV estimate, the UCL is $X \cdot 1.0336$ for respirable coal mine dust or $X \cdot 1.0302$ for respirable quartz dust. Consequently, to obtain the critical value, the verification limit is first divided by 1.0336 (coal mine dust) or 1.0302 (quartz dust) and then truncated to the desired number of decimal digits. This yields 1.93 mg/m³ for coal mine dust and 97 μg/m³ for respirable quartz dust.

The confidence coefficients used to establish critical values by this method are as follows:

n	Confidence coefficient
1	1.645
2	0.760
3	0.336
4	0.068

For n > 4, the confidence coefficient is less than 0.068. It should be noted that although the critical value calculated for n ≥ 4 is slightly below the verification limit for both types of respirable dust, for simplicity it was set equal to the verification limit as a close approximation.

[42] In some publications, this ratio is called the relative standard deviation (RSD). It is sometimes also denoted by CV_{total}, where ''total'' refers to all sources of potential sampling and analytical error but does not cover variability in μ itself.

Appendix B—Model Powered Air-Purifying Respirator (PAPR) Program

Note: The following is an example of a Model PAPR Protection Program. Not all items contained in this example would be required for all mines. Additional items not included in this example might be required depending on the conditions at your mine.

1.0 Purpose

Wellington Mining Company and the Mine Safety and Health Administration (MSHA) have determined that, after installing all feasible engineering and environmental controls on the 002–0 MMU longwall mining section, miners working downwind of the shearer continue to be exposed to respirable coal mine dust concentrations in excess of the allowable standard during routine mining operations. As a result, Wellington Mining Company has been granted permission by MSHA to use powered air-purifying respirators to protect affected miners from overexposure to this respiratory hazard until such time as other feasible engineering controls become available.

During mining of development entries, Wellington Mining Company, for brief periods of time, intermittently encounters high quartz concentrations while mining through rock partings. The approved ventilation plan parameters likely will not prevent overexposure to some miners during these brief occurrences. Accordingly, MSHA has approved a revision to the ventilation plan to allow for the use of PAPRs, for a period not to exceed 30 days, when these unusual operating conditions occur.

The purpose of this PAPR Protection Program is to specify who is required to wear PAPRs and the conditions under which the respirators must be used. The miners, occupations, work location or tasks requiring PAPR use at Wellington Mining Company are listed in Section 4.0.

2.0 Scope and Application

This PAPR Protection Program is applicable to all miners who are required by the provisions of the approved ventilation plan to wear PAPRs. This includes supply and maintenance personnel, electrical crews or supervisors working in those areas, occupations or tasks designated in Wellington's PAPR Protection Program.

Miners participating in the PAPR Protection Program do so at no cost to them. The expense associated with training, providing and maintaining PAPRs will be borne by Wellington Mining Company.

3.0 Responsibilities

Program Administrator

The Program Administrator is the management official designated by Wellington Mining Company who is responsible for administering the PAPR Program. The duties of the Program Administrator include:

- Selection of the PAPR.
- Monitoring respirator use to ensure that PAPRs are used in accordance with this program.
- Arranging for and conducting training.
- Ensuring proper storage and maintenance of PAPRs.
- Evaluating the program.
- Updating the written programs as needed.

The Program Administrator for Wellington Mining Company is John Doe.

Mine Supervisors

Mine supervisors are responsible for ensuring that the PAPR Protection Program is implemented in their area(s) of responsibility. In addition to being knowledgeable about the program requirements for their own protection, mine supervisors must also ensure that the program is understood and followed by the miners under their supervision. Duties of the mine supervisor include:

- Ensuring that miners under their supervision have received appropriate training.
- Ensuring the availability of PAPRs and accessories.
- Being aware of miners, areas, occupations or tasks requiring the use of PAPRs.
- Enforcing the proper use of PAPRs when necessary.
- Ensuring that PAPRs are properly cleaned, maintained, and stored according to the PAPR Protection Program.
- Ensuring that PAPRs fit properly and do not cause discomfort.
- Coordinating with the Program Administrator on how to address respirable coal mine dust hazards or other concerns regarding the program.

Miners

Each miner has the responsibility to wear the PAPR when and where required and in the manner in which he or she was trained. Miners must also:

- Care for their PAPRs as instructed.
- Inform their mine supervisor if the PAPR is no longer operating properly.
- Inform their mine supervisor or the Program Administrator of any concerns they have regarding the program.

4.0 Program Elements

Selection Procedures

The Program Administrator will select the PAPRs to be used on site in accordance with all MSHA requirements. The Program Administrator will provide all miners who wear PAPRs with a copy of the manufacturer's instructions including the use, care, maintenance and storage of the PAPR.

- PAPRs utilized will be 3M model AS–600LBC, certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR part 84 and approved by MSHA under 30 CFR part 18 and will be used in accordance with the terms of certification and approval. The main PAPR filter will be the AS–140 HE or equivalent as approved by NIOSH.

PAPR Protection Factor

The minimum air velocity specified in the approved ventilation plan at the headgate of the MMU 002–0 longwall is 550 fpm. Accordingly, the assigned protection factor for the use of PAPRs is 2.9.

When PAPRs are required to be used while mining through rock partings on development entries, the air velocity is less than 400 fpm which results in an assigned protection factor of 4.0.

PAPR Use

PAPR protection is required as follows:

- For all miners who work or travel downwind of the shearer operator when material is being produced on the 002–0 MMU longwall section.
- For all miners who work or travel on the active production face or work or travel downwind of that face when it has been determined by mine management that unique operating conditions caused by mining through rock partings has or will occur.

General Use Procedures

- PAPRs assigned for the exclusive use of a miner will be identified by labeling the outside with the miner's full name.
- Miners will use PAPRs under conditions specified by the program, and in accordance with the training they have received on the use of the device. The PAPR will not be used in a manner for which it is not certified by NIOSH or approved by MSHA.
- All miners should examine the PAPR prior to each shift of use for a new main filter, integrity of the visor, and proper functioning of the battery and motor assembly.

Cleaning, Maintenance and Storage

Cleaning

PAPRs are to be regularly cleaned and disinfected at the designated PAPR cleaning station located in the lamproom. Units issued for the exclusive use of a miner shall be cleaned prior to use on the next shift. Those not assigned for the exclusive use of a miner will be cleaned and disinfected prior to the next shift of use or assignment to a different miner. All PAPRs will be cleaned by the lamproom attendant.

The following procedures are to be used when cleaning and disinfecting PAPRs:

PAPRs Issued for Exclusive Use

- Wipe the Helmet/Headband/Cradle assembly/Head seal/Temple seal/visor with a soft cloth dampened with a solution of mild soap and water.
- Vacuum the motor housing.
- Replace the main filter.
- Inspect all parts for damage or wear. Replace any parts that may affect the performance of the respirator.
- All components may be wiped with a soft cloth dampened with a solution of disinfectant and water.

PAPRs Not Issued for Exclusive Use

- Disassemble the motor housing assembly, the head harness assembly, the head seal assembly, the visor assembly, the main filter and the expander.
- Clean all parts by wiping them with a soft cloth dampened with a solution of mild soap and water. Wipe each component with a soft cloth dampened with disinfectant.
- Allow all parts to dry prior to reinstallation.
- Inspect all parts for damage or wear. Replace any parts that may affect the performance of the respirator.
- Replace the main filter with a new filter.

Note: The PAPR Program Administrator will ensure an adequate supply of appropriate cleaning and disinfection material at the cleaning station.

Maintenance

PAPRs are to be maintained at all times in order to ensure that they function properly and adequately protect the miner. Maintenance involves a thorough visual inspection for cleanliness, defects and operational function. Worn, damaged, defective, or exhausted parts will be replaced prior to use. No components will be replaced or repairs made beyond those recommended by the manufacturer. All routine maintenance will be performed by the lamproom attendant.

The following checklist will be used when inspecting PAPRs:

- Headgear
  - —Check that there are no dents or cracks in the headgear assembly
  - —Look closely at the faceseals. There should be no tears or loss of elasticity that could permit contaminated air to enter the headgear.
  - —Check that the headseal and temple seals are in good condition.
- Faceshield
  - —Check the faceshield for correct placement in the visor surround. Also look for scratches or other visual distortions that make it difficult to see through the faceshield.
- Blower Assembly
  - —Remove the blower from the headgear
  - —Examine the blower housing and replace it if cracked or damaged.
  - —Examine the inside of the blower intake manifold for accumulated dust. Clean as described above, if required.
- Power supply and motor
  - —Check operational function
  - —Examine for tears or damage to the wiring or cable jacket.
  - —Check for compliance with electrical permissibility requirements.
- PAPR battery packs will be placed on charge if not already indicating a full charge.

Storage

PAPRs will be stored in a clean, dry area, and in accordance with the manufacturer's recommendations. Clean/disinfected and inspected units will be placed in a sealed plastic bag and stored in the lamproom.

Defective PAPRs

PAPRs that have defective parts shall be removed from service immediately. If, during an examination or during the work shift, a miner discovers a defect in a PAPR, it should be brought to the attention of the supervisor. The supervisor will have the Program Administrator or delegate make immediate repairs or secure a replacement prior to the miner returning to the work area that requires PAPR use. With the approval of the supervisor, miners will be permitted to leave the work area to perform limited maintenance on their PAPR in a designated area that is free of respirable coal mine dust hazards. Situations when this will be permitted include: to wash their PAPR facepiece, to replace a filter, leaking hose or exhausted power supply (battery), or to repair a damaged/missing visor.

Training

The Program Administrator will provide training to PAPR users and their mine supervisors on the contents of the Wellington Mining Company's PAPR Protection Program, on the applicable portions of the mine's approved mine ventilation plan revisions, and on MSHA respiratory protection standards. Miners will be trained prior to using a PAPR in the active workings. Supervisors will also be trained prior to using a PAPR in the active workings or prior to supervising miners who must wear PAPRs.

The training course will cover these topics:

- The Wellington Mining Company's PAPR Protection Program
- Applicable MSHA standards
- Respirable coal mine dust (including quartz) hazards encountered at Wellington Mining Company's operations and their health effects.
- Limitations of PAPRs
- PAPR donning, doffing and user fit check

Miners will be retrained at least annually. Miners must demonstrate their understanding of the topics covered in the training through hands-on exercises. PAPR training will be documented by the Program Administrator.

5.0 Program Evaluation

The Program Administrator will conduct periodic evaluations of the active workings to ensure that the provisions of the program are being implemented. The evaluations will include regular consultations with miners who use PAPRs and their supervisors, site inspections, an examination of respirable coal mine dust sampling results, and a review of training records.

6.0 Documentation and Recordkeeping

A written copy of this program and the MSHA requirements will be posted on the mine bulletin board for the review by interested miners, and a copy will be kept in the Program Administrator's office.

Also maintained in the Program Administrator's office are copies of training records. Those records will be updated as new miners are trained, and as existing miners receive annual refresher training.

Appendix C—Citation Threshold Values (CTV)

I. Interpretation of the CTV Table

Each CTV was calculated to ensure that, if the CTV is met or exceeded, noncompliance with the applicable dust standard can be inferred with at least 95-percent confidence. It is assumed that whatever applicable dust standard happens to be in effect at the sampling location is binding, and that a citation is warranted whenever there is sufficient evidence that an established standard has been exceeded. The CTV table does not depend on how the applicable dust standard was established, or on any measurement uncertainties in the process of setting the applicable dust standard.

The CTV table provides criteria for testing a tentative, or presumptive, hypothesis that the true single-shift average dust concentration did not exceed the applicable dust standard (S) at each of the individual locations sampled during a particular shift. For purposes of this test, the mine atmosphere at each such location is presumed to be in compliance unless the corresponding single-shift measurement provides sufficient evidence to the contrary. The ''true single-shift average'' does *not* refer, in this context, to an average across different occupations, locations, or shifts. Instead, it refers entirely to the dust concentration at the specific location of the sampler unit, averaged over the course of the particular shift during which the measurement was obtained. The CTV table is *not* designed to estimate or test the average dust concentration across occupational locations, or within any zone or mine area, or in the air actually inhaled by any particular miner.

The CTV table ensures that noncompliance is cited only when there is a 95-percent level of confidence that the applicable dust standard has actually been exceeded. A single-shift measurement that does not exceed the applicable CTV value, does not necessarily imply probable compliance with the applicable dust standard—let alone compliance at a 95-percent confidence level. For example, a single-shift measurement of 2.14 mg/m^3 would not, according to the CTV table, indicate noncompliance with sufficient confidence to warrant a citation if S = 2.0 mg/m^3. This does not imply that the mine atmosphere was in compliance on the shift and at the location sampled. On the contrary, unless contradictory evidence were available, this measurement would indicate that the MMU was probably *out* of compliance. However, because there is a small chance that the measurement exceeded the standard only because of measurement error, a citation would not be issued. Additional measurements would be necessary to verify the apparent lack of adequate control measures. Similarly, a single-shift measurement of 1.92 mg/m^3 would not warrant citation; but, because of possible measurement error, neither would it warrant concluding that the mine atmosphere sampled was in compliance. To confirm that control measures are adequate, it would be necessary to obtain additional measurements.

Furthermore, even if a single-shift measurement were to demonstrate, at a high confidence level, that the mine atmosphere was in compliance at the sampling location on a given shift, additional measurements would be required to demonstrate compliance on each shift. For example, if S = 2.0 mg/m^3, then a valid measurement of 1.65 mg/m^3 would demonstrate compliance on the particular shift and at the particular location sampled. It would not, however, demonstrate compliance on other shifts or at other locations.

II. Derivation of the CTV Table

To understand how the CTVs are derived and justified, it is first necessary to distinguish between variability due to measurement error and variability due to actual differences in dust concentration. The variability observed among individual measurements obtained at different locations (or at different times) combines both: dust concentration measurements vary partly because of measurement error and partly because of genuine differences in the dust concentration being measured. This distinction, between measurement error and variation in the true dust concentration, can more easily be explained by first carefully defining some notational abbreviations.

One or more dust samples are collected in the same MMU or other mine area on a particular shift. Since it is necessary to distinguish between different samples in the same MMU, let X_i represent the MRE-equivalent dust concentration measurement obtained from the ith sample. The quantity being measured is the true, single-shift average dust concentration at the ith sampling location and is denoted by μ_i. Because of potential measurement errors, μ_i can never be known with complete certainty. A ''sample,'' ''measurement,'' or ''observation'' always refers to an instance of X_i rather than μ_i.

The overall measurement error associated with an individual measurement is nothing more than the difference between the measurement (X_i) and the quantity being measured (μ_i). Therefore, this error can be represented as

$$\varepsilon_i = X_i - \mu_i.$$

Equivalently, any measurement can be regarded as the true concentration in the atmosphere sampled, with a measurement error added on:

$$X_i = \mu_i + \varepsilon_i.$$

For two different measurements (X_1 and X_2), it follows that X_1 may differ from X_2 not only because of the combined effects of ε_1 and ε_2, but also because μ_1 differs from μ_2.

The probability distribution of X_i around μ_i depends only on the probability distribution of ε_i and should not be confused with the statistical distribution of μ_i itself, which arises from spatial and/or temporal variability in dust concentration. This variability (*i.e.*, among μ_i for different values of *I*) is not associated with inadequacies of the measurement system, but real variation in exposures due to the fact that contaminant generation rates vary greatly in time and contaminants are heterogeneously distributed in workplace air.

Since noncompliance determinations are made relative to individual sampling locations on individual shifts, derivation of the CTV table requires no assumptions or inferences about the spatial or temporal pattern of atmospheric dust concentrations—*i.e.*, the statistical distribution of μ_i. MSHA is not evaluating dust concentrations averaged across the various sampler locations. Therefore, the degree and pattern of variability observed among different measurements obtained during MSHA sampling are not used in establishing any CTV. Instead, the CTV for each applicable dust standard (S) is based entirely on the distribution of measurement errors (ε_i) expected for the maximum dust concentration in compliance with that standard—*i.e.*, a concentration equal to S itself.

If control filters are used to eliminate potential biases, then each ε_i arises from a combination of four weighing errors (pre- and post-exposure for both the control and exposed filter capsule) and a continuous summation of instantaneous measurement errors accumulated over the course of an eight-hour sample. Since the eight-hour period can be subdivided into an arbitrarily large number of sub-intervals, and some fraction of ε_i is associated with each sub-interval, ε_i can be represented as comprising the sum of an

arbitrarily large number of sub-interval errors. By the Central Limit Theorem, such a summation tends to be normally distributed, regardless of the distribution of sub-interval errors. This does not depend on the distribution of μ_i, which is generally represented as being lognormal.

Furthermore, each measurement made by MSHA personnel is based on the difference between pre- and post-exposure weights of a dust sample, as determined in the same laboratory, and adjusted by the weight gain or loss of the control filter capsule. Any systematic error or bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. Furthermore, any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules is also mathematically canceled out. Elimination of the sources of systematic errors identified above, together with the fact that the concentration of respirable dust is defined by section 202(e) of the Mine Act to mean the average concentration of respirable dust measured by an approved sampler unit, implies that the measurements are unbiased. This means that ε_i is equally likely to be positive or negative and, on average, equal to zero.

Therefore, each ε_i is assumed to be normally distributed, with a mean value of zero and a degree of variability represented by its standard deviation

$$\sigma_i = \mu_i \cdot CV_{total}.$$

Since $X_i = \mu_i + \varepsilon_i$, it follows that for a given value of μ_i, X_i is normally distributed with expected value equal to μ_i and standard deviation equal to σ_i. CV_{total}, is the coefficient of variation in measurements corresponding to a given value of μ_i. CV_{total} relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

MSHA's procedure for citing noncompliance based on the CTV table consists of formally testing a presumption of compliance at every location sampled. Compliance with the applicable dust standard at the *ith* sampling location is expressed by the relation $\mu_i \leq S$. Max$\{\mu_i\}$ denotes the maximum dust concentration, among all of the sampling locations within a MMU. Therefore, if Max$\{\mu_i\} \leq S$, none of the sampler units in the MMU were exposed to excessive dust concentration. Since the burden of proof is on MSHA to demonstrate noncompliance, the hypothesis being tested (called the null hypothesis, or H_0,) is that the concentration at every location sampled is *in* compliance with the applicable dust standard. Equivalently, for a MMU the null hypothesis (H_0) is that max$\{\mu_i\} \leq S$. In other areas, where only one, full-shift measurement is made, the null hypothesis is simply that $\mu_i \leq S$.

The test consists of evaluating the likelihood of measurements obtained during an MSHA sample, under the assumption that H_0 is true. Since $X_i = \mu_i + \varepsilon_i$, X_i (or max$\{X_i\}$ in the case of a MMU) can exceed S even under that assumption. However, based on the normal distribution of measurement errors, it is possible to calculate the probability that a measurement error would be large enough to fully account for the measurement's exceeding the standard. The greater the amount by which X_i exceeds S, the less likely it is that this would be due to measurement error alone. If, under H_0, this probability is less than five percent, then H_0 can be rejected at a 95-percent confidence level and a citation is warranted. For a MMU, rejecting H_0 (and therefore issuing a citation) is equivalent to determining that $\mu_i > S$ for at least one value of *I*.

Each CTV listed was calculated to ensure that citations will be issued at a confidence level of at least 95 percent. As described in MSHA's February 1994 notice and explained further by Kogut [2], the tabled CTV corresponding to each S was calculated on the assumption that, at each sampling location:

$$CV_{total} \leq CV_{CTV} = \sqrt{\left(\frac{0.14\ \text{mg/m}^3}{\mu_i\ \text{mg/m}^3} \cdot 100\%\right)^2 + (5\%)^2 + (5\%)^2}$$

The MSHA and NIOSH joint finding establishes that for valid measurements made with an approved sampler unit, CV_{total} is in fact less than CV_{CTV} at all dust concentrations (μ_i).

The situation in which measurement error is most likely to cause an erroneous noncompliance determination is the hypothetical case of $\mu_i = S$ for either a single-shift sample measurement or for all of the measurements made in the same MMU. In that borderline situation—*i.e.*, the worst case consistent with H_0—the standard deviation is identical for all measurement errors. Therefore, the value of σ used in constructing the CTV table is the product of S and CV_{CTV} evaluated for a dust concentration equal to S:

$$\sigma = S \cdot \sqrt{\left(\frac{0.14}{S}\right)^2 + (.05)^2 + (.05)^2}$$

Assuming a normal distribution of measurement errors as explained above, it follows that the probability a single measurement would equal or exceed the critical value

$$c = S + 1.64 \cdot \sigma$$

is five percent under H_0 when $CV_{total} = CV_{CTV}$. The tabled CTV corresponding to S is derived by simply raising the critical value c up to the next exact multiple of 0.01 mg/m^3.

For example, at a dust concentration (μ_i) just meeting the applicable dust standard of S = 2 mg/m^3, CV_{CTV} is 9.95 percent. Therefore, the calculated value of c is 2.326 and the CTV is 2.33 mg/m^3. Any valid single-shift measurement at or above this CTV is unlikely to be this large simply because of measurement error. Therefore, any such measurement warrants a noncompliance citation.

The probability that a measurement exceeds the CTV is even smaller if $\mu_i < S$ for any *I*. Furthermore, to the extent that CV_{total} is actually less than CV_{CTV}, σ is actually less than $S \cdot CV_{CTV}$. This results in an even lower probability that the critical value would be exceeded under the null hypothesis. Consequently, if any single-shift measurement equals or exceeds c, then H_0 can be rejected at confidence level of at least 95-percent. Since rejection of H_0 implies that $\mu_i > S$ for at least one value of *I*, this warrants a noncompliance citation.

It should be noted that when each of several measurements is separately compared to the CTV table, the probability that at least one ε_i will be large enough to force $X_i \geq$ CTV when $\mu_i \leq S$ is greater than the probability when only a single comparison is made. For example (still assuming S = 2 mg/m^3), if CV_{total} is actually 6.6%, then the standard deviation of ε_i is 6.6% of 2.0 mg/m^3, or 0.132 mg/m^3, when $\mu_i = S$. Using properties of the normal

distribution, the probability that any single measurement would exceed the CTV in this borderline situation is calculated to be 0.0062. However, the probability that at least one of five such measurements results in a citation is $1 - (0.9938)^5 = 3.1$ percent. Therefore, the confidence level at which a citation can be issued, based on the maximum of five measurements made in the same MMU on a given shift, is 97%.

The constant 1.64 used in calculating the CTV is a 1-tailed 95-percent confidence coefficient and is derived from the standard normal probability distribution. Since the purpose of the CTV table is to provide criteria for determining that the true dust concentration strictly exceeds the applicable dust standard and such a determination can occur only when a single-shift measurement is sufficiently high, there is exactly zero probability of erroneously citing noncompliance when a measurement falls below the lower confidence limit. Consequently, the total probability of erroneously citing noncompliance equals the probability that a standard normal random variable exceeds 1.64, which is 5 percent.

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XII. Regulatory Text

List of Subjects

30 CFR Part 70

Coal, Mine safety and health, Underground coal mines, Respirable dust.

30 CFR Part 75

Coal, Mine safety and health, Underground coal mines, Ventilation.

30 CFR Part 90

Coal, Mine safety and health.

Dated: February 12, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

Accordingly, MSHA proposes to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811, 813(h), 957 and 961.

2. Subpart A is revised to read as follows:

Subpart A—General

Sec.
70.1 Scope.
70.2 Definitions.

§ 70.1 Scope and purpose.

This part sets forth mandatory health standards for each underground coal mine subject to the Federal Mine Safety and Health Act of 1977.

§ 70.2 Definitions.

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164, 30 U.S.C. 801 *et seq.*

Active workings. Any place in a coal mine where miners are normally required to work or travel.

Administrative controls. Methods of controlling the respirable dust exposure of an individual miner assigned to a specific work position or occupation by job rotation, altering the way in which the assigned work is performed, providing time periods away from dust-generating sources. These procedures must be:

(1) Capable of being reviewed to confirm their proper implementation,

(2) Clearly understood by the affected miners, and

(3) Applied consistently over time.

Approved sampling device. A sampling device of the constant-flow type:

(1) Approved by the Secretary and the Secretary of Health and Human Services under part 74 of this title; or

(2) Approved by the Secretary when it has been determined that the measured concentration of respirable dust can be converted to an equivalent concentration as measured with a sampling device approved under part 74 of this title.

Certified person. An individual certified by the Secretary to take respirable dust samples and/or to perform the maintenance and calibration of approved sampling devices.

Citation threshold value (CTV). The lowest equivalent concentration measurement demonstrating that the applicable dust standard has been exceeded at a confidence level of at least 95 percent.

Concentration. The amount of respirable dust contained per unit volume of air.

Control filter. An unexposed filter cassette of the same design and material as the filter cassette used for sampling that is pre- and post-weighed on the same day as the exposed filters.

Critical value. The highest equivalent concentration measurement demonstrating that the applicable verification limit has been met at a confidence level of at least 95 percent.

Designated area (DA). An area of a mine identified by the operator under § 75.371(t) of this title and approved by the district manager, or identified by the Secretary. Each DA is identified by a four-digit identification number assigned by MSHA.

Designated occupation (DO). The occupation or work location on a mechanized mining unit that has been determined by results of respirable dust samples to exhibit the greatest respirable dust concentration.

District manager. The manager of the Coal Mine Safety and Health District in which the mine is located.

Dust control parameters. Specific engineering or environmental controls, maintenance procedures, and other measures specified in the approved mine ventilation plan for controlling respirable dust in the mine atmosphere of the active workings.

Engineering or environmental controls. Methods of controlling the level of respirable dust by reducing the quantity released into the work environment, by diluting, capturing or diverting the generated dust.

Equivalent concentration. The concentration of respirable coal mine dust, as measured by an approved sampling device, converted to an MRE 8-hour equivalent as follows:

(1) Multiply the concentration measured by the approved sampling device by the constant factor prescribed by the Secretary for that device and then apply criteria in paragraphs (2) and (3) of this definition if applicable.

(2) If the sampled shift is longer than 8 hours, multiply the concentration obtained in paragraph (1) of this definition by $t/480$ where t is the length of the sampled work shift in minutes.

(3) If using PAPRs, divide the concentration obtained in paragraph (1) or (2) of this definition (whichever is applicable) by the protection factor assigned to the mechanized mining unit.

Material produced. Coal and/or any other substance(s) extracted by a mechanized mining unit during any production shift.

Mechanized mining unit (MMU). A set of mining equipment, including hand loading equipment, used for the production of material; or a specialized set which utilizes mining equipment other than specified in § 70.206(d) for the production of material. Each MMU is assigned a four-digit identification number by MSHA. The identification number is retained by the MMU regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are identified as a single MMU. When two or more sets of mining equipment are simultaneously engaged in the production of material within the same working section, each such mechanized mining unit is identified separately.

MRE. The Mining Research Establishment of the National Coal Board, London, England.

MRE instrument. A gravimetric dust sampler with a four channel horizontal elutriator developed by the MRE.

MSHA. The Mine Safety and Health Administration of the Department of Labor.

Personal continuous dust monitor (PCDM). An instrument that monitors the concentration of respirable dust on a continuous basis and displays in real-time the measured dust exposure information.

Powered air-purifying respirator (PAPR). A type of air-purifying respirator that uses a blower to force ambient air through the air-purifying elements to the inlet covering (a visor), which forms a partial seal with the face, to deliver filtered air into the miner's breathing area.

Protection factor (PF). A measure of the level of respiratory protection that would be expected in the workplace from a properly functioning PAPR when correctly worn and used. The protection factor is the ratio of the respirable dust concentration outside the respirator facepiece to the concentration inside the facepiece. For MMUs with average air velocity in the working face:

(1) <400 feet per minute (fpm), PF = 4;

(2) >800 fpm, PF = 2; and

(3) between 400 fpm and 800 fpm, the applicable PF is determined by the following formula: $2 \times (800 \text{ fpm}/\text{actual air velocity})$.

Production shift.

(1) With regard to a MMU, a shift during which material is produced; or

(2) With regard to a DA, a shift during which material is produced and routine day-to-day activities occur in the DA.

Quartz. Crystalline silicon dioxide (SiO_2) as measured by:

(1) MSHA's Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust; or

(2) any method approved by MSHA as providing a measurement of quartz equivalent to that measured by Analytical Method P–7.

Respirable dust. Dust collected with an approved sampling device.

Secretary. The Secretary of Labor or delegate.

Valid sample. A respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

Verification limits. 2.0 mg/m^3 of respirable coal mine dust and 100 μ g/m^3 of respirable quartz dust, each expressed as an equivalent concentration.

Verification production level (VPL). The tenth highest production level recorded in the most recent 30 production shifts; or, if fewer than 30 shifts of production data are available, the minimum production level attained on any shift used to verify the adequacy of the dust control parameters.

Working face. Any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

3. Subpart B is revised to read as follows:

Subpart B—Dust Standards

Sec.

70.100 Respirable dust standards when quartz is not present.

70.101 Respirable dust standard when quartz is present.

§ 70.100 Respirable dust standard when quartz is not present.

(a) Each operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 2.0 milligrams per cubic meter of air (mg/m^3) as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2.

(b) Each operator must continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways at or below 1.0 mg/m^3 as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2.

§ 70.101 Respirable dust standard when quartz is present.

When the respirable dust contains more than five percent quartz, as determined by the average of the most recent three MSHA samples, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift in the active workings of each mine, as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 70.2, at or below the applicable dust standard. The applicable dust standard is determined by dividing the average quartz percentage into the number 10.

Example: Assume a MMU or a DA is on a 2.0-mg/m^3 dust standard (5% or less). If the first MSHA sample contains 7.2% of quartz, and the required two subsequent samples contained 9.5% and 10.6%, respectively, the average quartz percentage would be 9.1% [(7.2% + 9.5% + 10.6%)/3 = 9.1%]. Therefore, the equivalent concentration of respirable dust in the mine atmosphere associated with that MMU or DA must, on each shift, be maintained at or below 1.1 mg/m^3 [10/9.1% = 1.1 mg/m^3].

4. Subpart C is revised to read as follows:

Subpart C—Sampling Procedures

Sec.

70.201 Sampling; general and technical requirements.

70.202 Approved sampling devices; maintenance and calibration.

70.203 Approved sampling devices; operation; air flowrate.

70.204 Demonstrating the adequacy of the dust control parameters specified in a mine ventilation plan; verification sampling.

70.205 Verification sampling; when required; time for completing.

70.206 Verification sampling; procedures for sampling.

70.207 Approval of dust control parameters by district manager; revocation of approval.

70.208 Follow-up action when either verification limit is exceeded.

70.209 Use of supplementary control measures; types and conditions for use; request for approval.

70.210 Powered air-purifying respirators (PAPRs); requirements for approval.

70.211 Powered air-purifying respirators (PAPRs); approval and conditions for continued use; revocation of approval.

70.212 Powered air-purifying respirators (PAPRs); conditions of use under special circumstances.

70.213 Administrative controls; requirements for approval.

70.214 Administrative controls; approval and conditions for continued use; revocation of approval.

70.215 Quarterly evaluation of approved plan parameters.

70.216 Respirable dust samples; transmission by operator.

70.217 Respirable dust samples; report to operator; and posting.

70.218 Violation of respirable dust standard; issuance of citation; action required by operator; and termination of citation.

70.219 Status change reports.

70.220 Personal continuous dust monitor (PCDM).

§ 70.201 Sampling; general and technical requirements.

(a) Each operator must conduct respirable dust sampling required by this part with an approved sampling device.

(b) Sampling must be performed by a certified person. To be certified, a person must pass the MSHA examination on sampling of respirable coal mine dust.

(c) Sampling devices must be worn or carried directly to and from the MMU to be sampled and must be operated in accordance with the requirements of this part.

(d) Except as provided in paragraph (h) of this section, one control filter must be used for each shift of sampling. Each control filter must have the same preweight date (noted on the dust data card) as the ones that are used for sampling; must remain plugged at all times; must be exposed to the same time, temperature, and handling conditions as the ones used for sampling; and must be kept with the exposed samples after sampling.

(e) Except as provided in paragraph (i) of this section, sampling must be conducted on a shift during which the amount of material produced by the MMU is at or above the verification production level (VPL), as defined in § 70.2, and using only the dust control parameters listed in the approved mine ventilation plan, at levels not exceeding 115 percent of the specified quantities.

(1) If the VPL is not achieved, the samples for that shift will be voided by MSHA. However, any sample, regardless of production, that exceeds either verification limit or applicable dust standard will be used to determine the equivalent concentration for that occupation.

(2) If the MMU being evaluated is authorized to use PAPRs under special circumstances (see § 70.212) and those circumstances prevent the operator from achieving the VPL, the sample(s) for that shift will be used to determine the equivalent concentration for the affected occupations.

(f) Each operator must provide affected miners and their representatives with an opportunity to observe respirable dust sampling required by this part and must give prior notice of the date and time of intended sampling to affected miners and their representatives. An operator is exempt from this requirement if using personal

continuous dust monitors in accordance with § 70.220.

(g) Upon request from the district manager, the operator must submit the date and time when any sampling required by this part will begin.

(h) Paragraph (d) of this section does not apply if sampling to conform with the requirements of § 70.215 or § 70.220(d).

(i) Paragraph (e) of this section does not apply if sampling to conform with the requirements of § 70.220(d).

§ 70.202 Approved sampling devices; maintenance and calibration.

(a) Sampling devices must be maintained as approved and calibrated by a certified person in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)'' or in accordance with the manufacturer's specifications if using a personal continuous dust monitor (PCDM) under § 70.220. To be certified, a person must pass the MSHA examination on maintenance and calibration for approved sampling devices.

(b) Sampling devices must be calibrated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device, before they are put into service and, thereafter, at time intervals prescribed by the manufacturer.

(c) If equipped with a flowmeter, a calibration mark must be placed on the flowmeter of each sampling device to indicate the proper position of the float when the sampler is operating at a flowrate of 2.0 liters of air per minute or other flowrate prescribed by the Secretary and the Secretary of Health and Human Services for the particular device. The standard to denote proper flow is when the lowest part of the float is lined up with the top of the calibration mark.

(d) Except as provided in paragraph (f) of this section, each sampling device must be tested and examined immediately before each sampling shift and necessary external maintenance must be performed by a certified person to assure that the sampling device is clean and in proper working condition. This testing and examination must include the following:

(1) Testing the voltage of each battery while under actual load to assure the battery is fully charged. The voltage for nickel cadmium cell batteries must not be lower than the product of the number of cells in the battery pack multiplied by 1.25. The voltage for other than nickel cadmium cell batteries must not be lower than the product of the number of cells in the battery pack multiplied by the manufacturer's nominal voltage per cell.

(2) Examination of all components of the cyclone to assure that they are clean and free of dust and dirt;

(3) Examination of the inner surface of the cyclone on the approved sampling device to assure that it is free of scoring;

(4) Examination of the external tubing on the approved sampling device to assure that it is clean and free of leaks, and;

(5) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, and firmly in contact.

(e) In accordance with 5 U.S.C. 552(a) and 1 CFR, part 51, MSHA Informational Report No. 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. Copies may be inspected or obtained without charge at each Coal Mine Safety and Health District office of MSHA.

(f) Paragraphs (d)(1) through (d)(5) of this section do not apply if using a PCDM. The operator must follow the examination procedures recommended by the manufacturer or prescribed by the Secretary and the Secretary of Health and Human Services for the particular device.

§ 70.203 Approved sampling devices; operation; air flowrate.

(a) Sampling devices must be operated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device.

(b) Except as provided in paragraphs (c) and (d) of this section, each sampling device must be examined each shift by a person certified to sample during:

(1) The second hour after being put into operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments must be made by the certified person.

(2) The last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample must be transmitted to MSHA with a notation by the certified person on the back of the dust data card stating that the proper flowrate was not maintained. Also to be noted are any other events occurring during sampling that may affect the validity of the sample.

(c) Paragraph (b)(1) of this section will not apply if the approved sampling device is being operated in a breast or chamber of an anthracite coal mine where the full box mining method is used.

(d) Paragraphs (b)(1) and (2) of this section do not apply if using a personal continuous dust monitor in accordance with § 70.220. To assure that the personal dust monitor is operating properly and at the proper flowrate, the operator must follow the procedures recommended by the manufacturer or prescribed by the Secretary and the Secretary of Health and Human Services for the particular device.

§ 70.204 Demonstrating the adequacy of the dust control parameters specified in a mine ventilation plan; verification sampling.

As of _____ (Insert date which must be within 12 months of the effective date of this rule), each operator of an underground coal mine must have a ventilation plan in which the dust control parameters specified for each MMU have been verified through sampling to be adequate in controlling respirable dust as required by § 75.370(a)(1) of this title. To demonstrate that the plan parameters for each MMU are adequate, the operator must show, with a high level of confidence, that the equivalent concentration of respirable coal mine dust and respirable quartz dust can be maintained at or below the verification limits (2.0 mg/m^3 and 100 μg/m^3, respectively) as determined by meeting the critical values in Table 70–1.

§ 70.205 Verification sampling; when required; time for completing.

(a) The operator must, within 45 calendar days after obtaining provisional approval, verify the adequacy of the dust control parameters for each MMU when:

(1) Submitting a ventilation plan under § 75.370 for a newly established MMU.

(2) The district manager determines that the previously approved plan parameters are inadequate to control respirable dust under the prevailing operating conditions and requires the operator to revise the plan parameters.

(b) The district manager may, upon written request, grant the operator an extension of up to 30 calendar days to complete verification sampling.

(c) All previously approved ventilation plans must be revised in accordance with § 75.371(f) of this title and the adequacy of the dust control parameters verified by _____ (Insert date which must be within 12 months of the effective date of this rule.)

§ 70.206 Verification sampling; procedures for sampling.

(a) Each operator must sample the following occupations for each MMU:

(1) Designated occupation (DO);

(2) Roof bolter operator(s);

(3) Longwall jack setters; and

(4) Any other occupation designated by the district manager.

(b) Each sampling device must be turned ''ON'' upon arriving at the MMU to be sampled, must remain operational the entire period spent in the MMU, and must be turned ''OFF'' at the end of the shift as the device exits the MMU.

(c) Multiple-shift samples are not required to be collected on consecutive shifts. All samples collected during verification sampling must be submitted to MSHA.

(d) Unless otherwise directed by the district manager, the DO samples must be collected by placing the sampling device as follows:

(1) *Conventional section using cutting machine*—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(2) *Conventional section shooting off the solid*—on the loading machine operator or on the loading machine within 36 inches inby the normal working position;

(3) *Continuous mining section other than auger-type*—on the continuous mining machine operator or on the continuous mining machine within 36 inches inby the normal working position;

(4) *Continuous mining machine; auger-type*—on the jacksetter who works nearest the working face on the return air-side of the continuous mining machine or at a location that represents the maximum concentration of dust to which the miner is exposed;

(5) *Scoop section using cutting machine*—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(6) *Scoop section, shooting off the solid*—on the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(7) *Longwall section*—on the miner who works nearest the return air-side of the longwall working face or along the working face on the return side within 48 inches of the corner;

(8) *Hand loading section with a cutting machine*—on the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(9) *Hand loading section shooting off the solid*—on the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed; and

(10) *Anthracite mine sections*—on the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed.

(e) When sampling an occupation other than the DO, the sampling device must be placed on the miner assigned to that occupation, unless directed otherwise by the district manager.

§ 70.207 Approval of dust control parameters by district manager; revocation of approval.

(a) Approval of the dust control parameters specified in the ventilation plan will be granted when:

(1) No valid equivalent concentration measurement exceeds the critical values listed in Table 70–1 that correspond to the number of shifts sampled, and

(2) The specified dust control parameters incorporate the parameters used during verification sampling.

(b) MSHA approval may be revoked based on samples collected by MSHA or in accordance with § 70.215.

TABLE 70–1.—CRITICAL VALUES FOR DETERMINING COMPLIANCE WITH VERIFICATION LIMITS

If samples are submitted for	Critical values	
	Respirable coal mine dust	Respirable quartz dust
1 shift	1.71 mg/m^3	87 µg/m^3
2 shifts	1.85 mg/m^3	93 µg/m^3
3 shifts	1.93 mg/m^3	97 µg/m^3
4 or more shifts	2.0 mg/m^3	100 µg/m^3

§ 70.208 Follow-up action when either verification limit is exceeded.

If either verification limit is exceeded, the operator must:

(a) Stop sampling and make approved respiratory equipment available to affected miners in accordance with § 70.300;

(b) Determine the cause and take action to reduce the concentration of respirable dust to within the applicable verification limit; and

(c) Submit in writing, within 5 calendar days of receiving results of sampling, any proposed revision to the plan parameters to the district manager. The district manager will notify the operator in writing if the proposed revision is provisionally approved and whether to resume sampling from the point it was stopped or to begin sampling all over again. The district manager may require additional control measures before the operator may resume or initiate sampling in accordance with the requirements of § 70.206.

§ 70.209 Use of supplementary control measures; types and conditions for use; request for approval.

(a) If either verification limit is exceeded and the operator believes that the MMU is using all feasible engineering or environmental controls, the operator may request the Administrator for Coal Mine Safety and Health to approve the use of supplementary control measures to reduce exposure of individual miners assigned to work in the affected occupations to within the applicable verification limits. The operator must provide a copy of the submitted request to the representative of miners at the time of submittal. MSHA will consider all comments from the representative of miners and provide copies of these comments to the operator upon request.

(b) The Administrator will approve or deny the operator's request to use supplementary controls within 30 calendar days or as soon as practicable after its receipt by MSHA.

(1) If approval is denied, the operator will be notified in writing of specific reasons for disapproval.

(2) If approval is granted, the operator will be permitted to use either powered air-purifying respirators (PAPRs), approved by NIOSH under 42 CFR part 84 and by MSHA under part 18 of this title, administrative controls, or a combination of both, provided the requirements of §§ 70.210 and 70.211 or §§ 70.213 and 70.214 are met. The operator will be permitted to use these

supplementary controls until additional feasible engineering controls become available and are implemented or until the district manager revokes the approval.

(c) MSHA approval to use supplementary controls may be revoked for failure to comply with requirements of § 70.211(b) or § 70.214(b).

§ 70.210 Powered air-purifying respirators (PAPRs); requirements for approval.

(a) Within 5 calendar days of receiving MSHA approval to use supplementary controls, the operator must submit, in writing, a revision to the ventilation plan to the district manager. The proposed revision must include:

(1) Feasible engineering controls capable of:

(i) Reducing the concentration of respirable dust in every occupational environment where a PAPR is required as low as achievable; and

(ii) Maintaining other occupational environments at or below the verification limits.

(2) A written PAPR protection program which meets the requirements of § 72.710 and includes:

(i) The protection factor assigned to the MMU as determined in accordance with § 70.2; and

(ii) The specific occupation(s), work locations or tasks affected in the MMU. The district manager may require adjustments in the PAPR protection program.

(3) The location(s) in a MMU where warning signs with the statement ''RESPIRATORY PROTECTION REQUIRED IN THIS AREA'' will be posted.

(b) Within 30 calendar days of receiving provisional approval of the plan revision, the operator must verify, in accordance with § 70.206(b) through (e), the adequacy of the proposed revision by sampling the occupation(s) being affected by the PAPR protection program, the DO, and/or other occupation(s) designated by the district manager.

§ 70.211 Powered air-purifying respirators (PAPRs); approval and conditions for continued use; revocation of approval.

(a) MSHA approval of the proposed plan revision incorporating a PAPR protection program will be granted when:

(1) No valid equivalent concentration measurement exceeds the critical values listed in Table 70–1 to §70.207 that correspond to the number of shifts sampled; and

(2) The revision incorporates the dust control parameters used during verification sampling.

(b) MSHA may revoke approval to use supplementary controls for failure to:

(1) Comply with the plan requirements on each shift;

(2) Maintain the equivalent concentration of respirable coal mine dust for any occupation affected by a PAPR protection program and other occupations within the MMU at or below the applicable dust standard; and

(3) Implement other feasible engineering controls to reduce dust concentrations as low as achievable when such controls become available. The approved plan parameters will be reviewed every 6 months to assure that the operator is using all feasible engineering controls and that the plan parameters continue to be effective under current operating conditions.

§ 70.212 Powered air-purifying respirators (PAPRs); conditions of use under special circumstances.

(a) When unusual operating conditions are either encountered or anticipated, which are known to occur briefly and intermittently, and the operator has reason to believe that the approved plan parameters will not maintain all occupational environments in the MMU in compliance with § 70.100 or § 70.101, the operator may submit a written request to the district manager, along with a proposed revision to the plan parameters, for the use of PAPRs as a supplementary control measure to prevent individual miners from being overexposed and to comply with the applicable dust standard during such periods. The operator must provide a copy of the request to the representative of miners at the time of submittal. MSHA will consider all comments from the representative of miners and provide copies of these comments to the operator upon request.

(b) The district manager will approve the use of PAPRs on an intermittent basis as a result of the operational factors set forth in paragraph (a) of this section when the operator:

(1) Shows that the unusual conditions are atypical, intermittent and beyond the control of the operator; and

(2) Revises the previously approved dust control provisions of the ventilation plan to comply with requirements of § 70.210(a)(1), (2) and (3) when PAPRs are used.

(c) The operator also must:

(1) Notify the district manager and the representative of miners in writing or by electronic means within 24 hours of the occurrence of unusual conditions which requires the use of PAPRs;

(2) Comply with the requirements of § 70.211(b)(1) and (2); and

(3) Not use PAPRs for a period longer than 30 consecutive calender days;

(d) If PAPR use is to exceed 30 consecutive calendar days or if any equivalent concentration measurements indicate that miners are being overexposed, the operator must revise and verify the adequacy of the plan parameters under the prevailing operating conditions.

§ 70.213 Administrative controls; requirements for approval.

(a) Within 5 calendar days of receiving MSHA approval to use supplementary controls, the operator must submit, in writing, a revision to the ventilation plan to the district manager. The proposed revision must include:

(1) Feasible engineering controls capable of maintaining the environment of any occupation under administrative controls and other occupational environments at or below the verification limits; and

(2) The administrative controls to be implemented and the method for ensuring that the procedures for such controls are complied with on each shift. The district manager may require additional procedures in the plan revision.

(b) Within 30 calendar days of receiving provisional approval of the plan revision, the operator must verify, in accordance with § 70.206(b) through (e), the adequacy of the proposed revision by sampling the occupation(s) under administrative control, the DO, and/or other occupation(s) designated by the district manager.

§ 70.214 Administrative controls; approval and conditions for continued use; revocation of approval.

(a) MSHA will approve the proposed plan revision incorporating the use of administrative controls when:

(1) No valid equivalent concentration measurement exceeds the critical values listed in Table 70–1 that correspond to the number of shifts sampled; and

(2) The revision incorporates the dust control parameters used during verification sampling.

(b) MSHA may revoke approval to use supplementary controls for failure to:

(1) Comply with the plan requirements on each shift;

(2) Maintain the equivalent concentration of respirable coal mine dust for any occupation under administrative controls and other occupations in the MMU at or below the applicable dust standard; and

(3) Implement other feasible engineering controls to reduce dust concentrations as low as achievable when such controls become available. MSHA will review the approved plan

parameters every 6 months to assure that the operator is using all feasible environmental controls and that the plan parameters continue to be effective under current operating conditions.

§ 70.215 Quarterly evaluation of approved plan parameters.

(a) For those MMUs designated by MSHA, one valid respirable dust sample from the DO and the occupation(s) under supplementary controls must be submitted to MSHA on a quarterly basis. The occupations must be sampled in accordance with paragraphs (b), (d) and (e) of § 70.206.

(1) MSHA designates an MMU for sampling when any MSHA equivalent concentration measurement exceeds the applicable dust standard by at least 0.1 mg/m^3.

(2) Sampling is required until all MSHA and operator sample results remain at or below the applicable dust standard for at least four quarters.

(3) Sampling begins during the next quarterly period following MSHA designation of the MMU. The quarterly periods are:

(i) January 1–March 31

(ii) April 1–June 30

(iii) July 1–September 30

(iv) October 1–December 31.

(b) If any valid equivalent concentration measurement exceeds the applicable dust standard by 0.1 mg/m^3 or more , the operator must, make approved respiratory equipment available to affected miners in accordance with § 70.300, unless already under a PAPR protection program; and within 15 calender days after receipt of the respirable dust sample data report from MSHA:

(1) Determine the cause and take corrective action to reduce the equivalent concentration of respirable coal mine dust to within the applicable dust standard;

(2) Make a record of the reported excessive dust condition. The record must include the following:

(i) Date of sampling;

(ii) Location within the mine and the occupation where the sample was collected;

(iii) Measured dust concentration of each sample collected;

(iv) Corrective action being taken to reduce the concentration of respirable coal mine dust.

(c) If any valid equivalent concentration measurement exceeds the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard, the district manager may require the operator to revise the plan parameters and verify their adequacy under the prevailing operating conditions.

(d) MSHA will cite an operator for failure to take corrective action to reduce the concentration of respirable dust in accordance with § 70.215(c)(1).

(e) Paragraph (a) of this section does not apply if using a personal continuous dust monitor under § 70.220.

§ 70.216 Respirable dust samples; transmission by operator.

(a) Within 24 hours after the end of the sampling shift, the operator must transmit, in containers provided by the manufacturer of the filter cassette, all samples collected to fulfill the requirements of this part, including the control filter cassettes if required to be used, to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, Building 38, P.O. Box 18179, Pittsburgh, Pennsylvania 15236–0179, or to any other address designated by the district manager.

(b) The operator must not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used.

(c) A person certified to take respirable dust samples must properly complete the dust data card for each filter cassette. The card must have an identification number identical to that on the cassette used to take the sample or used as a control filter and be submitted to MSHA with the sample. Each card must be signed by the certified person and must include that person's certification number. Samples with data cards not properly completed will be voided by MSHA.

(d) All samples submitted by the operator must be considered taken to fulfill the sampling requirement of this part, unless the sample has been identified in writing by the operator to the district manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by this part.

(e) Paragraphs (a) through (d) of this section do not apply if using a PCDM under § 70.220, except when transmitting samples for quartz analysis along with the control filter cassette required by § 70.220(c).

§ 70.217 Respirable dust samples; report to operator; and posting.

(a) MSHA will provide the operator a report with the following data on all samples submitted in accordance with this part and samples collected by MSHA:

(1) The mine identification number;

(2) The location within the mine from which the samples were taken;

(3) The result of each sample taken in accordance with this part and by MSHA;

(4) The occupation code, where applicable;

(5) The reason for voiding any sample; and

(6) The engineering controls and their measured quantities, including other dust control parameters that were being used in the MMU when sampled by MSHA.

(b) The operator must post the following information on the mine bulletin board:

(1) The report of the results of all samples described in paragraph (a) of this section and the end-of-shift exposure data if using a personal continuous dust monitor (PCDM) under § 70.220.

(2) The engineering controls and their measured quantities, including other dust control parameters that were being used in the MMU when sampled by the operator or by MSHA.

(3) All written notifications from the district manager regarding any aspect of the verification procedures, including all correspondence submitted by the operator in accordance with §§ 70.209 and 70.212.

(c) The operator may remove all information pertaining to the verification process, such as sample results, the information specified in paragraph (b)(3) of this section, and written correspondence, after the district manager approves the dust control parameters specified in the ventilation plan. The notification required under § 70.212(c)(1) of the occurrence of special circumstances requiring the use of PAPRs must be posted no longer than 30 calendar days or until such time when it is no longer necessary to continue to use PAPRs, whichever time period is less.

(d) Results of samples collected by the operator in accordance with § 70.215 or by MSHA must be posted for at least 31 calendar days following receipt, including the information specified in paragraph (b)(2) of this section. If using a PCDM, the end-of-shift exposure data and information specified in paragraph (b)(2) of this section must be posted for at least 7 calendar days.

§ 70.218 Violation of respirable dust standard; issuance of citation; action required by operator; and termination of citation.

(a) If a valid equivalent concentration measurement for any occupation sampled by MSHA meets or exceeds the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard in effect, the operator will be cited for a violation of § 70.100 or § 70.101.

(b) Upon receipt of a citation issued in accordance with paragraph (a) of this

section, the operator must take the following actions within the time for abatement fixed in the citation:

(1) Make respiratory equipment available to affected miners in accordance with § 70.300, unless already under a PAPR protection program;

(2) Determine the cause and take corrective action to reduce the equivalent concentration of respirable coal mine dust to within the applicable dust standard;

(3) Revise the plan parameters if the corrective action taken indicates that the dust control parameters originally approved for the MMU are inadequate for the current operating conditions; and

(4) Notify the district manager, in writing or by electronic means, within 24 hours after implementing corrective action(s).

(c) The citation will be terminated when:

(1) All valid equivalent concentration measurements of MSHA abatement samples are at or below the applicable dust standard. If compliance is demonstrated, the plan must incorporate the dust control parameters used during MSHA sampling; or,

(2) The revised plan parameters have been verified for the current operating conditions, if required by the district manager.

TABLE 70–2.—CITATION THRESHOLD VALUES (CTV) FOR CITING RESPIRABLE DUST VIOLATIONS BASED ON SINGLE-SHIFT MEASUREMENTS

Applicable dust standard (mg/m³)	CTV (mg/m³)
2.0	2.33
1.9	2.22
1.8	2.11
1.7	2.0
1.6	1.90
1.5	1.79
1.4	1.68
1.3	1.58
1.2	1.47
1.1	1.36
1.0	1.26
0.9	1.15
0.8	1.05
0.7	0.94
0.6	0.84
0.5	0.74
0.4	0.64
0.3	0.53
0.2	0.43

§ 70.219 Status change reports.

(a) If there is a change in operational status of the mine or a MMU that affects either the sampling requirements of this part or MSHA's ability to carry out its sampling responsibilities, the operator must report the change to the MSHA District Office or to any other MSHA office designated by the district manager. Status changes must be reported in writing within 3 working days after the change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) Producing—has at least one MMU producing material.

(ii) Nonproducing—no material is being produced.

(iii) Abandoned—the work of all miners has been terminated and production activity has ceased.

(2) Mechanized mining unit:

(i) Producing—producing material from a working section.

(ii) Nonproducing—temporarily ceased production of material.

(iii) Abandoned—permanently ceased production of material.

§ 70.220 Personal continuous dust monitor (PCDM).

(a) An operator may implement a miner protection program based on the use of approved personal continuous dust monitors (PCDM) in conjunction with engineering and administrative controls specified in the ventilation plan.

(b) If PCDMs are to be used, the operator may include administrative controls in the proposed plan without obtaining approval from the Administrator for Coal Mine Safety and Health under § 70.209. The proposed plan must include:

(1) The engineering and administrative controls to be used and the method for ensuring that such controls are complied with each shift;

(2) The miners or occupations that will wear a PCDM each shift; and

(3) The procedures that ensure no miner will be exposed above the applicable dust standard in § 70.100(a) or § 70.101.

(c) The adequacy of the proposed plan in controlling exposure to respirable dust must be demonstrated as prescribed in § 70.204 by monitoring each miner's exposure. Each PCDM must be operated portal-to-portal and must remain operational the entire work shift or for 12 hours, whichever time is less. In addition, the operator must collect a respirable dust sample for quartz analysis from each occupation specified in paragraph (a) and in accordance with paragraphs (b), (d) and (e) of § 70.206. The district manager will approve the proposed plan in accordance with § 70.207(a).

(d) Following approval by the district manager, the exposure of each miner on a MMU must be monitored on every shift under the prevailing operating conditions, unless the operator demonstrated through verification sampling that the exposure of each miner working on the same shift is represented by sampling only the DO and/or another occupation(s) specified in § 70.206(a). Each PCDM must be operated portal-to-portal and must remain operational the entire shift or for 12 hours, whichever time is less.

(e) If any end-of-shift equivalent concentration measurement exceeds the applicable dust standard by 0.1 mg/m³ or more, the requirements in paragraphs (c)(1) through (3), (d) and (e) of § 70.215 will apply.

PART 75—[AMENDED]

5. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

6. Section 75.370 of Subpart D is amended by adding paragraph (h) to read as follows:

§ 75.370 Mine ventilation plan; submission and approval.

* * * * *

(h) The operator must record the amount of material produced, as defined in § 70.2 of this title, by each MMU during each production shift, retain the records for six months, and make the records available to authorized representatives of the Secretary and the miners' representative.

7. Section 75.371 of Subpart D is amended by revising paragraphs (f) and (t) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(f) Section and face ventilation systems used, including drawings illustrating how each system is used; and a description of each different dust suppression system used on equipment on working sections, including any specific work practices used to minimize the dust exposure of individual miners, along with information on the location of the roof bolter(s) during the mining cycle for each continuous miner section, and the cut sequence for each longwall mining section. For plans required to be verified pursuant to § 70.204 of this title, the length of each normal production shift and the verification production level (VPL), as determined in accordance with § 70.2 of this title, must be included for each working section.

* * * * *

(t) The location of each ''designated area,'' and the respirable dust controls

used at the dust generating sources for these locations.

* * * * *

8. Part 90 is revised to read as follows:

PART 90—MANDATORY HEALTH STANDARDS—COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS

Subpart A—General

Sec.
90.1 Scope.
90.2 Definitions.
90.3 Part 90 option; notice of eligibility; exercise of option.

Subpart B—Dust Standards, Rights of Part 90 Miners

90.100 Respirable dust standard when quartz is not present.
90.101 Respirable dust standard when quartz is present.
90.102 Transfer; notice.
90.103 Compensation.
90.104 Waiver of rights; re-exercise of option.

Subpart C—Sampling Procedures

90.201 Sampling; general requirements.
90.202 Approved sampling devices; maintenance and calibration.
90.203 Approved sampling devices; operation; air flowrate.
90.204 Respirable dust sampling.
90.205 Respirable dust samples; transmission by operator.
90.206 Respirable dust samples; report to operator and Part 90 miner.
90.207 Violation of respirable dust standard; issuance of citation; action required by operator; and termination of citation.
90.208 Status change reports.

Subpart D—Respirable Dust Control Plans

90.300 Respirable dust control plan; filing requirements; contents.
90.301 Respirable dust control plan; approval by district manager; copy to Part 90 miner.

Authority: 30 U.S.C. 811, 813(h).

Subpart A—General

§ 90.1 Scope.

This Part 90 establishes the option of miners who are employed at underground coal mines or at surface work areas of underground coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below 1.0 milligrams per cubic meter of air. The proposed rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The proposed rule also sets forth the operator's obligations, including respirable dust sampling for Part 90 miners. This Part 90 is promulgated pursuant to section 101 of the Act and supercedes section 203(b) of the Act.

§ 90.2 Definitions.

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91–173, as amended by Public Law 95–164, 30 U.S.C. 801 *et seq.*

Active workings. Any place in a coal mine where miners are normally required to work or travel.

Approved sampling device. A sampling device of the constant-flow type:

(1) Approved by the Secretary and the Secretary of Health and Human Services under part 74 of this title; or

(2) Approved by the Secretary when it has been determined that the measured concentration of respirable dust can be converted to an equivalent concentration as measured with a sampling device approved under part 70 of this title.

Certified person. An individual certified by the Secretary to take respirable dust samples and/or to perform the maintenance and calibration of approved sampling devices.

Citation threshold value (CTV). The lowest equivalent concentration measurement demonstrating that the applicable dust standard has been exceeded at a confidence level of at least 95 percent.

Concentration. The amount of respirable dust contained per unit volume of air.

District manager. The manager of the Coal Mine Safety and Health District in which the mine is located.

Equivalent concentration. The concentration of respirable coal mine dust, as measured by an approved sampling device, converted to an MRE 8-hour equivalent as follows:

(1) Multiply the concentration measured by the approved sampling device by the constant factor prescribed by the Secretary for that device and then apply criteria in paragraph (2) of this definition if applicable.

(2) If the sampled shift is longer than 8 hours, multiply the concentration obtained in paragraph (1) of this definition by t/480 where t is the length of the sampled work shift in minutes.

Mechanized mining unit (MMU). A set of mining equipment, including hand loading equipment, used for the production of material; or a specialized set which utilizes mining equipment other than specified in § 70.206(d). Each MMU is assigned a four-digit identification number by MSHA. The identification number is retained by the MMU regardless of where the unit relocates within the mine. When two sets of mining equipment are provided in a series of working places and only one production crew is employed at any given time on either set of mining equipment, the two sets of equipment are identified as a single MMU. When two or more MMUs are simultaneously engaged in the production of material within the same working section, each such MMU is identified separately.

MRE. The Mining Research Establishment of the National Coal Board, London, England.

MRE instrument. A gravimetric dust sampler with a four channel horizontal elutriator developed by the MRE.

MSHA. The Mine Safety and Health Administration of the Department of Labor.

Normal work duties. Duties which the Part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

Part 90 miner. A miner employed at an underground coal mine or at a surface work area of an underground coal mine who has exercised the option under the old section 203(b) program, or under § 90.3 of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air (mg/m^3), and who has not waived these rights.

Quartz. Crystalline silicon dioxide (SiO_2) as measured by:

(1) MSHA's Analytical Method P–7: Infrared Determination of Quartz in Respirable Coal Mine Dust; or

(2) Any method approved by MSHA as providing a measurement of quartz equivalent to that measured by Analytical Method P–7.

Respirable dust. Dust collected with an approved sampling device.

Secretary. The Secretary of Labor or a designee.

Surface work area of an underground coal mine. The surface areas of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, excavations, and other property, real or personal, placed upon or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting bituminous coal, lignite, or anthracite from its natural deposits underground by any means or method, and the work of preparing extracted coal, and includes custom coal preparation facilities.

Transfer. (1) Any change in the work assignment of a Part 90 miner by the operator and includes—

(i) any change in occupation code of a Part 90 miner;

(ii) any movement of a Part 90 miner to or from a MMU; or

(iii) any assignment of a Part 90 miner to the same occupation in a different location at a mine.

(2) A change in work assignment that lasts no longer than one shift would not constitute a transfer under Part 90 if circumstances beyond the control of the operator interrupt work being performed by a Part 90 miner because of equipment malfunction or absenteeism, and necessitate the operator to temporarily assign the Part 90 miner to perform work duties outside of his or her regular work classification.

Underground coal mine. An area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted.

Valid sample. A respirable dust sample collected and submitted as required by this part, and not voided by MSHA.

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at an underground coal mine or at a surface work area of an underground coal mine who, in the judgment of the Secretary of Health and Human Services, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of Health and Human Services, or based on other medical examinations must be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below 1.0 milligrams per cubic meter of air (mg/m^3). Each of these miners must be notified in writing of eligibility to exercise the option.

(b) Any miner who is a section 203(b) miner on January 31, 1981, must be a Part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment shift and respirable dust protection.

(c) Any Part 90 miner who is transferred to a position at the same or another coal mine must remain a Part 90 miner entitled to full rights under this part at the new work assignment.

(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who was eligible for the option under the old section 203(b) program, or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209.

(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at an underground coal mine or at a surface work area of an underground coal mine who exercised the option under the old section 203(b) program, or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. The request should include the name and address of the mine and operator where the miner is employed.

(f) No operator shall require from a miner a copy of the medical information or notification of any chest X-ray evaluation received from the Secretary or Secretary of Health and Human Services.

Subpart B—Dust Standards, Rights of Part 90 Miners

§ 90.100 Respirable dust standard when quartz is not present.

After the 20th calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the Part 90 miner in the active workings of the mine is exposed at or below 1.0 mg/m^3, as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 90.2.

§ 90.101 Respirable dust standard when quartz is present.

When the respirable dust in the mine atmosphere of the active workings to which a Part 90 miner is exposed contains more than 10 percent quartz, as determined by the average of the most recent three MSHA samples, the operator must continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a Part 90 miner is exposed at or below the applicable dust standard, as measured with an approved sampling device and in terms of an equivalent concentration determined in accordance with § 90.2. The applicable dust standard is determined by dividing the average quartz percentage into the number 10. The application of the formula must not result in an applicable dust standard in excess of 1.0 mg/m^3.

Example: Assume a Part 90 miner is on a 1.0-mg/m^3 applicable dust standard (10% quartz or less). If the first MSHA sample contains 12.2% of quartz, and the required two subsequent samples contained 14.6% and 10.4%, respectively, the average quartz percentage would be 12.4% [(12.2% + 14.6% + 10.4%)/3 = 12.4%]. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that Part 90 miner must, on each shift, be maintained at or below 0.8 mg/m^3 [10/12.4% = 0.8 mg/m^3].

§ 90.102 Transfer; notice.

(a) Whenever a Part 90 miner is transferred in order to meet the applicable dust standard in §§ 90.100 or 90.101, the operator must transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a Part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer. The requirements of this paragraph do not apply when a Part 90 miner's work position complies with the applicable dust standard but circumstances, such as reductions in workforce or changes in operational methods, require a change in the miner's job or shift assignment.

(b) On or before the 20th calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator must give the district manager written notice of the occupation and, if applicable, the mechanized mining unit to which the Part 90 miner will be assigned on the 21st calendar day following receipt of the notification from MSHA.

(c) After the 20th calendar day following receipt of notification from MSHA that a Part 90 miner is employed at the mine, the operator must give the district manager written notice before any transfer of a Part 90 miner. This notice must include the scheduled date of the transfer.

§ 90.103 Compensation.

(a) The operator must compensate each Part 90 miner at not less than the regular rate of pay received by that

miner immediately before exercising the option under § 90.3.

(b) Whenever a Part 90 miner is transferred, the operator must compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.

(c) Paragraphs (a) and (b) of this section do not apply when a Part 90 miner initiates and accepts a change in work assignment for reasons of job preference.

(d) The operator must compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.

(e) In addition to the compensation required to be paid under paragraphs (a), (b) and (d) of this section, the operator must pay each Part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned.

(f) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3, the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the Part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.

(g) If a Part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the Part 90 option was incorrect, the operator must retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (d) and (e) of this section, until:

(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or

(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under § 90.3 or under the old section 203(b) program.

(i) When such a position is available, the operator must offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.

(ii) If the affected miner accepts the available position in writing, the operator must implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the available position in writing, the miner may be reassigned and protections under this Part 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A Part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under Part 90 by:

(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;

(2) Applying for and accepting a position in an area of a mine which the miner knows exceeds the applicable dust standard; or

(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§ 90.100, 90.101 and 90.102(a) after dust sampling shows that the existing work position exceeds the applicable dust standard.

(b) If rights under this Part 90 are waived, the miner gives up all rights under this Part 90 until the miner re-exercises the option in accordance with § 90.3(e).

(c) If rights under this Part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) at any time.

Subpart C—Sampling Procedures

§ 90.201 Sampling; general requirements.

(a) Each operator must conduct respirable dust sampling required by this part with an approved sampling device to assure that the assigned work position of a new or transferred Part 90 miner meets §§ 90.100 or 90.101.

(b) Sampling must be performed by a certified person. To be certified, a person must pass the MSHA examination on sampling of respirable coal mine dust.

(c) The sampling device must be worn by each Part 90 miner, must be operated portal-to-portal, and must be operational during the Part 90 miner's entire work shift.

(d) Sampling required by this part must be conducted while the Part 90 miner is performing normal work duties.

(e) Unless otherwise directed by the district manager, the sampling device must be placed:

(1) On the Part 90 miner;

(2) On the piece of equipment which the Part 90 miner operates within 36 inches of the normal working position; or

(3) At a location that represents the maximum concentration of respirable dust to which the Part 90 miner is exposed.

(f) Upon request from the district manager, the operator must submit the date and time when sampling required by this part will begin.

§ 90.202 Approved sampling devices; maintenance and calibration.

(a) Sampling devices must be maintained as approved and calibrated by a certified person in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers ''(supercedes IR 1121).'' To be certified, a person must pass the MSHA examination on maintenance and calibration for approved sampling devices.

(b) Sampling devices must be calibrated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device, before they are put into service and, thereafter, at time intervals prescribed by the manufacturer.

(c) If equipped with a flowmeter, a calibration mark must be placed on the flowmeter of each sampling device to indicate the proper position of the float when the sampler is operating at a flowrate of 2.0 liters of air per minute or other flowrate prescribed by the Secretary and the Secretary of Health and Human Services for the particular device. The standard to denote proper flow is when the lowest part of the float is lined up with the top of the calibration mark.

(d) Each sampling device must be tested and examined immediately before each sampling shift and necessary external maintenance must be performed by a certified person to assure that the sampling device is clean and in proper working condition. This testing and examination must include the following:

(1) Testing the voltage of each battery while under actual load to assure the battery is fully charged. The voltage for nickel cadmium cell batteries must not be lower than the product of the number of cells in the battery pack multiplied by 1.25. The voltage for other than nickel cadmium cell batteries must not be lower than the product of the number of cells in the battery pack multiplied by

the manufacturer's nominal voltage per cell value;

(2) Examination of all components of the cyclone to assure that they are clean and free of dust and dirt;

(3) Examination of the inner surface of the cyclone on the approved sampling device to assure that it is free of scoring;

(4) Examination of the external tubing on the approved sampling device to assure that it is clean and free of leaks; and

(5) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, and firmly in contact.

(e) In accordance with 5 U.S.C. 552(a) and 1 CFR, part 51, MSHA Informational Report No. 1240 (1996) referenced in paragraph (a) of this section is hereby incorporated-by-reference. Copies may be inspected or obtained at each Coal Mine Safety and Health office of MSHA.

§ 90.203 Approved sampling devices; operation; air flowrate.

(a) Sampling devices must be operated at the flowrate of 2.0 liters of air per minute, or at a different flowrate as prescribed by the Secretary and the Secretary of Health and Human Services for the particular device.

(b) Except as provided in paragraph (c) of this section each sampling device must be examined each shift by a person certified to sample during:

(1) The second hour after being put into operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments must be made by the certified person.

(2) The last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample must be transmitted to MSHA with a notation by the certified person on the back of the dust data card stating that the proper flowrate was not maintained. Other events occurring during sampling that may affect the validity of the sample must also be noted on the back of the dust data card.

(c) Paragraph (b)(1) of this section will not apply if the sampling device is being operated in a breast or chamber of an anthracite coal mine where the full box mining method is used.

§ 90.204 Respirable dust sampling.

(a) The operator must collect five valid samples for each Part 90 miner within 15 calendar days after:

(1) The 20-day period specified for each Part 90 miner in § 90.100; and

(2) Implementing any transfer after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine; and

(b) When any valid sample collected in accordance with either paragraph (a) or (b) of this section exceeds the applicable dust standard by at least 0.1 mg/m^3, the operator must, within 15 calendar days following receipt of notification from MSHA:

(1) Take corrective action by reducing the respirable dust level in the Part 90 miner's assigned work position or transferring the Part 90 miner to another work position that meets the applicable dust standard; and

(2) Sample the affected Part 90 miner until five valid samples are collected.

(c) When any valid sample taken in accordance with paragraph (b)(2) of this section exceeds the applicable dust standard by at least 0.1 mg/m^3, the operator will be cited for a violation of paragraph (b)(1) of this section.

§ 90.205 Respirable dust samples; transmission by operator.

(a) Within 24 hours after the end of the sampling shift, the operator must transmit, in containers provided by the manufacturer of the filter cassette, all samples collected to fulfill the requirements of this part to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, Cochrans Mill Road, Building 38, P.O. Box 18179, Pittsburgh, Pennsylvania 15236–0179, or to any other address designated by the district manager.

(b) The operator must not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used.

(c) A person certified to take respirable dust samples must properly complete the dust data card for each filter cassette. The card must have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card must be signed by the certified person and must include that person's certification number. Samples with data cards not properly completed will be voided by MSHA.

(d) All samples submitted by the operator must be considered taken to fulfill the sampling requirements of this part, unless the sample has been identified in writing by the operator to the district manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by this part.

§ 90.206 Respirable dust samples; report to operator and Part 90 miner.

(a) MSHA will provide the operator a report with the following data on all samples submitted by the operator in accordance with this part and samples collected by MSHA:

(1) The mine identification number;

(2) The location within the mine from which the samples were taken;

(3) The results of each sample taken in accordance with this part and by MSHA;

(4) The occupation code;

(5) The reason for voiding any sample;

(6) The Social Security Number of the Part 90 miner; and

(7) The respirable dust control measures that were being used in the position of the Part 90 miner sampled by MSHA and their measured quantities;

(b) Upon receipt, the operator must provide a copy of this report to the Part 90 miner. The operator must not post the original or a copy of this report on the mine bulletin board.

§ 90.207 Violation of respirable dust standard; issuance of citation; action required by operator; and termination of citation.

(a) If a valid equivalent concentration measurement for any Part 90 miner sampled by MSHA meets or exceeds the citation threshold value (CTV) listed in Table 70–2 to §70.218 of this title that corresponds to the applicable dust standard in effect, the operator will be cited for a violation of § 90.100 or § 90.101.

(b) Upon receipt of a citation issued in accordance with paragraph (a) of this section, the operator must take the following action within the time for abatement fixed in the citation:

(1) Make approved respiratory protection equipment available to the affected Part 90 miner in accordance with § 70.300;

(2) Determine the cause and take corrective action to reduce the equivalent concentration of respirable coal mine dust to within the applicable dust standard. If the corrective action involves:

(i) Reducing the respirable dust level in the position of the Part 90 miner, the operator must notify the district manager, in writing or by electronic means, within 24 hours after implementing the control measures.

(ii) Transferring the Part 90 miner to another position at the mine to meet the applicable dust standard, the operator must comply with § 90.102(c) and then sample the affected miner until five valid samples are collected.

(c) The citation will be terminated when a valid equivalent concentration measurement taken by MSHA is at or below the applicable dust standard. If the violation was abated by:

(1) Reducing the respirable dust level in the working position of the Part 90 miner, the operator must submit a respirable dust control plan to the district manager for approval in accordance with § 90.300.

(2) Transferring the Part 90 miner to another position at the mine, a respirable dust control plan is not required to be submitted to the district manager for approval.

§ 90.208 Status change reports.

If there is a change in the status of the Part 90 miner that either affects the sampling requirements of this part or MSHA's ability to carry out its sampling responsibilities (such as entering a terminated, injured or ill status, or returning to work), the operator must report the change in the status of the Part 90 miner to the MSHA District Office or to any other MSHA office designated by the district manager. Status changes must be reported in writing within 3 working days after the status change has occurred.

Subpart D—Respirable Dust Control Plans

§ 90.300 Respirable dust control plan; filing requirements; contents.

(a) Within 15 calendar days after the termination date of a citation for violation of § 90.100 or § 90.101, the operator must submit to the district manager for approval a written respirable dust control plan applicable to the Part 90 miner in the position identified in the citation. The dust control plan and revisions thereof must be suitable to the conditions and the mining system of the coal mine and must be adequate to continuously maintain respirable dust within the permissible concentration for the Part 90 miner in the position identified in the citation.

(b) The dust control plan must contain the information described below and any additional provisions required by the district manager:

(1) The mine identification number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address and telephone number of the principal officer in charge of health and safety at the mine;

(2) The name and Social Security number of the Part 90 miner and the position at the mine to which the plan applies;

(3) A detailed description of the specific dust control measures used to abate the violation of § 90.100 or § 90.101; and

(4) A detailed description of how each of the dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place and manner the control measures will be used.

§ 90.301 Respirable dust control plan; approval by district manager; copy to Part 90 miner.

(a) The district manager will approve each dust control plan on a mine-by-mine basis. Additional measures may be required in plans by the district manager. When approving such plans, the district manager will consider the results of MSHA sampling and whether:

(1) The dust control measures specified in the plan would be likely to continuously maintain compliance with the applicable dust standard; and

(2) The operator's compliance with all plan provisions could be readily verified by MSHA.

(b) MSHA will conduct sampling to monitor the continued effectiveness of the approved plan provisions in maintaining compliance with the applicable dust standard.

(c) The operator must comply with all plan provisions upon notice from MSHA that the dust control plan is approved.

(d) The operator must provide a copy of the dust control plan required under this part to the Part 90 miner. The operator must not post the original or a copy of the plan on the mine bulletin board.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the district manager for approval.

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Part III

Department of Homeland Security

Office of the Secretary

6 CFR Part 15

Enforcement of Nondiscrimination on the Basis of Disability in Department of Homeland Security Programs or Activities; Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 15

RIN 1601–AA05

Enforcement of Nondiscrimination on the Basis of Disability in Department of Homeland Security Programs or Activities

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes for the Department of Homeland Security the necessary procedures for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability, as it applies to programs or activities conducted by the Department of Homeland Security. It sets forth standards for what constitutes discrimination on the basis of a mental or physical disability, provides a definition for an individual with a disability and a qualified individual with a disability, and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: This interim final rule is effective April 7, 2003. Written comments may be submitted by April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282–8410, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate public interaction with the DHS Office of the Secretary, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Homeland Security. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the interaction of the public with the Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to effectuate the provisions of section 504 of the Rehabilitation Act of 1973. Similar regulations were applicable to components being transferred to DHS from other cabinet-level agencies and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of these cabinet-level agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

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

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This regulation has been reviewed and approved by the Attorney General pursuant to Executive Order 12250 and has also been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

Copies of this regulation have been submitted to the appropriate authorizing committees of Congress, and this regulation will take effect no earlier than the thirtieth day after the date on which this regulation is so submitted to such committees (*See* 29 U.S.C. 794.)

List of Subjects in 6 CFR Part 15

Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, chapter I of 6 CFR is amended by adding part 15 to read as follows:

PART 15—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOMELAND SECURITY

Sec.
15.1 Purpose.
15.2 Application.
15.3 Definitions.
15.10 Self-evaluation.
15.11 Notice.
15.30 General prohibitions against discrimination.
15.40 Employment.
15.49 Program accessibility; discrimination prohibited.
15.50 Program accessibility; existing facilities.
15.51 Program accessibility; new construction and alterations.
15.60 Communications.
15.70 Compliance procedures.

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301; 29 U.S.C. 794.

§ 15.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973 (''Section 504''), as amended by section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which prohibits discrimination on the basis of disability in programs or activities conducted by Executive agencies. The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing section 504 regulations.

§ 15.2 Application.

This part applies to all programs or activities conducted by the Department of Homeland Security (Department), except for programs or activities conducted outside the United States that do not involve individuals with a disability in the United States.

§ 15.3 Definitions.

For purposes of this part:

(a) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department. For example, auxiliary aids useful for persons with impaired vision

include readers, materials in Braille, audio recordings and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, notetakers, written materials and other similar services and devices.

(b) *Complete complaint* means a written statement that contains the complainant's name and address, and describes the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes of individuals with disabilities shall also identify (where possible) the alleged victims of discrimination.

(c) *Facility* means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock, or other conveyance, or other real or personal property.

(d) *Individual with a disability* means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. For purposes of this definition:

(1) *Physical or mental impairment includes:*

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs, cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's major life activities.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (e)(1) of this section but is treated by the Department as having such an impairment.

(e) *Qualified individual with a disability* means:

(1) With respect to a Department program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in the nature of the program; and

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) With respect to employment, an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

(f) *Section 504* means section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ 15.10 Self-evaluation.

(a) Except as provided in paragraph (d) of this section, the Department shall, not later than March 7, 2005, evaluate its current policies and practices, and the effects thereof, to determine if they meet the requirements of this part. To the extent modification of any such policy and practice is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall provide an opportunity to interested persons, including individuals with a disability or organizations representing individuals with disabilities, to participate in the self-evaluation process.

(c) The Department shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified;

(2) A description of any modifications made; and

(3) A list of participants in the self-evaluation process.

(d) If a component within the Department has already complied with the self-evaluation requirement of a regulation implementing section 504, then the requirements of this section shall apply to only those programs and activities conducted by that component that were not included in the previous self-evaluation.

§ 15.11 Notice.

The Department shall make available to all Department employees and interested persons information regarding the provisions of this part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such a manner as is necessary to apprise them of the protections against discrimination assured them by section 504 and this part.

§ 15.30 General prohibitions against discrimination.

(a) No qualified individual with a disability in the United States, shall, by reason of his or her disability, be excluded from the participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in

affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with a disability and for nondisabled persons, but must afford individuals with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the Department is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individuals with a disability or for any class of individuals with a disability, the Department must permit any qualified individual with a disability who wishes to participate in the program that is not separate or different to do so.

(4) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(5) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(6) The Department, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of disability.

(7) The Department may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of disability, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the Department are not, themselves, covered by this part.

(c) The exclusion of nondisabled persons from the benefits of a program limited by Federal statute or Executive order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Executive order to a different class of individuals with a disability is not prohibited by this part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

§ 15.40 Employment.

No qualified individual with a disability shall, on the basis of that disability, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment of Federally conducted programs or activities.

§ 15.49 Program accessibility; discrimination prohibited.

Except as otherwise provided in § 15.50, no qualified individual with a disability shall, because the Department's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 15.50 Program accessibility; existing facilities.

(a) *General.* The Department shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not require the Department:

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with a disability where other methods are effective in achieving compliance with this section; or

(2) To take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Department personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Department has the burden of proving that compliance with this paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary of Homeland Security (or his or her designee) after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Department, in making alterations to existing buildings, shall meet accessibility requirements to the extent required by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the

Department shall give priority to those methods that offer programs and activities to qualified individuals with a disability in the most integrated setting appropriate.

(c) *Time period for compliance.* The Department shall comply with the obligations established under this section not later than May 5, 2003, except that where structural changes in facilities are undertaken, such changes shall be made not later than March 6, 2006, but in any event as expeditiously as possible. If a component within the Department has already complied with the accessibility requirements of a regulation implementing section 504, then the provisions of this paragraph shall apply only to facilities for that agency's programs and activities that were not previously made readily accessible to and usable by individuals with disabilities in compliance with that regulation.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall develop not later than September 8, 2003, a transition plan setting forth the steps necessary to complete such changes. The Department shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments (both telephonic and written). A copy of the transition plan shall be made available for public inspection. If a component of the Department has already complied with the transition plan requirement of a regulation implementing section 504, then the requirements of this paragraph shall apply only to the agency's facilities for programs and activities that were not included in the previous transition plan. The plan shall at a minimum:

(1) Identify physical obstacles in the Department's facilities that limit the physical accessibility of its programs or activities to individuals with disabilities;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 15.51 Program accessibility; new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with a disability. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 through 101–19.607 apply to buildings covered by this section.

§ 15.60 Communications.

(a) The Department shall take appropriate steps to effectively communicate with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the individual with a disability.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the Department communicates with applicants and beneficiaries by telephone, the Department shall use telecommunication devices for deaf persons (TTYs) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The Department shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall post notices at a primary entrance to each of its inaccessible facilities, directing users to an accessible facility, or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(e) In those circumstances where Department personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Department has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary of Homeland Security (or his or her designee) after considering all resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with a disability receive the benefits and services of the program or activity.

§ 15.70 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the Department.

(b) The Department shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614.

(c) All other complaints alleging violations of section 504 may be sent to the Officer for Civil Rights and Civil Liberties, Department of Homeland Security, Washington, DC 20528. The Officer for Civil Rights and Civil Liberties shall be responsible for coordinating implementation of this section.

(d)(1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself, or by his or her authorized representative, file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint.

(2) The Department shall accept and investigate all complete complaints over which it has jurisdiction.

(3) All complete complaints must be filed within 180 days of the alleged act of discrimination. The Department may extend this time period for good cause.

(e) If the Department receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity of the Federal government.

(f) The Department shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

(g)(1) Not later than 180 days from the receipt of a complete complaint over which it has jurisdiction, the Department shall notify the complainant of the results of the investigation in a letter containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(2) Department employees are required to cooperate in the investigation and attempted resolution of complaints. Employees who are required to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement shall describe the subject matter of the complaint and any corrective action to which the parties have agreed.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant not later than 60 days after receipt from the Department of the letter required by paragraph (g)(1) of this section. The Department may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Officer for Civil Rights and Civil Liberties, or designee thereof, who will issue the final agency decision which may include appropriate corrective action to be taken by the Department.

(j) The Department shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Department determines that it needs additional information from the complainant, it shall have 30 days from the date it received the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended for an individual case when the Officer for Civil Rights and Civil Liberties determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The Department may delegate its authority for conducting complaint investigations to other Federal agencies and may contract with nongovernment investigators to perform the investigation, but the authority for making the final determination may not be delegated to another agency.

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–5142 Filed 3–5–03; 8:45 am]

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Federal Register

Thursday,
March 6, 2003

Part IV

Department of Homeland Security

Office of the Secretary

6 CFR Part 17

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 17

RIN 1601–AA04

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes for the Department of Homeland Security the necessary procedures for effectuating Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.

DATES: These interim final rules are effective on March 6, 2003.

Written comments may be submitted to the Department of Homeland Security on or before April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282–8410, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate the operations of the new Department, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule provides those procedures necessary to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681–1683 and 1685–1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the operations of the new Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to effectuate the provisions of Title IX (*see* 65 FR 52858, the final common rule for Title IX for numerous agencies). Similar regulations were applicable to components being transferred to DHS from other agencies, and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of other agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

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

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This regulation has been reviewed and approved by the Attorney General pursuant to Executive Order 12250 and reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

List of Subjects in 6 CFR Part 17

Civil rights, Education, Equal employment opportunity, Sex discrimination.

Authority and Issuance

For the reasons set forth above, chapter I of 6 CFR is amended by adding part 17 to read as follows:

PART 17—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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Subpart F—Procedures

17.600 Notice of covered programs.
17.605 Enforcement procedures.
17.635 Forms and instructions; coordination.

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301; 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

Subpart A—Introduction

§ 17.100 Purpose and effective date. (a) The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be March 6, 2003.

(b) The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing Title IX regulations.

§ 17.105 Definitions.

As used in these Title IX regulations, the term:

(a) *Administratively separate unit* means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(b) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(c) *Applicant* means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

(d) *Department* means Department of Homeland Security.

(e) *Designated agency official* means the Officer for Civil Rights and Civil Liberties, or the designee thereof.

(f) *Educational institution* means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

(g) *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *Institution of graduate higher education* means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(i) *Institution of professional education* means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

(j) *Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree;

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

(k) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

(l) *Recipient* means any State or political subdivision thereof or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

(m) *Reviewing authority* means that component of the Department delegated authority to review the decisions of hearing officers in cases arising under these Title IX regulations.

(n) *Secretary* means Secretary of the Department of Homeland Security.

(o) *Student* means a person who has gained admission.

(p) *Title IX* means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by

section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

(q) *Title IX regulations* means the provisions of this part.

(r) *Transition plan* means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the EducationAmendments of 1972 (20 U.S.C. 1681(a)(2)), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§ 17.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p.684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) Self-evaluation. Each recipient education institution shall, within one year of March 6, 2003:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 17.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 17.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 17.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 17.205 through 17.235(a).

§ 17.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit

the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 17.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 17.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§ 17.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 17.300 through 17.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 17.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of March 6, 2003 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 17.200 Application.

Except as provided in §§ 17.205 through 17.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 17.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

§ 17.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

§ 17.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. 501(a)), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 17.220 Admissions.

(a) *General.* Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ 17.225, 17.230, and 17.300 through 17.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 17.300 through 17.310.* Except as provided in paragraphs (d) and (e) of this section, §§ 17.300 through 17.310 apply to each recipient. A recipient to which §§ 17.300 through 17.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 17.300 through 17.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 17.300 through 17.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Sections 17.300 through 17.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 17.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 17.300 through 17.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) Provision for transition plans. An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 17.300 through 17.310.

§ 17.230 Transition plans.

(a) *Submission of plans.* An institution to which § 17.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 17.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 17.300 through 17.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 17.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§ 17.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) For purposes of these Title IX regulations, program or activity or program means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship:

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of

any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) Program or activity does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a program or activity subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 17.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 17.300 through 17.310 apply, except as provided in §§ 17.225 and 17.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 17.300 through 17.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 17.300 through 17.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 17.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 17.305 Preference in admission.

A recipient to which §§ 17.300 through 17.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 17.300 through 17.310.

§ 17.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 17.300 through 17.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 17.110(a), and may choose to undertake such efforts as affirmative action pursuant to § 17.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 17.300 through 17.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 17.300 through 17.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§ 17.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 17.400 through 17.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 17.300 through 17.310 do not apply, or an entity, not a recipient, to which §§ 17.300 through 17.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 17.400 through 17.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees; or

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 17.405 Housing.

(a) *General.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 17.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 17.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to physical education classes and activities at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible, but in no event later than one year from March 6, 2003. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from March 6, 2003.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 17.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 17.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 17.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex.

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 17.450.

§ 17.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 17.500 through 17.550.

§ 17.440 Health and insurance benefits and services.

Subject to § 17.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 17.500 through 17.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 17.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 17.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave

under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 17.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services; and

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from March 6, 2003. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from March 6, 2003.

§ 17.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 17.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefore, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 17.500 through 17.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* Sections 17.500 through 17.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 17.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such

disproportionately adverse effect, are shown to be unavailable.

§ 17.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 17.500 through 17.550.

§ 17.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ 17.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 17.550.

§ 17.525 Fringe benefits.

(a) *''Fringe benefits'' defined.* For purposes of these Title IX regulations, the term fringe benefits means any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provisions of § 17.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 17.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to § 17.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 17.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§ 17.500 through 17.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 17.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 17.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 17.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 17.500 through 17.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet

facility used only by members of one sex.

Subpart F—Procedures

§ 17.600 Notice of covered programs.

Within 60 days of March 6, 2003, each component of the Department that awards Federal financial assistance shall publish in the **Federal Register** a notice of the programs covered by these Title IX regulations. Each such component shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Department's office that enforces Title IX.

§ 17.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (''Title VI'') are hereby adopted and applied to these Title IX regulations. These procedures may be found at 6 CFR part 21.

§ 17.635 Forms and instructions; coordination.

(a) *Forms and instructions.* The designated agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating these Title IX regulations.

(b) *Supervision and coordination.* The designated agency official may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title IX and these Title IX regulations (other than responsibility for review as provided in § 17.625(e)), including the achievements of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title IX and these Title IX regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this section shall have the same effect as though such action had been taken by the designated official of this Department.

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–5143 Filed 3–5–03; 8:45 am]

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Part V

Department of Homeland Security

Office of the Secretary

6 CFR Part 21

Regulations Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of Homeland Security; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 21

RIN Number 1601–AA03

Regulations Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance From the Department of Homeland Security

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: This interim final rule effectuates the provisions of title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Homeland Security.

DATES: These interim final rules are effective March 6, 2003. Written comments may be submitted to the Department of Homeland Security on or before April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282–8410, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate the operations of the new Department, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule effectuates the provisions of title VI of the Civil Rights Act of 1964 to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Homeland Security.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the operations of the new Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to effectuate the provisions of title VI of the Civil Rights Act of 1964. Similar regulations were applicable to virtually all of the components being transferred to DHS from other cabinet-level agencies and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of these cabinet-level agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553 (d)(3).

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

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This regulation has been reviewed and approved by the Attorney General pursuant to Executive Order 12250 and reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

List of Subjects in 6 CFR Part 21

Civil rights, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, 6 CFR chapter I is amended by adding part 21 to read as follows:

PART 21—NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF HOMELAND SECURITY

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Authority: 5 U.S.C. 310, 42 U.S.C. 2000d–2000d–7.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Homeland Security. The provisions established by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing title VI regulations.

§ 21.3 Application.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor

organization, except to the extent described in § 21.5(c). The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

§ 21.4 Definitions.

Unless the context requires otherwise, as used in this part:

(a) *Applicant* means a person who submits an application, request, or plan required to be approved by the Secretary, or designee thereof, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and application means such an application, request, or plan.

(b) *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) *Federal financial assistance* includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) *Primary recipient* means any recipient that is authorized or required to extend Federal financial assistance to another recipient.

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

(f) *Recipient* may mean any State, territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) *Secretary* means the Secretary of the Department of Homeland Security or, except in § 21.17(e), any delegatee of the Secretary.

§ 21.5 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or

subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, may take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, and use of facilities). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, deny them the benefits of, or subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) *Facility location or site.* A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will substantially impair the accomplishment of the objectives of this part.

§ 21.7 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if

necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) *Continuing Federal financial assistance.* Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application:

(1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part; and

(2) Provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

(c) *Assurance from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education (including assistance for construction, for research, for special training projects, for student loans or for any other purpose), the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

§ 21.9 Compliance information.

(a) *Cooperation and assistance.* The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general, recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) *Access to sources of information.* Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 21.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes that he or she, or any specific class of persons, has been subjected to discrimination prohibited by this part may by himself or herself, or by a representative, file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) *Investigations.* The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 21.13 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 21.7.* If an applicant fails or refuses to furnish an assurance required under § 21.7 or otherwise fails or refuses to comply with a requirement imposed by or

pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to § 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(i) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(ii) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(iii) The action has been approved by the Secretary pursuant to § 21.17(e); and

(iv) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

(2) Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 21.15 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 21.13(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 21.17.

§ 21.17 Decisions and notices.

(a) *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient

may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 21.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 21.21 Effect on other regulations, forms, and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder; or

(2) Any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in § 21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

Appendix A to Part 21—Activities to Which This Part Applies

Note: Failure to list a type of Federal assistance in appendix A shall not mean, if

title VI is otherwise applicable, that a program is not covered.

1. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the U.S. Coast Guard (14 U.S.C. 93 (n) and (o)).

2. Utilization of U.S. Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).

3. Use of U.S. Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and the Commonwealth of Puerto Rico (14 U.S.C. 148).

4. Use of obsolete and other U.S. Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the U.S. Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).

5. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821–832).

6. U.S. Coast Guard Boating Safety Financial Assistance program.

7. U.S. Coast Guard State Access to Oil Spill Liability Trust Fund.

8. U.S. Coast Guard Bridge Alteration.

9. Use of Customs personnel and facilities by any State, territory, possession, or political subdivision thereof.

10. Use of Customs personnel for duty in connection with instruction and training by the States, territories and the Commonwealth of Puerto Rico.

11. Grants to educational institutions, associations, States, or other entities for research, analysis, or programs or strategies relating to trade issues.

Appendix B to Part 21—Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is To Provide Employment

Note: Failure to list a type of Federal assistance in appendix B shall not mean, if title VI is otherwise applicable, that a program is not covered.

[Reserved]

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–5144 Filed 3–5–03; 8:45 am]

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Thursday,
March 6, 2003

Part VI

Department of Homeland Security

Office of the Secretary

6 CFR Part 9

Restrictions Upon Lobbying; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 9

RIN Number 1601–AA12

Restrictions Upon Lobbying

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Interim final rule.

SUMMARY: The interim final rule prohibits use of appropriated funds by recipients of a federal contract, grant, loan, or cooperative agreement to influence any federal agency or Congress in connection with federal awards and establishes the Department of Homeland Security procedures for enforcement of this prohibition.

DATES: This interim final rule is effective March 6, 2003. Written comments may be submitted by April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Robert Coyle, (202) 282–8410 (not a toll free call).

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296) (''Act''), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, the new Department came into existence on January 24, 2003.

In order to establish procedures to facilitate the operations of the new Department, DHS is issuing an initial series of proposed and interim final regulations.

II. The Interim Final Rule

This interim final rule establishes those procedures necessary to fulfill departmental obligations to impose restrictions upon lobbying. Except to the extent a Department component has adopted separate guidance under 31 U.S.C. 1352, the provisions of this subpart shall apply to each component of the Department.

This regulation establishes procedures concerning general prohibitions on lobbying and the use of certain appropriated funds and the appropriate penalties for violations of those prohibitions. The purpose of the procedures is to ensure that neither the recipients of appropriated funds nor the employees of the Department of Homeland Security inappropriately solicit for action by Congress.

III. Procedural Requirements

Because the DHS came into existence on January 24, 2003, it is necessary to promptly establish procedures to facilitate the operations of the new Department. Furthermore, this interim final rule parallels the existing operational regulations of other cabinet-level agencies to impose restrictions upon lobbying, similar regulations were applicable to components being transferred to DHS from other agencies, and the regulations are only being technically adapted for DHS, imposing no substantive requirement that is different from the existing regulations of other agencies. Accordingly, the Department has determined that notice and public procedure are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). For the same reasons, the Department has determined that this interim rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

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

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

List of Subjects in 6 CFR Part 9

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

Authority and Issuance

For the reasons set forth above, 6 CFR chapter I is amended by adding part 9 to read as follows:

PART 9—RESTRICTIONS UPON LOBBYING

Subpart A—General

Sec.
9.1 Conditions on use of funds.
9.2 Definitions.
9.3 Certification and disclosure.

Subpart B—Activities by Own Employees

9.11 Agency and legislative liaison.
9.15 Professional and technical services.
9.20 Reporting.

Subpart C—Activities by Other than Own Employees

9.23 Professional and technical services.

Subpart D—Penalties and Enforcement

9.31 Penalties.
9.32 Penalty procedures.
9.33 Enforcement.

Subpart E—Exemptions

9.41 Secretary of Defense.

Subpart F—Agency Reports

9.51 Semi-annual compilation.
9.52 Inspector General report.

Appendix A to Part 9—Certification Regarding Lobbying

Appendix B to Part 9—Disclosure Form to Report Lobbying

Authority: Sec. 319, Pub. L. 101–121, 103 Stat. 750 (31 U.S.C. 1352); Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

Subpart A—General

§ 9.1 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Appendix A to this part, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in Appendix B to this part, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment

providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in Appendix A to this part, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in Appendix B to this part, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 9.2 Definitions.

For purposes of this part:

(a) *Agency* has the same meaning as provided in 5 U.S.C. 552(f), and includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) The term *covered Federal action*:

(1) Means any of the following Federal actions:

(i) The awarding of any Federal contract;

(ii) The making of any Federal grant;

(iii) The making of any Federal loan;

(iv) The entering into of any cooperative agreement; and

(v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) Does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance that provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definition of Indian tribe in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* or loan insurance means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual appointed to a position in the Government pursuant to title 5 of the United States Code, including any position by temporary appointment or any appointment as an acting official as outlined in section 1511(c) of the Homeland Security Act;

(2) A member of the uniformed services as defined in 37 U.S.C. 101(3);

(3) A special Government employee as defined in section 18 U.S.C. 202; and

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act at 5 U.S.C. App. 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and sub grantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 9.3 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b)(1) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(i) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(ii) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(2) A filing described in paragraph (b)(1) of this section shall not be required if such person previously filed a certification, and a disclosure form required under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d)(1) The requirements of paragraph (d)(2) of this section apply to any person who requests or receives from a person referred to in paragraph (a) or (b) of this section:

(i) A subcontract exceeding $100,000 at any tier under a Federal contract;

(ii) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(iii) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or

(iv) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement.

(2) A person described in paragraph (d)(1) of this section shall file a certification, and a disclosure form, if required, to the next tier.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 31 U.S.C. 1352.

(g) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C of this part.

Subpart B—Activities by Own Employees

§ 9.11 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 9.1(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 9.15 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 9.1(a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, *professional and technical services* shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services.

Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 9.20 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other than Own Employees

§ 9.23 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 9.1(a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 9.3(a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, *professional and technical services* shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal action include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 9.31 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see Appendix B to this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 9.32 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements in this part.

§ 9.33 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 9.41 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 9.51 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see Appendix B to this part) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 9.52 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year an evaluation of the compliance of that agency with, and the effectiveness of, the requirements in this part. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

Appendix A to Part 9—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

I. The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

II. Statement for Loan Guarantees and Loan Insurance:

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Appendix B to Part 9—Disclosure Form to Report Lobbying

[Approved by OMB 0348–0046]

BILLING CODE 4410–10–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. Initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report_____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier_____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime Congressional District, if known:	
6. Federal Department/Agency:	7. Federal Program Name/Description CFDA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: $	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	b. Individual Performing Services (including address if different from No. 10a) (last name, first name, MI)	
11. Amount of Payment (check all that apply): $_____ ☐ actual ☐ planned	13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature_____ value_____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for payment indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: Yes No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.	Signature:_____ Print Name:_____ Title:_____ Telephone No.:_____ Date:_____	
Federal Use Only	Authorized for Local Reproduction Standard Form--LLL	

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity:_____ Page _____ of _____

Authorized for Local Reproduction
Standard Form--LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee of prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing of attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a); Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material charge report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 03–5145 Filed 3–5–03; 8:45 am]

BILLING CODE 4410–10–C

Federal Register

Thursday,
March 6, 2003

Part VII

Department of Homeland Security

Immigration and Naturalization Service

8 CFR Parts 1, 2, 103, and 239

Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Immigration and Naturalization Service

8 CFR Parts 1, 2, 103, 239

RIN 1601–AA06

Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws

AGENCY: INS, Homeland Security.

ACTION: Final rule.

SUMMARY: This final rule amends certain regulations relating to the administration and enforcement of the immigration laws to reflect the authority of the Secretary of Homeland Security and to address delegation of that authority, as a result of the March 1, 2003, transfer of the Immigration and Naturalization Service of the Department of Justice to the Department of Homeland Security.

DATES: This final rule is effective March 6, 2003. Written comments may be submitted to the Department of Homeland Security on or before April 7, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: Philip B. Busch, (202) 514–2895, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107–296) (the Act), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, DHS came into existence on January 24, 2003. As provided by the Act and by the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified (Reorganization Plan), the functions of the Immigration and Naturalization Service (INS) of the Department of Justice, and all authorities with respect to those functions, transfer to DHS on March 1, 2003, and the INS is abolished on that date. The transition and savings provisions of the Act, including sections 1512(d) and 1517, provide that references relating to the INS in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS. Despite this continued validity of Title 8 of the Code of Federal Regulations with respect to DHS, and its application as a matter of law in full to DHS as the successor to the INS unless and until specifically modified, it is appropriate at this time to begin the process of conforming the text of Title 8 to the new governmental structures provided by the Act and the Reorganization Plan.

This rule is also a step in the process of separating DHS enforcement and services functions from Department of Justice adjudication functions as envisioned by the Act. DHS and the Department of Justice are working together to ensure that this complex task proceeds as smoothly as possible without unnecessary disruption to enforcement, adjudication, and other immigration functions.

II. The Final Rule

First, this final rule replaces 8 CFR 2.1—stating the authority of the Commissioner of the INS and providing for his redelegation of authority—with an equivalent provision that vests all authorities and functions of DHS to administer and enforce the immigration laws in the Secretary of Homeland Security. The immigration laws are defined in section 101(a)(17) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(17), as the INA and all laws, conventions, and treaties of the United States relating to the immigration, deportation, expulsion, or removal of aliens (this INA definition is incorporated in Title 8 of the Code of Federal Regulations by 8 CFR 1.1(a)). The Secretary may redelegate any of his functions and authorities with respect to the immigration laws in his discretion to any official, officer or employee of DHS (including by means of successive redelegations), or to other employees of the United States to the extent authorized by law. He may delegate his authority in any manner he chooses, including by regulation or by memorandum, directive, or other method. The Secretary's delegations of authority may in his discretion be published as rules or notices in the **Federal Register**, but the Secretary is not required to publish his delegations of authority in the **Federal Register**. The new section 2.1 reflects the statutory authority that the Secretary of Homeland Security possesses under section 102 and other provisions of the Act and other applicable law, and does not limit or constrain that authority in any way.

Second, the final rule deletes delegations of authority at 8 CFR 103.1 that reflect the structure of the former INS and therefore no longer provide accurate information from the regulations. These delegations are replaced with a cross-reference to the Secretary of Homeland Security's delegation authority under 8 CFR 2.1. Delegations to replace the former § 103.1 will be in place on March 1, 2003, but are not required to be, and will not be promulgated as rules or codified in the Code of Federal Regulations. The final rule retains the designations of ''immigration officer'' in former 8 CFR 103.1(j) (new § 103.1(b)), and amends it to include additional officers in DHS as the Secretary may designate as provided by § 2.1.

Third, the final rule revises the regulation at 8 CFR 239.1 that delegates authority to issue notices to appear. The Secretary of Homeland Security has determined in his discretion that he will continue publication of this delegation to certain officers in the Code of Federal Regulations, but has added a cross-reference to his delegation authority under 8 CFR 2.1 to clarify that he may in his discretion supplement or revise the list by memorandum or other method other than rulemaking or publication in the **Federal Register**. The list has also been revised to reflect new titles. This rule omits the former first sentence of § 239.1 as superfluous explanatory material that is unnecessary in light of the jurisdictional regulations of the Executive Office for Immigration Review of the Department of Justice at 8 CFR 3.14.

Fourth, the final rule supplements the regulatory definition of ''director'' at 8 CFR 1.1(o) to clarify that on or after March 1, 2003, any reference to a district director or other director in Title 8 of the Code of Federal Regulations with respect to any function or authority will be a reference to that official within the Bureau of Immigration and Customs Enforcement, the Bureau of Customs and Border Protection, the Bureau of Citizenship and Immigration Services, or other component of DHS who has been delegated that function or authority for a district or other geographic area.

III. Procedural Requirements

Administrative Procedure Act

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking or delayed effective date is unnecessary as this rule relates to agency organization and management. Accordingly, it is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

Executive Order 12866

This rule making is limited to agency organization, management or personnel matters, and therefore is not a regulation or rule as defined by Executive Order 12866. It has also been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform.

This rule meets the applicable standards set forth in section 3 of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal government, in the aggregate, or by the private sector of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 2

Administrative practice and procedure, Authority delegation (Government agencies), Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 239

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

Chapter I—Immigration and Naturalization Service, Department of Homeland Security

1. The chapter heading is revised to read as set forth above.

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

2. In § 1.1, paragraph (o) is revised to read as follows:

§ 1.1 Definitions.

* * * * *

(o) The term *director*, when used with respect to any function, geographic area, office or authority, means the district director, service center director, district director for interior enforcement or for other specified function, or other official within the Bureau of Citizenship and Immigration Services, the Bureau of Immigration and Customs Enforcement, the Bureau of Customs and Border Protection, or other component of the Department of Homeland Security who has been delegated the function or authority by the Secretary of Homeland Security for an office, region, district or geographic area.

* * * * *

PART 2—AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY

3. The heading for Part 2 is revised to read as set forth above.:

4. The authority citation for Part 2 is revised to read as follows:

Authority: 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

5. Section 2.1 is revised to read as follows:

§ 2.1 Authority of the Secretary of Homeland Security.

All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary of Homeland Security may, in the Secretary's discretion, delegate any such authority or function to any official, officer, or employee of the Department of Homeland Security, including delegation through successive redelegation, or to any employee of the United States to the extent authorized by law. Such delegation may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion. A delegation of authority or function may in the Secretary's discretion be published in the **Federal Register**, but such publication is not required.

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

6. The heading for Part 103 is revised to read as set forth above.

7. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

8. Section 103.1 is revised to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* Any immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot,

helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, chief legalization officer, supervisory legalization officer, legalization adjudicator, legalization officer and legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in § 2.1 of this chapter, or senior or supervisory officer of such employee, is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

PART 239—INITIATION OF REMOVAL PROCEEDINGS

9. The authority citation for part 239 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Public Law 107–296; 8 CFR part 2.

10. Section 239.1 is amended by revising paragraph (a) to read as follows:

§ 239.1 Notice to appear.

(a) *Issuance of notice to appear.* Any immigration officer performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such an alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

(1) District directors (except foreign);

(2) Deputy district directors (except foreign);

(3) Chief patrol agents;

(4) Deputy chief patrol agents;

(5) Service center directors;

(6) Deputy service center directors;

(7) Assistant service center directors for examinations;

(8) Officers in charge (except foreign);

(9) Assistant officers in charge (except foreign);

(10) Supervisory special agents;

(11) Supervisory deportation officers;

(12) Supervisory detention and deportation officers;

(13) Supervisory district adjudications officers;

(14) Supervisory asylum officers;

(15) Supervisory border patrol agents;

(16) Directors of investigations;

(17) District directors for interior enforcement;

(18) Deputy or assistant district directors for interior enforcement;

(19) Director of detention and removal;

(20) Supervisory asylum officers;

(21) Port directors;

(22) Deputy port directors;

(23) Directors of juvenile affairs;

(24) Directors or officers in charge of detention facilities;

(25) Directors of field operations;

(26) Deputy or assistant directors of field operations; or

(27) Other officers or employees of the Department of Homeland Security or of the United States who are delegated the authority to issue notices to appear as provided by § 2.1 of this chapter.

* * * * *

Dated: February 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–5146 Filed 3–5–03; 8:45 am]

BILLING CODE 4410–10–P

Federal Register

Thursday,
March 6, 2003

Part VIII

Securities and Exchange Commission

Order Making Fiscal 2003 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47425/February 28, 2003]

Order Making Fiscal 2003 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.[3]

Sections 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond.[4] Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011. The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under section 31 equal to the ''target offsetting collection amount'' specified in section 31(l)(1) for that fiscal year.[5] For fiscal 2003, the target offsetting collection amount is $849,000,000.[6]

Congress established the target offsetting collection amounts in the Investor and Capital Markets Fee Relief Act (''Fee Relief Act'') by applying reduced fee rates to the Congressional Budget Office's (''CBO'') January 2001 projections of dollar volume for fiscal years 2002 through 2011.[7] In any fiscal year through fiscal 2011, the annual, and in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2003

Under section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under sections 31(b) and (c) in fiscal year 2003 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate ($33,158,519,250,001) is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2003.[8] To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2003.

Based on data provided by the national securities exchanges and the national securities association that are subject to section 31,[9] the actual aggregate dollar volume of sales during the first four months of fiscal 2003 was $7,073,980,109,231.[10] Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2003 (developed after consultation with the CBO and the OMB),[11] the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2003 to be $14,847,347,328,783. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2003 will be $21,921,327,438,013.

Because $33,158,519,250,001 is more than 10% greater than the $21,921,327,438,013 estimated actual aggregate dollar volume of sales for fiscal 2003, section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2003. Specifically, the Commission must adjust the rates under sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of [fiscal 2003], is reasonably likely to produce aggregate fee collections under section 31 (including fees collected during such 5-month period and assessments collected under [section 31(d)]) that are equal to [$849,000,000].''[12] In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under section 31(d) during all of fiscal 2003 from $849,000,000, which is the target offsetting collection amount for fiscal 2003. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $311,031,169 in fees for the period prior to the effective date of the mid-year adjustment[13] and $22,100 in

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] 15 U.S.C. 78ee(j)(1) and (j)(3).

[5] *See* 15 U.S.C. 78ee(l)(1).

[6] *Id.*

[7] The target offsetting collection amounts for fiscal 2002 through 2006 were determined by applying a rate of $15 per million to the CBO's January 2001 projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of $7 per million to the CBO's January 2001 projections of dollar volume for those fiscal years. For example, CBO's January 2001 projection of dollar volume for fiscal 2003 was $56,600,000,000,000. Applying the initial rate under the Fee Relief Act of $15 per million to that projection produces the target offsetting collection amount for fiscal 2003 of $849,000,000.

[8] The amount $33,158,519,250,001 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2003 calculated by the Commission in its Order Making Fiscal 2003 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 34–45842 (April 29, 2002), 67 FR 22126 (May 2, 2002).

[9] Each exchange is required to file a monthly report on Form R–31 containing dollar volume data on sales of securities subject to section 31 on the exchange. The report is due by the end of the month following the month for which the exchange provides dollar volume data. The NASD Inc. (''NASD'') provides data separately.

[10] Although section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2003 ''based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year,'' data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.*, March 1, 2003. Dollar volume data on sales of securities subject to section 31 for February 2003 will not be available from the exchanges and the NASD for several weeks.

[11] *See* Appendix A.

[12] 15 U.S.C. 78ee(j)(2). The term ''fees collected'' is not defined in section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of section 31 fees for fiscal 2003 until March 15, the Commission will not ''collect'' any fees in the first five months of fiscal 2003. *See* 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in section 31(j)(2) that the ''uniform adjusted rate * * * is reasonably likely to produce aggregate fee collections under section 31 * * * that are equal to [$849,000,000],'' intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

[13] This calculation is based on applying a fee rate of $30.10 per million to the projected aggregate

assessments on round turn transactions in security futures products during all of fiscal 2003. Using the methodology referenced in part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2003 following the effective date of the new rate will be $11,505,683,278,185. Based on these estimates, the uniform adjusted rate is $46.80 per million of the aggregate dollar amount of sales of securities.[14]

The Commission recognizes that this fee rate is higher than the fee rate in effect prior to the enactment of the Fee Relief Act. However, this higher fee rate is a direct consequence of the decline in dollar volume in fiscal 2003 compared to the CBO's January 2001 projection of dollar volume for fiscal 2003. The recent decline in dollar volume for securities transactions subject to section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to section 31 fees must pay fees under sections 31(b) and (c) at the uniform adjusted rate of $46.80 per million for sales of securities transacted on April 1, 2003, and thereafter until the annual adjustment for fiscal 2004 is effective.[15]

V. Conclusion

Accordingly, pursuant to section 31 of the Exchange Act,[16]

It is hereby ordered that each of the fee rates under sections 31(b) and (c) of the Exchange Act shall be $46.80 per $1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

A. Baseline Estimate of the Aggregate Dollar Amount of Sales

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 1993—January 2003). The data obtained from the exchanges and Nasdaq are presented in Table A. The monthly aggregate dollar amount of sales (exchange plus Nasdaq) is contained in column E.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.014 and the standard deviation 0.116. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 2.0 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2003 ($80,998,598,695) to forecast ADS for February 2003 ($82,654,487,385 = $80,998,598,695 × 1.020).[1] Multiply by the number of trading days in February 2003 (19) to obtain a forecast of the total dollar volume forecast for the month ($1,570,435,260,311). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column I of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column E) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column F).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t/ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.014$ and $\sigma = 0.116$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.020 \times ADS_{t-1}$.

6. For February 2003, this gives a forecast ADS of 1.020 × $80,998,598,695 = $82,654,487,385. Multiply this figure by the 19 trading days in February 2003 to obtain a total dollar volume forecast of $1,570,435,260,311.

7. For March 2003, multiply the February 2003 ADS forecast by 1.020 to obtain a forecast ADS of $84,344,228,109. Multiply this figure by the 21 trading days in March 2003 to obtain a total dollar volume forecast of $1,771,228,790,287.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts from A To Calculate the New Fee Rate

1. Using the data from Table A, determine the actual and projected aggregate dollar volume of sales between 10/1/02 and 3/21/03 to be $9,909,578,791,175. (Allocate the projected aggregate dollar volume in March 2003 based on the number of trading days in the periods—15 trading days during 3/1/03 and 3/21/03, and 6 trading days during 3/22/03 and 3/31/03.) Multiply this amount by the fee rate of $30.10 per million dollars in sales during this period and get an estimate of $298,278,322 in actual and projected fees collected during 10/1/02 and 3/21/03. Determine the projected aggregate dollar volume of sales between 3/22/03 and 3/31/03 to be $506,065,368,653. Multiply this amount by the fee rate of $25.20 per million dollars in sales during this period and get an estimate of $12,752,847 in projected fees collected during 3/22/03 and 3/31/03.

2. Estimate the amount of assessments on securities futures products collected during 10/1/02 and 9/30/03 to be $22,100 by summing the amounts collected through January of $4,747 with projections of a 2% monthly increase in subsequent months.

3. Using the data from Table A, determine the projected aggregate dollar volume of sales between 4/1/03 and 9/30/03 to be $11,505,683,278,185.

4. The rate necessary to collect the target $849,000,000 in fee revenues is then calculated as: ($849,000,000 − $298,278,322 − $12,752,847 − $22,100) ÷ $11,505,683,278,185 = .000046755.

5. Consistent with the system requirements of the exchanges and the NASD, round the rate to the seventh decimal point, yielding a rate of .0000468 (or $46.80 per million).

(continued) dollar volume of sales of securities subject to section 31 through March 21, 2003, and a rate of $25.20 for the period from March 22, 2003, to March 31, 2003. Because the Commission's 2003 appropriations act was not enacted prior to the end of fiscal year 2002, Exchange Act section 31(k), the ''Lapse of Appropriation'' provision, provided that the fee rate in use at the end of fiscal year 2002, $30.10 per million, remains in effect until 30 days after the Commission's regular appropriation for fiscal year 2003 was enacted. *See also* Order Making Fiscal 2003 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 34–45842 (April 29, 2002), 67 FR 22126 (May 2, 2002). The Commission's regular appropriation for fiscal year 2003 was enacted on February 20, 2003, and the $25.20 rate goes into effect 30 days later, by operation of the statute. *See* Exchange Act section 31(j)(4)(A)(ii).

[14] The calculation is as follows: ($849,000,000 − $311,031,169 − $22,100)/$11,505,683,278,185 = $0.000046755. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of $46.80 per million.

[15] Section 31(j)(1) and section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2003, adjusting the fee rates applicable under sections 31(b) and (c) for fiscal 2004. These fee rates for fiscal 2004 will be effective on the later of October 1, 2003, or 30 days after the enactment of the Commission's regular appropriation for fiscal 2004.

[16] 15 U.S.C. 78ee.

[1] The value 1.020 has been rounded. All computations are done with the unrounded value.

TABLE A.—ESTIMATION OF BASELINE OF THE AGGREGATE DOLLAR AMOUNT OF SALES

[Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.]

Fee rate calculation

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/02 to 3/21/03 ($Millions)	9,909,579
b. Baseline estimate of the aggregate dollar amount of sales, 3/22/03 to 3/31/03 ($Millions)	506,065
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/03 to 9/30/03 ($Millions)	11,505,683
d. Estimated collections in assessments on securities futures products in FY 2003 ($Millions)	0.022
d. Implied fee rate (($849,000,000 − 0.0000301*a − 0.0000252*b − d)/c)	$46.755

(A) Month	(B) # of trading days in month	(C) Exchange-listed dollar amount of sales	(D) Nasdaq dollar amount of sales	(E) Aggregate Dollar Amount of Sales	(F) Average daily dollar amount of sales (ADS)	(G) Change in LN of ADS	(H) Forecast ADS	(I) Forecast aggregate dollar amount of sales
Data								
Jan-93	20	212,344,305,792	107,992,636,000	320,336,941,792	16,016,847,090			
Feb-93	19	238,758,759,740	107,865,220,000	346,623,979,740	18,243,367,355	0.130		
Mar-93	23	254,153,083,005	104,714,261,000	358,867,344,005	15,602,928,000	0.000		
Apr-93	21	259,894,323,029	101,842,746,000	361,737,069,029	17,225,574,716	0.099		
May-93	20	228,370,238,902	103,225,212,000	331,595,450,902	16,579,772,545	−0.038		
Jun-93	22	223,269,586,987	105,819,661,000	329,089,247,987	14,958,602,181	−0.103		
Jul-93	21	228,189,513,167	101,802,827,000	329,992,340,167	15,713,920,960	0.049		
Aug-93	22	240,087,999,028	117,600,923,000	357,688,922,028	16,258,587,365	0.034		
Sep-93	21	243,134,952,411	117,640,918,000	360,775,870,411	17,179,803,353	0.055		
Oct-93	21	275,653,273,040	139,364,838,000	415,018,111,040	19,762,767,192	0.140		
Nov-93	21	280,909,537,581	127,345,828,000	408,255,365,581	19,440,731,694	−0.016		
Dec-93	22	268,471,426,906	114,885,343,000	383,356,769,906	17,425,307,723	−0.109		
Jan-94	21	277,615,393,351	137,551,072,000	415,166,465,351	19,769,831,683	0.126		
Feb-94	19	281,053,587,314	122,882,920,000	403,936,507,314	21,259,816,174	0.073		
Mar-94	23	316,713,498,173	151,177,373,000	467,890,871,173	20,343,081,355	−0.044		
Apr-94	19	289,365,151,226	114,834,515,000	404,199,666,226	21,273,666,643	0.045		
May-94	21	241,278,516,490	112,318,747,000	353,597,263,490	16,837,964,928	−0.234		
Jun-94	22	245,067,967,632	112,555,736,000	357,623,703,632	16,255,622,892	−0.035		
Jul-94	20	221,511,138,952	100,563,525,000	322,074,663,952	16,103,733,198	−0.009		
Aug-94	23	255,511,795,450	127,675,353,000	383,187,148,450	16,660,310,802	0.034		
Sep-94	21	273,589,300,476	111,984,539,000	385,573,839,476	18,360,659,023	0.097		
Oct-94	21	266,363,537,805	129,089,800,000	395,453,337,805	18,831,111,324	0.025		
Nov-94	21	267,314,618,799	121,827,668,000	389,142,286,799	18,530,585,086	−0.016		
Dec-94	21	265,184,891,948	106,839,641,000	372,024,532,948	17,715,453,950	−0.045		
Jan-95	21	253,958,524,771	125,092,685,000	379,051,209,771	18,050,057,608	0.019		
Feb-95	19	263,486,075,035	125,574,811,000	389,060,886,035	20,476,888,739	0.126		
Mar-95	23	330,806,034,718	161,066,575,000	491,872,609,718	21,385,765,640	0.043		
Apr-95	19	285,586,213,818	149,741,420,000	435,327,633,818	22,911,980,727	0.069		
May-95	22	340,254,177,379	191,600,883,000	531,855,060,379	24,175,230,017	0.054		
Jun-95	22	376,703,055,609	197,629,158,000	574,332,213,609	26,106,009,710	0.077		
Jul-95	20	346,809,496,831	229,239,839,000	576,049,335,831	28,802,466,792	0.098		
Aug-95	23	327,435,391,060	243,203,335,000	570,638,726,060	24,810,379,394	−0.149		
Sep-95	20	352,176,019,676	225,957,920,000	578,133,939,676	28,906,696,984	0.153		
Oct-95	22	386,892,948,035	255,297,230,000	642,190,178,035	29,190,462,638	0.010		
Nov-95	21	340,868,134,565	255,556,416,000	596,424,550,565	28,401,169,075	−0.027		
Dec-95	20	386,356,222,037	238,254,219,000	624,610,441,037	31,230,522,052	0.095		
Jan-96	22	412,342,988,854	275,256,103,000	687,599,091,854	31,254,504,175	0.001		
Feb-96	20	432,110,721,273	255,121,750,000	687,232,471,273	34,361,623,564	0.095		
Mar-96	21	462,522,216,093	252,313,904,000	714,836,120,093	34,039,815,243	−0.009		
Apr-96	21	419,529,647,022	284,880,671,000	704,410,318,022	33,543,348,477	−0.015		
May-96	22	444,864,509,489	323,514,998,000	768,379,507,489	34,926,341,250	0.040		
Jun-96	20	364,047,300,223	267,051,480,000	631,098,780,223	31,554,939,011	−0.102		
Jul-96	22	405,998,331,384	282,430,397,000	688,428,728,384	31,292,214,927	−0.008		
Aug-96	22	347,207,351,036	222,902,421,000	570,109,772,036	25,914,080,547	−0.189		
Sep-96	20	361,752,600,688	255,491,281,000	617,243,881,688	30,862,194,084	0.175		
Oct-96	23	450,138,412,454	314,131,029,000	764,269,441,454	33,229,106,150	0.074		
Nov-96	20	468,499,807,419	279,994,893,000	748,494,700,419	37,424,735,021	0.119		
Dec-96	21	475,791,378,753	288,688,118,000	764,479,496,753	36,403,785,560	−0.028		
Jan-97	22	578,613,348,586	378,819,289,000	957,432,637,586	43,519,665,345	0.179		
Feb-97	19	500,101,991,446	337,072,192,000	837,174,183,446	44,061,799,129	0.012		
Mar-97	20	526,670,517,788	312,522,211,000	839,192,728,788	41,959,636,439	−0.049		
Apr-97	22	541,016,966,315	321,782,247,000	862,799,213,315	39,218,146,060	−0.068		
May-97	21	560,712,670,647	365,021,182,000	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	590,497,004,859	339,912,081,000	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	665,142,486,898	420,540,220,000	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	646,260,997,751	385,083,141,000	1,031,344,138,751	49,111,625,655	−0.005		
Sep-97	21	636,729,800,602	399,730,444,000	1,036,460,244,602	49,355,249,743	0.005		
Oct-97	23	795,309,593,718	534,343,839,000	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	614,656,941,587	311,360,937,000	926,017,878,587	48,737,783,084	−0.171		
Dec-97	22	771,801,485,199	375,503,531,000	1,147,305,016,199	52,150,228,009	0.068		
Jan-98	20	664,267,640,263	375,290,271,000	1,039,557,911,263	51,977,895,563	−0.003		
Feb-98	19	672,565,048,157	408,876,474,000	1,081,441,522,157	56,917,974,850	0.091		
Mar-98	22	798,277,192,905	464,862,662,000	1,263,139,854,905	57,415,447,950	0.009		
Apr-98	21	821,022,063,854	478,804,341,000	1,299,826,404,854	61,896,495,469	0.075		
May-98	20	717,711,593,246	392,290,631,000	1,110,002,224,246	55,500,111,212	−0.109		
Jun-98	22	781,193,541,641	464,886,854,000	1,246,080,395,641	56,640,017,984	0.020		

(A) Month	(B) # of trading days in month	(C) Exchange-listed dollar amount of sales	(D) Nasdaq dollar amount of sales	(E) Aggregate Dollar Amount of Sales	(F) Average daily dollar amount of sales (ADS)	(G) Change in LN of ADS	(H) Forecast ADS	(I) Forecast aggregate dollar amount of sales
Jul-98	22	839,132,005,554	561,429,081,000	1,400,561,086,554	63,661,867,571	0.117		
Aug-98	21	811,893,940,585	494,696,509,000	1,306,590,449,585	62,218,592,837	−0.023		
Sep-98	21	899,363,115,702	452,978,456,000	1,352,341,571,702	64,397,217,700	0.034		
Oct-98	22	934,874,788,951	519,628,635,672	1,454,503,424,623	66,113,792,028	0.026		
Nov-98	20	761,843,293,678	534,735,697,587	1,296,578,991,265	64,828,949,563	−0.020		
Dec-98	22	831,906,512,838	610,078,427,246	1,441,984,940,084	65,544,770,004	0.011		
Jan-99	19	999,043,017,550	881,762,273,376	1,880,805,290,926	98,989,752,154	0.412		
Feb-99	19	881,206,542,866	771,821,519,115	1,653,028,061,981	87,001,476,946	−0.129		
Mar-99	23	1,064,559,310,307	845,323,661,356	1,909,882,971,663	83,038,390,072	−0.047		
Apr-99	21	1,200,826,668,871	974,846,639,668	2,175,673,308,539	103,603,490,883	0.221		
May-99	20	1,052,642,277,388	728,648,483,251	1,781,290,760,639	89,064,538,032	−0.151		
Jun-99	22	968,355,845,707	728,666,375,241	1,697,022,220,948	77,137,373,679	−0.144		
Jul-99	21	968,729,547,313	795,657,683,556	1,764,387,230,869	84,018,439,565	0.085		
Aug-99	22	909,861,580,448	782,763,893,461	1,692,625,473,909	76,937,521,541	−0.088		
Sep-99	21	886,209,235,286	842,754,416,364	1,728,963,651,650	82,331,602,460	0.068		
Oct-99	21	1,075,832,673,611	938,836,857,225	2,014,669,530,836	95,936,644,326	0.153		
Nov-99	21	1,125,441,492,744	1,218,999,895,936	2,344,441,388,681	111,640,066,128	0.152		
Dec-99	22	1,260,244,827,356	1,472,542,539,476	2,732,787,366,832	124,217,607,583	0.107		
Jan-00	20	1,293,751,986,296	1,759,510,466,949	3,053,262,453,245	152,663,122,662	0.206		
Feb-00	20	1,237,324,279,941	1,730,179,962,177	2,967,504,242,118	148,375,212,106	−0.028		
Mar-00	23	1,675,729,644,521	2,460,195,052,947	4,135,924,697,468	179,822,812,933	0.192		
Apr-00	19	1,429,668,149,369	1,739,658,625,584	3,169,326,774,953	166,806,672,366	−0.075		
May-00	22	1,273,774,500,287	1,374,100,073,878	2,647,874,574,166	120,357,935,189	−0.326		
Jun-00	22	1,283,603,525,223	1,594,692,767,334	2,878,296,292,557	130,831,649,662	0.083		
Jul-00	20	1,203,862,111,445	1,594,341,902,395	2,798,204,013,840	139,910,200,692	0.067		
Aug-00	23	1,211,624,989,972	1,481,001,529,902	2,692,626,519,874	117,070,718,255	−0.178		
Sep-00	20	1,261,317,634,976	1,631,936,332,356	2,893,253,967,332	144,662,698,367	0.212		
Oct-00	22	1,517,440,783,915	1,925,128,263,471	3,442,569,047,386	156,480,411,245	0.079		
Nov-00	21	1,290,090,415,114	1,473,929,732,217	2,764,020,147,331	131,620,007,016	−0.173		
Dec-00	20	1,367,739,635,585	1,419,735,645,693	2,787,475,281,277	139,373,764,064	0.057		
Jan-01	21	1,547,342,196,427	1,573,412,629,080	3,120,754,825,507	148,607,372,643	0.064		
Feb-01	19	1,223,669,743,506	1,130,494,302,446	2,354,164,045,952	123,903,370,840	−0.182		
Mar-01	22	1,454,524,517,280	1,080,912,409,264	2,535,436,926,544	115,247,133,025	−0.072		
Apr-01	20	1,312,755,897,976	991,843,272,797	2,304,599,170,773	115,229,958,539	0.000		
May-01	22	1,320,141,836,216	1,023,175,979,663	2,343,317,815,879	106,514,446,176	−0.079		
Jun-01	21	1,241,534,765,288	847,846,047,529	2,089,380,812,818	99,494,324,420	−0.068		
Jul-01	21	1,240,941,545,734	757,402,982,130	1,998,344,527,864	95,159,263,232	−0.045		
Aug-01	23	1,123,517,678,209	669,526,933,547	1,793,044,611,756	77,958,461,381	−0.199		
Sep-01	15	1,051,262,586,802	519,060,855,910	1,570,323,442,711	104,688,229,514	0.295		
Oct-01	23	1,361,284,609,043	787,768,976,829	2,149,053,585,872	93,437,112,429	−0.114		
Nov-01	21	1,176,788,120,102	757,448,489,572	1,934,236,609,675	92,106,505,223	−0.014		
Dec-01	20	1,170,905,574,588	738,526,447,576	1,909,432,022,164	95,471,601,108	0.036		
Jan-02	21	1,291,250,297,101	842,154,952,554	2,133,405,249,655	101,590,726,174	0.062		
Feb-02	19	1,263,981,883,602	651,569,612,254	1,915,551,495,857	100,818,499,782	−0.008		
Mar-02	20	1,389,898,629,427	604,393,572,668	1,994,292,202,095	99,714,610,105	−0.011		
Apr-02	22	1,421,949,055,151	627,529,687,636	2,049,478,742,788	93,158,124,672	−0.068		
May-02	22	1,385,822,316,157	580,513,560,084	1,966,335,876,241	89,378,903,466	−0.041		
Jun-02	20	1,328,095,777,811	519,384,103,360	1,847,479,881,170	92,373,994,059	0.033		
Jul-02	22	1,763,762,436,133	547,406,479,695	2,311,168,915,828	105,053,132,538	0.129		
Aug-02	22	1,351,178,678,292	415,631,867,486	1,766,810,545,778	80,309,570,263	−0.269		
Sep-02	20	1,139,710,089,326	365,913,379,195	1,505,623,468,521	75,281,173,426	−0.065		
Oct-02	23	1,557,604,059,315	515,148,025,791	2,072,752,085,106	90,119,655,874	0.180		
Nov-02	20	1,281,865,198,491	481,235,326,808	1,763,100,525,299	88,155,026,265	−0.022		
Dec-02	21	1,135,751,469,074	401,405,457,153	1,537,156,926,228	73,197,948,868	−0.186		
Jan-03	21	1,243,044,958,028	457,925,614,570	1,700,970,572,598	80,998,598,695	0.101		
Feb-03	19						82,654,487,385	1,570,435,260,311
Mar-03	21						84,344,228,109	1,771,228,790,287
Apr-03	21						86,068,512,919	1,807,438,771,298
May-03	21						87,828,048,014	1,844,389,008,300
Jun-03	21						89,623,554,032	1,882,094,634,662
Jul-03	22						91,455,766,339	2,012,026,859,466
Aug-03	21						93,325,435,340	1,959,834,142,143
Sep-03	21						95,233,326,777	1,999,899,862,315

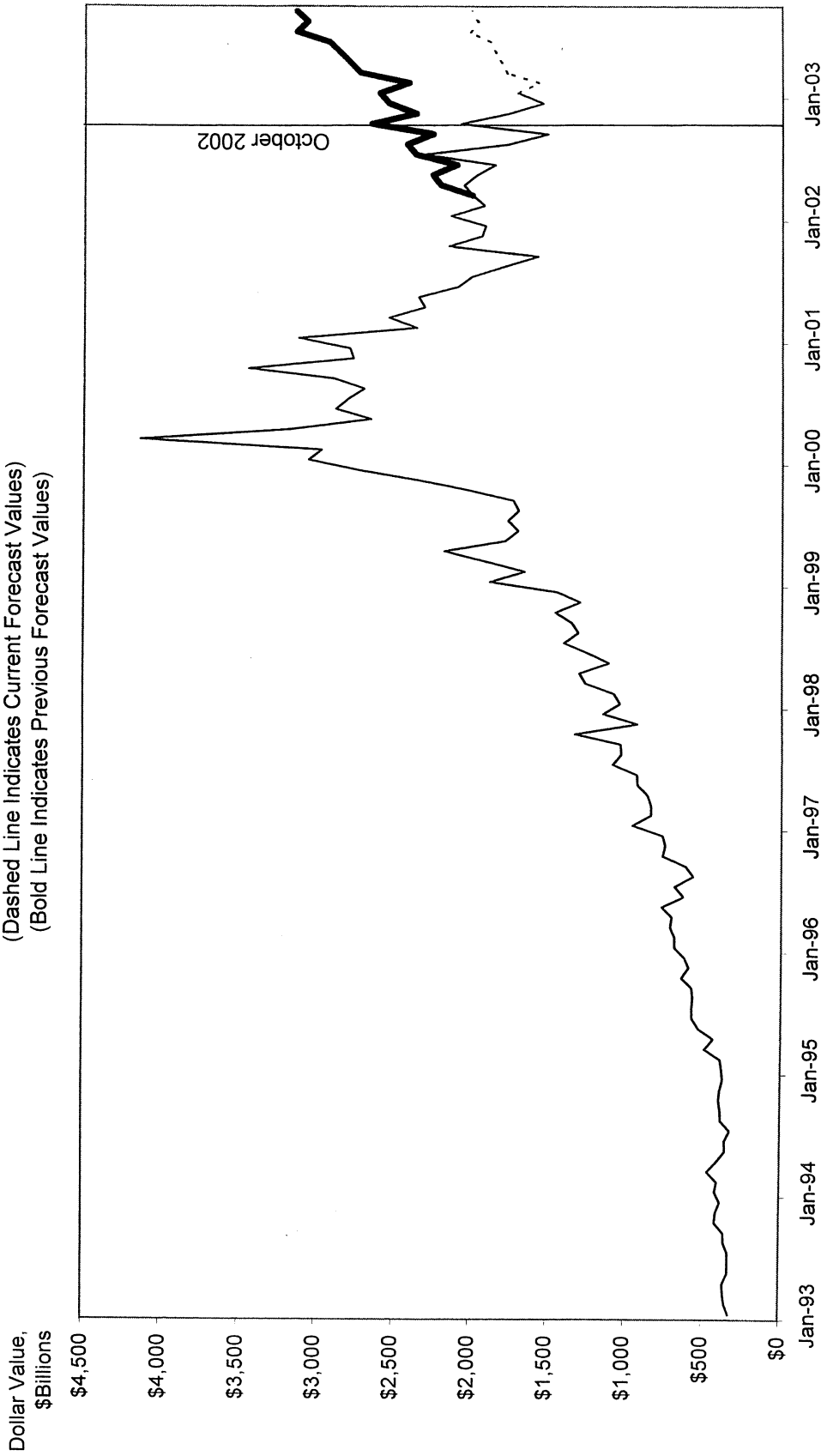
Figure A.

Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]

Methodology Developed in Consultation With OMB and CBO

(Dashed Line Indicates Current Forecast Values)

(Bold Line Indicates Previous Forecast Values)



[1] Forecasted lines are not smooth because the number of trading days varies by month.

[FR Doc. 03–5282 Filed 3–5–03; 8:45 am]

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Part IX

Department of Labor

Employment and Training Administration

20 CFR Part 625
Disaster Unemployment Assistance Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 625

RIN: 1205–AB31

Disaster Unemployment Assistance Program

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this final rule to clarify eligibility for disaster unemployment assistance (DUA) in the wake of the major disasters declared as a result of the terrorist attacks of September 11, 2001. The Department undertook emergency rulemaking and published an interim final rule on November 13, 2001, that was effective upon publication and which included a post-publication comment period to provide an opportunity for public participation in this rulemaking. This final rule takes into account the comments that were received.

DATES: The interim rule is adopted as final, effective March 6, 2003, except for amendments to §§ 625.5(c)(2) and (c)(3) which will be effective April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Betty Castillo, Division Chief, Division of Unemployment Insurance Operations, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Telephone: (202) 693–3209 (this is not a toll-free number); facsimile: (202) 693–3229; e-mail: *bcastillo@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. The Disaster Unemployment Assistance Program

Section 410(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5177(a)) sets forth the framework of the Disaster Unemployment Assistance (DUA) Program. The President is authorized by section 410(a) of the Stafford Act to provide to any individual who is unemployed as a result of a major disaster declared by the President under the Stafford Act ''such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation . . . or waiting period credit.'' Section 410(a) provides that DUA is to be furnished to individuals for no longer than 26 weeks after the major disaster is declared. (Pub. L. 107–154 amended section 410(a) of the Stafford Act to extend to 39 weeks the availability of assistance to individuals unemployed as a result of the terrorist attacks of September 11, 2001.) Furthermore, for any week of unemployment, a DUA payment (a type of unemployment compensation (UC)) is not to exceed the maximum weekly benefit amount authorized under the applicable state UC law, as specified in the Department's DUA regulations implementing section 410(a) of the Act.

The Department operates the DUA program under a delegation of authority (51 FR 4988, February 10, 1986) to the Secretary of Labor from the Director of the Federal Emergency Management Agency (FEMA). The Secretary of Labor has promulgated and published regulations for the DUA program at part 625 of title 20 of the Code of Federal Regulations. The DUA Program is administered by the states in accordance with an agreement each state has signed with the Secretary of Labor.

II. Explanation of the Interim Final Rule

On November 13, 2001 (66 FR 56960), the Department added, at § 625.5(c), a definition of the phrase ''unemployment is a direct result of the major disaster,'' used in § 625.5(a)(1) and (b)(1) for determining whether a worker's or self-employed individual's unemployment is caused by a major disaster. Section 410(a) of the Stafford Act provides, in pertinent part, that the President is authorized to provide benefit assistance to any individual ''unemployed as a result of a major disaster.'' The Department has consistently interpreted this phrase in its regulations as requiring, for DUA eligibility, that the individual's ''unemployment is a direct result of the major disaster.'' However, that phrase had never been defined in the Department's regulations. (Note that paragraphs (a)(2)–(a)(5) and (b)(2)–(b)(4) of § 625.5 also provide for other circumstances where an individual's unemployment is caused by a major disaster. However, these provisions are not relevant here.)

The terrorist attacks of September 11, 2001, resulting in declarations of major disasters in New York City and Arlington County, Virginia, were of catastrophic proportions. They presented a number of situations the regulations did not contemplate, such as the extended closure of Reagan National Airport. In order to address these types of situations, the Department defined the phrase ''unemployment is a direct result of the major disaster'' to clarify eligibility. By defining the phrase ''unemployment is a direct result of the major disaster,'' the Department ensured greater uniformity in applying the standard. This is consistent with the first and second rules of construction of § 625.1(b) and (c) of the DUA regulations, which provide that sections 410 and 423 of the Stafford Act and the implementing regulations must be construed liberally to carry out the purposes of the Act and to assure, insofar as possible, the uniform interpretation and application of the DUA provisions of the Act throughout the United States.

Definition of ''Unemployment Is a Direct Result of the Major Disaster''

In the interim final rule, the Department interpreted the phrase ''unemployment is a direct result of the major disaster'' under paragraphs (a)(1) and (b)(1) of § 625.5 to mean that an individual's unemployment must be an immediate result of the disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the major disaster. This rule also clarified that an individual's unemployment is a direct result of the major disaster if the unemployment resulted from: the physical damage or destruction of the work site; the physical inaccessibility of the work site due to a federal government closure of the work site, in immediate response to the major disaster; or lack of work, or loss of revenues, provided that the employer, or the business in the case of a self-employed individual, prior to the disaster, received at least a majority of its revenue or income from either an entity damaged or destroyed in the disaster, or an entity closed by the federal government in immediate response to the disaster. This rule simply sets forth a definition for determining whose unemployment is a direct result of a major disaster.

In the preamble discussion of the interim final rule, the Department recognized that the terrorist attacks of September 11 had a ''ripple effect'' throughout the economy, and that many businesses nationwide suffered serious declines due to the effect these disasters had on commerce. However, individuals who became unemployed as a result of the general decline in commerce in response to these major disasters were not unemployed as a ''direct result'' of the major disasters and thus were not considered eligible for DUA.

The above considerations apply equally to any major disaster. They led the Department to conclude and instruct state agencies that workers and self-employed individuals whose work site, for example, is within the presidentially-declared major disaster area yet outside the immediate disaster site, and who no longer have a job because the federal government either closed or took over the work site in immediate response to the major disaster, are potentially eligible for DUA. The interim final rule included only employees and self-employed individuals at facilities closed by the federal government in the major disaster area. (For further explanation of this issue, *see* ''Other Changes to the Final Rule'' below.) Examples of eligible individuals in the case of an airport shutdown in the major disaster area included airport employees, owners and employees of restaurants and shops located in airport terminal buildings, and workers or service providers for these and other facilities where the above conditions were met. However, workers at other airports not closed by the federal government were not considered eligible for DUA under the interim final rule. Individuals potentially eligible for DUA also included employees and self-employed individuals who could not perform services or get to their workplace not only because of physical damage to their place of employment but because a federal agency, such as FEMA, took over such site for disaster administration purposes. Similarly, because the federal government could, as an immediate emergency response to the major disaster, close certain facilities such as bridges or tunnels in the major disaster area, employees of those facilities could, therefore, be potentially eligible for DUA.

As noted above, the Department also concluded in the interim final rule that an employee or self-employed individual could be eligible for DUA if the entity in the major disaster area was closed by the government in immediate response to the major disaster or the major disaster caused physical damage to or destruction of an entity in the major disaster area which, before the major disaster, provided at least a majority of the employer's or self-employed individual's revenue or income. Where less than a majority of the employer's or self-employed individual's revenue or income came from that entity, the link to the unemployment was viewed as too tenuous to be considered direct under the regulations. Just as this test would be employed to determine whether employees of suppliers of goods or services to entities physically damaged by the major disaster may be eligible for DUA, so too would that analysis be applicable to employees of suppliers of goods or services to other entities closed or taken over by the federal government in immediate response to the major disaster. Thus, if one of those entities provided at least a majority of the revenue or income of that employer or self-employed individual, the employees of that business or that self-employed individual could be eligible for DUA.

Where it could not be established that at least a majority of the revenue or income of a business or self-employed individual was dependent upon providing goods or services to these entities, DUA eligibility must be denied. For example, a taxicab driver would be potentially eligible for DUA where a majority of his or her business depended on providing transportation services between points which included areas cordoned off because of the physical damage of the major disaster or because facilities were closed or commandeered by the federal government. On the other hand, DUA eligibility should be denied a taxicab driver who cannot establish that a majority of his or her livelihood depended on providing transportation services between points which include areas cordoned off because of either the physical damage of the major disaster or the closing or commandeering of the facilities in the major disaster area by the federal government.

Further, the interim final rule said that DUA is payable only for those weeks of unemployment during the disaster assistance period that continue to be the direct result of the major disaster. Therefore, if the state agency finds that an eligible DUA applicant's unemployment can no longer be directly attributed to the major disaster, the applicant is no longer unemployed as a direct result of the disaster and is no longer eligible for DUA.

III. Comments on the Interim Final Rule

The Department received comments on the interim final rule from a furloughed airline worker, three state workforce agencies (Iowa, Kansas, and New Jersey), three labor organizations, and five employee advocacy organizations. The three labor organizations were the American Federation of State, County, and Municipal Employees (AFSCME), the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), and the Service Employees International Union (SEIU). The five employee advocacy organizations included the Urban Justice Center, New York City, on behalf of the Chinese Staff and Worker's Association; the National Employment Law Project, New York City and Oakland, California; the Greater Boston Legal Services; the New York Taxi Workers' Alliance, New York City; and the Workforce Organizations for Regional Collaboration, Arlington, Virginia. In addition, a state senator from New York submitted a letter in support of the comments of the National Employment Law Project. The Department discusses and responds below only to those comments received that were relevant to the regulatory section we added in the interim final rule, § 625.5(c).

The furloughed airline worker submitted a comment requesting an amendment to the interim final rule to include coverage of employees of airlines affected by the government-imposed restrictions on air traffic. The Department realizes that the airline industry, as well as this individual, suffered economically as a result of the ''ripple effect'' the September 11 attacks had on the overall economy. While the Department is sympathetic to the effect the terrorist attacks had on the airline industry and others, the interim final rule was promulgated to specifically define the phrase ''unemployment as a direct result of the major disaster,'' as used in the existing DUA regulations. The Department never intended to define the phrase to include individuals unemployed due to an economic ''ripple effect'' of a major disaster, as this would inappropriately broaden the rule's scope to include individuals indirectly affected by the disaster. In drafting the interim final rule, the Department did take into account the fact that certain individuals and businesses located outside the disaster area could be severely affected by the loss of economic activity within the disaster area. Therefore, the phrase ''unemployment as a direct result of the major disaster'' is defined to include self-employed individuals, as well as employees of businesses, suffering from unemployment because their employers or businesses received, before the disaster, more than fifty percent of revenues from businesses damaged, destroyed, or closed by the government within the major disaster area. The regulation, however, was never intended to cover all of the possible economic effects of a disaster.

Comments From State Workforce Agencies

All the comments from the state workforce agencies, and nearly all the labor organizations and worker advocacy groups, complimented the Department for the provisions included in the interim final rule. The Kansas agency supported the amendment made by the interim final rule. Likewise, the Iowa agency supported the amendment, focusing particularly on how the rule would likely help small businesses in Iowa that serve farmers affected by major disasters.

The New Jersey agency also supported the amendment but requested a broadening of the rule to ensure DUA eligibility for individuals not generally eligible for regular UC. Specifically, New Jersey suggested that individuals who worked exclusively out of an airport, such as limousine drivers, would be excluded from DUA eligibility unless the airport was closed or taken over by the government. While that may be true, the Department notes that the amendment expands the coverage for DUA to include the unemployment of employees and self-employed individuals where, before the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster. Thus, if a limousine driver lost the majority of his or her business due to the government closing an airport, or if the driver obtained the majority of his or her income from serving guests at hotels and the hotels were closed because of a major disaster, then the individual would be potentially eligible for DUA. The Department recognizes that the amendment is more restrictive than New Jersey advocates. However, the Department chose not to broaden the scope of the rule as this would overextend the rule's coverage to include individuals indirectly injured by the major disaster, such as workers secondarily affected by the economic ''ripple effect'' after the terrorist attacks of September 11, 2001, as discussed above with regard to the airline industry.

Comments From Labor and Employee Advocacy Organizations

Nearly all of the comments from labor and employee organizations advocated an expansion of the DUA program to reach more workers. The three labor organizations and the five employee advocacy organizations, along with a New York state senator, submitted nearly identical comments on one or more of the following issues:

1. Workers otherwise covered by DUA should not be denied DUA when the order rendering the business inaccessible is issued by a private or public/governmental entity other than the federal government in response to security concerns or the provision of services related to a disaster.

2. Workers unemployed because their company did business with an entity damaged or destroyed by the disaster should receive DUA when the loss of revenue from the company ''contributed importantly'' or ''contributed significantly'' (rather than losing the majority of one's income) to the employer's decision (or self-employed individual's decision) to order a layoff or reduce hours of work.

3. The regulations should abandon the requirement that a worker, initially determined as separated from work due to the disaster, must establish on a weekly basis that his or her unemployment is still the direct result of the disaster.

4. Because the interim final rule expanded coverage and was a shift in policy, any workers who had been denied DUA prior to the publication of the interim final rule, as well as all individuals filing for DUA after the rule's publication should be entitled to receive DUA retroactively.

In addition, the AFL–CIO argued that the regulations should provide that a worker's immigration status is immaterial to DUA eligibility. The AFL–CIO also advocated expanding DUA eligibility to include individuals employed in areas near, but not specifically designated as, disaster areas.

The Department agrees, in part, with the first proposal to amend § 625.5(c) to cover workers due to business closures by private or public and governmental entities in the major disaster area in response to security concerns or the provision of services related to that disaster. The interim final rule added paragraphs (c)(2) and (c)(3) to § 625.5 which expanded the circumstances under which individuals would be considered unemployed as a direct result of the disaster. The Department intended that individuals would be covered if their unemployment resulted from their place of employment in the major disaster area being closed or taken over by the federal government in immediate response to that disaster, or where, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in that disaster, or an entity in the major disaster area was closed by the federal government, in immediate response to that disaster resulting in lack of work or loss of revenues. A major reason for adopting these provisions was that, as far as the Department knows, there had never been a disaster situation where the federal government, as a result of the disaster, closed facilities separate and apart from the actual disaster site. The Department wanted to ensure that individuals unemployed at those sites due to a federal closure were considered unemployed as a direct result of the major disaster. In all major disasters, geographic areas within a state (generally counties and sometimes cities) are designated as the major disaster areas. The Department has consistently held that state and local governments' decisions affecting the closure of businesses and the health and safety of individuals determine whether individuals are unemployed as a direct result of the major disaster. For example, if a city waste treatment facility were flooded and the city ordered certain businesses in an area of the city to close because the waste treatment facility was not functioning as a result of the disaster, the Department would conclude that out-of-work individuals from those businesses were unemployed as a direct result of the disaster. The Department did not intend to suggest that the rights of state and local governments to manage disasters in their jurisdictions were limited by this regulation, which defines unemployment as a direct result of the disaster. Consequently, in order to be clear that the amendment covers such government closings, the Department has revised § 625.5(c)(2) and (c)(3) to include closures by the federal, state, or local government.

The Department, however, does not believe it sensible to add businesses closed by private entities, unless such entities were advised or required by governmental agencies to close for health or safety reasons related to the disaster. Indeed, while a private entity could decide to close down its operations for any reason, only governmental agencies have authority to force a closure of facilities or businesses due to a disaster, usually to protect the health and safety of the populace. Given that government agencies are vested with such responsibility, the Department believes it best to limit coverage to individuals unemployed

due to governmental actions or recommendations designed to protect the public's health and safety, as opposed to purely private closures.

The Department declines to accept the second proposal to amend § 625.5(c) to consider an individual unemployed due to the major disaster if that individual's loss of income ''contributed importantly'' or ''contributed significantly'' to his or her unemployment rather than as provided in the regulation, which requires that an individual received at least a majority of his or her revenue or income from the entity that was damaged, destroyed, or closed by the federal government. The genesis of this majority of revenue or income test came in the form of a 1994 Advanced Notice of Proposed Rulemaking (59 FR 63670, 63672), where, for purposes of § 625.5(a)(1), (a)(3), (b)(1) and (b)(3), the Department proposed that a worker or self-employed individual was considered unemployed due to the disaster where (s)he was unable to perform more than 50 percent of his or her usual and customary services that were being performed prior to the major disaster because sales to customers coming to the job site or work location were substantially reduced as a direct result of the major disaster. While this interpretation was never adopted as a regulation, the Department did apply it informally on a case-by-case basis. The Department then revised and formalized this interpretation in the interim final rule to include such unemployment due to lack of work, or loss of revenues, where prior to the disaster the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in that disaster, or an entity in the major disaster area closed by the federal government in immediate response to that disaster.

This majority of income or revenue test is a defined amount, can be determined with a good degree of accuracy, utilizes a simple calculation, and is an equitable standard applicable to all claimants. On the other hand, the terms ''contributed importantly'' or ''contributed significantly'' do not easily translate into a quantifiable amount, thus lacking the relative ease and certitude of the majority of income or revenue test. Adopting such subjective criteria would be administratively difficult for state workforce agencies dealing with the exigencies of a disaster to implement. While such a ''contributed importantly'' test is used under the Department's Trade Act programs (19 U.S.C. 2272(a)(3) and 2331(a)), the authorizing statute permits the agency 60 days under the Trade Act and 30 days under the expiring North American Free Trade Agreement transitional adjustment assistance program to make this determination (19 U.S.C. 2273(a) and 2331(c)(1)), and the recent amendments to the Trade Act now change that time period to 40 days. Trade Act of 2002, Public Law 107–210, section 112(b). Under DUA, however, the Department believes that a bright line test is necessary to ensure benefit determinations can be made quickly so assistance can be given out expeditiously to those in need. Furthermore, several of the comments criticized this ''majority of income or revenue'' standard in the interim final rule as burdensome on claimants because it limits them to producing tax and financial documents. The Department disagrees and notes that all evidence (*e.g.*, affidavits, employer statements, and other credible evidence) will be considered in establishing a claim and not only typical financial records. Thus, the Department believes that the ''majority of income or revenue'' test is fair and provides a more workable standard.

The Department also declines to adopt comment three to amend § 625.5(c) to eliminate the requirement for establishing on a weekly basis that a claimant's unemployment is still the direct result of the major disaster. Those advocating this comment believe that eliminating this requirement would make DUA more like the regular UC program, in that once a claimant qualifies for benefits (s)he no longer is required to establish that the unemployment is a result of the original layoff or separation. However, the Department notes that this weekly requirement follows the statutory requirements of section 410(a) of the Stafford Act whereby ''[t]he President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation.'' 42 U.S.C. 5177(a). The Department cannot adopt this proposal as it contravenes the DUA authorizing statute, which establishes eligibility for benefits on a weekly basis.

Comment four on the retroactive payment of DUA did not propose a change to § 625.5(c) but instead addressed the administration of the new DUA regulatory provision. While advocates for comment four requested retroactive benefits due to the change in DUA eligibility, several commenters also requested aggressive publicity of these new eligibility rules. In response to these comments, the Department notes that it advised the state agencies in New York and Virginia, in a memorandum before publication of the interim final rule, of the Department's position on both retroactive and partial payments and that individuals could be eligible in accordance with the yet unpublished rule. Thus, the Department made it clear that New York and Virginia were to apply the principles of this rule to all claims arising out of the September 11 terrorist attacks. New York, for example, made significant efforts to publicize DUA eligibility criteria using various media in several different languages.

Lastly, the AFL-CIO made two separate comments. They proposed paying DUA to all aliens, whether legally in the United States or not. However, the Department cannot adopt this proposal due to limitations placed on the DUA program by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Section 432 of the PRWORA (Pub. L. 104–193), as amended, provides that only aliens falling within the definition of ''qualified aliens'' are eligible for federal public benefits, which include benefits under the DUA program. Therefore, DUA payments to other than qualified aliens are prohibited.

The AFL-CIO also advocated expanding DUA eligibility to include areas close to, but not specifically designated as, major disaster areas. They posited that workers in the District of Columbia who were adjacent to the disaster area in Arlington, Virginia were ineligible for DUA even though they may have been negatively affected by the disaster. The AFL-CIO suggests broadening coverage because the disaster hurt, in a general way, the District of Columbia's economy, so that the unemployed in DC should be eligible to receive DUA. The Department has sought to limit coverage to a ''direct result'' of the disaster, since the ''ripple effect'' on the DC economy and other adjacent jurisdictions would be endless. The Department notes that the interim final rule at § 624.5(c)(3) allows for the coverage of individuals outside the major disaster area when they can establish that a majority of their income or business revenue came from an entity in the major disaster area either damaged or destroyed in the disaster, or closed by the federal government in immediate response to the disaster. Thus, an independent contractor in Washington, DC, who lost a majority of its income due to the Pentagon attack or

closure of Reagan National Airport, could potentially be eligible for DUA as could a DC taxi driver, the majority of whose revenue came from trips to and from Reagan National Airport.

Other Changes to the Final Rule

The Department notes that it erred in its initial description of the interim final rule when, after describing the limited scope of the rule, it said considerations led ''the Department to conclude that workers and self-employed individuals whose work site, for example, is outside a major disaster area, and who no longer have a job because the federal government either closed or took over the job site in response to the major disaster, are potentially eligible for DUA.'' (66 FR 56961.) This statement is wrong since the rule was never intended to cover the physical inaccessibility to a place of employment or the lack of work or loss of revenues due to damage, destruction or the closure of entities located outside the major disaster area. As noted earlier in this preamble and as demonstrated by the Department's subsequent implementation of the rule after publication, what was meant was not a place of employment or entity located ''outside the major disaster area'' as that term is defined in the regulations, but instead a place of employment or entity located ''outside the major disaster site'' (i.e., the actual area damaged by the disaster and not the broader jurisdiction, such as a county or city, that is typically designated the major disaster area), but within the major disaster area.

As the interim final rule's example on taxi drivers and its reference to the closure of Reagan National Airport after the terrorist attacks make clear, the Department intended to cover individuals whose place of employment was located within the major disaster area but which may not have been located at the actual disaster site. Thus, individuals unemployed due to lack of work, or loss of revenues, would be eligible, provided that prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

Since publication of the interim final rule, the Department has acted consistently with this interpretation. Indeed, the state agency, in accordance with our interpretation, denied benefits to Maryland airport workers unemployed due to the federal government's closure of municipal airports in the Washington, DC Metropolitan Area, because their place of employment was outside the declared major disaster areas of Arlington, Virginia, and New York City. Moreover, these employees and self-employed individuals did not have employers or businesses that received a majority of income or revenues from an entity that was either damaged or destroyed in the disaster (e.g., the Pentagon), or an entity in the major disaster area closed by the government in immediate response to the disaster (e.g., Reagan National Airport). Therefore, these individuals were ineligible to receive benefits in accordance with the Department's interpretation. Consequently, in order to correct the error in the preamble of the interim final rule and to clarify the Department's interpretation, the Department has revised § 625.5(c)(2) and (c)(3) to include the phrase ''in the major disaster area'' when referencing the place of employment and entities described in those sections.

Effective Date

Because no changes were made to the interim final rule other than to § 625.5(c)(2) and (c)(3), the Department has determined that this final rule will be effective upon publication, except for § 625.5(c)(2) and (c)(3) which will be effective 30 days after publication.

Executive Order 12866

This final rule is a ''significant regulatory action'' within the meaning of Executive Order 12866 because it meets the criteria of section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this rule was submitted to, and reviewed by, the Office of Management and Budget. It is not ''economically significant'' within the meaning of section 3(f)(1) of that Executive Order because it will not have an annual effect on the economy of $100 million or more. Rather, the Department estimates the cost of benefits under this rule for the major disasters of September 11, 2001, to be $2.205 million and, therefore, projects that the annual cost of benefits under this rule will be far less than $100 million.

The Department has evaluated the rule and finds it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. The rule will not impact states and state agencies in a material way because it would not impose any new requirements on states. Instead, the final rule simply clarifies the rules that states use to determine the eligibility of individuals affected by these new types of disasters now affecting the nation, such as the terrorist attacks of September 11, 2001. Also, the federal government entirely finances DUA benefits.

Paperwork Reduction Act

The Department has determined that this final rule contains no new information collection requirements. The existing information collection requirements are approved under Office of Management and Budget control number 1205–0051.

Executive Order 13132

The Department has reviewed this final rule in accordance with Executive Order 13132 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict states' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. Because this is a federal benefit program, the Department has determined that the rule does not have federalism implications.

Executive Order 12988

The Department drafted and reviewed this rule in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

The Department has reviewed this final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. The Department has determined that this rule does not include any federal mandate that may result in increased expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Regulatory Flexibility Act

The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth the terms under which states and state agencies, which are not within the

definition of ''small entity'' under 5 U.S.C. 601(6), will pay federal benefits. Benefits provided under section 410(a) of the Stafford Act are fully funded by the federal government. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

The Department certifies that this final rule has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by providing benefits to more individuals whose households have been affected by major disasters.

Small Business Regulatory Enforcement Fairness Act of 1996 and Congressional Notification

The Department has determined that this final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. With regard to the revised sections of the final rule, the Department will submit to each House of Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date of the rule, which will note that this rule does not constitute a ''major rule'' for purposes of this Act.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, ''Disaster Unemployment Assistance (DUA).''

List of Subjects in 20 CFR Part 625

Disaster assistance, Labor, and Unemployment compensation.

Words of Issuance

Accordingly, the interim final rule amending part 625 of chapter V of title 20, Code of Federal Regulations, which was published at 66 FR 56960 on November 13, 2001, is adopted as a final rule with the following changes to § 625.5(c)(2) and (c)(3):

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority for part 625 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4–75 (40 FR 18515).

2. Section 625.5(c)(1) is republished, and paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 625.5 Unemployment caused by a major disaster.

* * * * *

(c) *Unemployment is a direct result of the major disaster.* For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

(1) the physical damage or destruction of the place of employment;

(2) the physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or

(3) lack of work, or loss of revenues, provided that, prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

Signed at Washington, DC, on February 27, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 03–5271 Filed 3–5–03; 8:45 am]

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Federal Register

Thursday,
March 6, 2003

Part X

Department of Labor

Mine Safety and Health Administration

Department of Health and Human Services

Centers for Disease Control and Prevention

30 CFR Part 72

Determination of Concentration of Responsible Coal Mine Dust; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

30 CFR Part 72

RIN 1219–AB18

Determination of Concentration of Respirable Coal Mine Dust

AGENCIES: Mine Safety and Health Administration (MSHA), Department of Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services (DHHS).

ACTION: Proposed rule; reopening of record; request for comments; notice of public hearings; correction; close of record.

SUMMARY: The Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) are reopening the rulemaking record on a joint proposed rule that would determine that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries proposed to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single shift sampling.

The Secretaries are reopening the rulemaking record to provide interested parties an additional opportunity to comment on any issue relevant to the July 2000 proposed rule; and to solicit comment on new data and information added to the record.

DATES: We must receive your comments on or before June 4, 2003.

The Agencies are also announcing that they will hold public hearings on this reopening notice. The hearing dates and times will be announced by a separate document in the **Federal Register**.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to *comments@msha.gov*, by facsimile to (202) 693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. You may contact MSHA with any format questions. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.*

This document is also available on MSHA's webpage at http://*www.msha.gov,* under Statutory and Regulatory Information; **Federal Register** Documents; Proposed Rules. You can view comments filed on this rulemaking at *http://www.msha.gov/currentcomments.htm.*

SUPPLEMENTARY INFORMATION: In accordance with sections 101 and 202(f) of the Federal Mine Safety and Health Act of 1977 (Mine Act), this document is published jointly by the Secretary of the Department of Labor, and the Secretary of Health and Human Services.

This document should be read in conjunction with: (1) The July 7, 2000 notice of proposed rulemaking (63 FR 42068) addressing ''Determination of Concentration of Respirable Coal Mine Dust, ''Single Sample''; and (2) the notice of proposed rulemaking addressing Verification of Underground Coal Mine Operator's Dust Control Plans, ''Plan Verification,'' 1219–AB14, published in today's **Federal Register**, and (3) the associated Preliminary Regulatory Economic Analysis (PREA) available on MSHA's webpage. The plan verification rule would require operators to verify that the dust controls specified in the ventilation plan protect miners from overexposure during normal operations.

In addition to this rulemaking, today's **Federal Register** contains the Plan Verification notice of proposed rulemaking, (NPRM). In combination, these rules represent MSHA's revised program to meet the Mine Act's requirement that a miners' exposure to respirable coal mine dust be maintained at or below the applicable standard on each shift.

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I. Introduction

This reopening notice includes supplemental information which updates the preamble of the July 7, 2002 notice of proposed rulemaking. This information concerns the background, MSHA's current enforcement policy, health effects, quantitative risk assessment, technological feasibility, economic feasibility, compliance costs and benefits, and the list of references and supporting documentation.

The Agencies organized the July 2000 proposed rule (65 FR 42068) to allow interested persons to first consider pertinent material on the Agencies' 1972 notice followed by an overview of the NIOSH mission and assessment of the proposed rule, as well as those aspects of MSHA's coal mine respirable dust program relevant to this proposed rule. Following the introductory material is a discussion of the ''measurement objective,'' or what the Secretaries intend to measure with a single sample measurement, and the application of the NIOSH Accuracy Criterion for determining whether a single sample measurement will ''accurately represent'' the full-shift atmospheric dust concentration. Next, the validity of the sampling process is addressed, including the performance of the approved sampler unit, sample collection procedures, and sample processing. The concept of measurement uncertainty is then addressed, and why sources of dust concentration variability and various other factors are not relevant to the proposed rule. In addition, the 2000 proposed rule summarized the health effects of occupational exposure to respirable coal mine dust and presented MSHA's quantitative risk assessment. Finally, the 2000 proposed rule explained how the total measurement uncertainty is quantified, and how the accuracy of a single sample measurement meets the NIOSH Accuracy Criterion. Several Appendices, which contain relevant technical information, are attached and incorporated in the preamble to the 2000 proposed rule.

The Secretaries are interested in further comment on all issues relevant to the July 7, 2000 NPRM. The July 7, 2000 NPRM is available on MSHA's webpage at *http://www.msha.gov*, under Statutory and Regulatory Information, **Federal Register** Documents, Proposed Rules; or you may contact MSHA at 202–693–9440 for a copy.

The proposed rule, ''Determination of Concentration of Respirable Coal Mine Dust,'' has been referred to as ''Single, Full-Shift Sampling'' based on the Agencies' finding that a single, full-shift measurement would, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed. However, where appropriate, the term ''single, full-shift sample,'' will now be referred to as ''single sample'' in this document and any subsequent publications. This reopening notice does not change the actual finding as published in the July 7, 2000 **Federal Register**.

II. Background

In 1972, the Secretary of Interior and the Secretary of Health, Education, and Welfare issued a ''joint finding'' under the Federal Coal Mine Health and Safety Act of 1969. The finding concluded that a single, full-shift measurement of respirable dust would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed.

In 1994, the Secretary of Labor and the Secretary of Health and Human Services tentatively concluded that the 1972 joint finding was incorrect. Therefore, on February 18, 1994, the Secretaries published a proposed Joint Notice of Finding in the **Federal Register** (59 FR 8537). The Joint Notice proposed to rescind the 1972 finding and, instead, to find that a single, full-shift measurement *will* accurately represent the atmospheric conditions with regard to the respirable dust concentration during the shift on which it was taken. Concurrently, on February 18, 1994 (59 FR 8356) MSHA published a separate **Federal Register** document announcing how MSHA intended to use both single, full-shift samples and the average of multiple, full-shift samples for noncompliance determinations, and solicited public comment on the proposed enforcement procedure.

On February 3, 1998, MSHA and the National Institute for Occupational Safety and Health (NIOSH) published a final Joint Notice of Finding in the **Federal Register**, along with MSHA's enforcement policy implementing the joint finding (63 FR 5664 and 5687 respectively).

In May 1998, the National Mining Association and the Alabama Coal Association petitioned the United States Court of Appeals for the 11th Circuit to review the 1998 Notice of Finding. On September 4, 1998, the 11th Circuit issued a final decision and order vacating the Joint Finding on the grounds that the Agencies failed to comply with all the requirements for a health standard under section 101(a)(6)(A) of the Mine Act (30 U.S.C. 811(a)(6)(A)).

In response to the Court's ruling, on July 7, 2000, the Secretaries published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM), Determination of Concentration of Respirable Coal Mine Dust (Single Sample) (65 FR 42068). In that document, the Secretaries proposed a new mandatory health standard in 30 CFR part 72 that stated that a single, full-shift measurement would accurately represent atmospheric conditions to which a miner is exposed during such shift. The proposed rule would rescind the 1972 Joint Notice of Finding.

During August 2000, three public hearings were conducted. Transcripts of those proceedings are available to the public (*www.msha.gov*, under Statutory and Regulatory Information).

III. MSHA's Current Enforcement Policy

The Federal Mine Safety and Health Review Commission's decision in *MSHA* v. *Excel,* 23 FMSHRC 600 (June 2001) precluded MSHA from citing an operator on the average of multiple samples collected by an inspector on a single shift. This decision affirmed an Administrative Law Judge dismissal of three citations alleging violations of the respirable dust standard based on the average of multiple inspector samples taken on a single shift. The Secretary's appeal of the Commission's decision is now pending before the D.C. Circuit Court of Appeals (D.C. Cir. No. 01–1335). Oral argument was held on October 7, 2002. In August 2001, MSHA ceased issuing citations on the average of multiple samples taken on a single shift pending a resolution of the appeal. Currently, all noncompliance determinations are based on the average of multi-shift sample results. Because this change has taken place since publication of the July 7, 2000 NPRM, references to enforcement action based on the average of multiple samples taken by inspectors on a single shift no longer reflect MSHA's current enforcement policy. The promulgation of the Single Sample rule would address the 1972 Finding and the consequences of the June 2001 Commission decision.

IV. Revisions To Update Data for the Rulemaking Record

The Agencies also solicit comments on revised information to update the rulemaking record which address the following:

(a) Health Effects

(Please see Section VII, 65 FR 42075, of the July 7, 2000 notice of proposed rulemaking for a complete discussion of Health Effects). The following provides an update on the Miners' Choice Program.

MSHA and NIOSH implemented the Miners' Choice Health Screening Program (Miners' Choice) in October 1999. The Miners' Choice program and Coal Workers' X-Ray Surveillance Program (CWXSP) identify cases of simple and complicated pneumoconiosis, including coal workers' pneumoconiosis and silicosis—hereafter referred to as ''CWP.'' All of the Miners' Choice x-rays were processed using the same procedures and criteria used in the CWXSP in accordance with the requirements of 42 CFR part 37.

MSHA and NIOSH are conducting preliminary analyses of the first three years of the Miners' Choice program. These data and analyses are being handled, conducted, and reported pursuant to the DOL's and DHHS's respective Information Quality Guidelines.[1] Preliminary analyses of these data are expected in Spring 2003. The analyses will be made available to commenters through the MSHA and NIOSH Web sites, *www.msha.gov* and *www.cdc.gov/niosh/homepage.html*, respectively.

As of the end of fiscal year 2002, more than 19,500 active coal miners from 20 states voluntarily participated in Miners' Choice. The overall CWP prevalence rate for radiographic categories of simple CWP categories 1, 2, 3, and PMF combined was 2.8% (546/19,517) among miners examined in Miners' Choice during the 2000–2002 period. This is similar to the CWP prevalence rate of 2.25% for initial participants in the Miners' Choice Program reported in the 2000 NPRM (65 FR 42100). Among Miners' Choice participants, the CWP prevalence rate was higher among underground coal miners at 3.8% (356/9,265), than it was for surface coal miners, 1.8% (188/10,184). The CWP prevalence rate for independent contractors was 2.9% (2/68). These findings show that CWP continues to occur among coal miners working under the current program to

[1] Specifically, the information is maintained in a confidential manner, all methodologies for data processing are transparent, and all available records were included. This information is reliable and accurate, and is presented in a clear and objective manner, as required by the Department of Labor's Information Quality Guidelines and the Department of Health and Human Services' Guidelines for Ensuring the Quality of Information Disseminated to the Public.

control respirable coal mine dust, including quartz.

(b) Quantitative Risk Assessment

The Quantitative Risk Assessment (QRA) in support of this rule has been updated to reflect more current data on the pattern of overexposures to respirable coal mine dust. The new data replaces some of the original information used to derive the risk estimates for the Single, Full-Shift Sample (65 FR 42068) and Plan Verification (65 FR 42122) Notice of Proposed Rulemakings. The updated analysis of risk provides the best available evidence pursuant to the requirements of section 101(a)(6)(A) of the Mine Act. Please refer to section VI. of the July 7, 2000 (63 FR 42123) notice of proposed rulemaking for the previous discussion of the QRA.

In this quantitative risk assessment (QRA), MSHA will demonstrate that eliminating overexposures on each and every shift would, over a 45-year occupational lifetime, significantly reduce the cumulative exposure to respirable coal mine dust, thereby reducing the risk of both simple CWP and PMF among miners. This reduction in risk would be attributed to reducing concentrations on just that percentage of shifts currently exhibiting a pattern of recurrent overexposure.

MSHA has estimated health benefits of the two rules based on eliminating excessive exposures at only those MMUs and roofbolter designated areas (RB–DAs) currently exhibiting a pattern of recurrent overexposures on individual shifts. In the previous proposed rule, MSHA used operator sampling data from the year 1999 to identify and characterize such MMUs. In the current proposed rule, MSHA has updated the analysis to 2001, included MSHA DO sampling data in addition to operator data, and expanded the quantitative analysis to include the reduction in risk expected for certain miners not previously considered (*i.e.,* miners working in RB–DAs). As a result, MSHA believes it has more accurately quantified the expected reduction in risk for the most exposed miner population currently subjected to recurrent overexposures.

By ''exhibiting a pattern of recurrent overexposures,'' MSHA means that, for the same DO (MMU) or RB–DA, at least two valid MSHA or operator bimonthly samples exceeded the applicable standard in a given year. MMUs exhibiting such a pattern are highly likely to have experienced excessive exposures on at least six shifts during the year under consideration.[2]

Based on 2001 MSHA and operator data, there were 716 MMUs (out of 1,256 total) at which dust concentrations for the DO exceeded the applicable standard on at least two of the sampling shifts (MSHA, datafile: DO_2001.ZIP). MSHA considers these 716 MMUs, representing 57 percent of all MMUs and more than one-half of all underground coal miners working in production areas, to have exhibited a pattern of recurrent overexposures. Valid DO samples were collected on a total of 20,905 shifts at these 716 MMUs, and the applicable standard was exceeded on 4,028 of these shifts, or 19.3 percent. For this 19.3 percent, the mean excess above the standard, as measured for the DO only, was 1.04 mg/m^3.

These results are based on a large number of shifts (an average of nearly 30 at each of the 716 MMUs). Therefore, assuming representative operating conditions on these shifts, the results can be extrapolated to all production shifts, including those that were not sampled, at these same 716 MMUs. With 99-percent confidence, the overall percentage of production shifts on which the DO sample exceeded the standard was between 18.6 percent and 20.0 percent for 2001. At the same confidence level, again assuming representative operating conditions, the overall mean excess on noncompliant shifts at these MMUs was between 0.96 mg/m^3 and 1.11 mg/m^3. If, as some commenters on the earlier single sample proposed rule and the Dust Advisory Committee proceedings have alleged, operators tend to reduce production and/or increase dust controls on sampled shifts, then the true values could be higher than even the upper endpoints of these 99-percent confidence intervals.

The available data suggest that, unless changes are made to bring dust concentrations down to at or below the dust standard on every shift, the same general pattern of overexposures observed in 2001 will persist into the future.[3] Therefore, MSHA concludes that without the proposed changes:

- More than half of all MMUs would continue to have a pattern of recurrent overexposures on individual shifts;
- At those MMUs with recurrent overexposures, average respirable dust concentrations for the DO would continue to exceed the applicable standards on about 20 percent of all production shifts;
- Among those shifts on which DO exposure exceeds the applicable standards, the mean excess for the DO would continue to be approximately 1 mg/m^3.

If all overexposures on individual shifts are eliminated, the reduction in total respirable coal mine dust inhaled by a miner over a working lifetime will depend on three factors: (1) The average volume of air inhaled on each shift that would otherwise have exceeded the applicable standard, (2) the degree of reduction in respirable dust concentration in the air inhaled on such shifts, and (3) the number of such shifts per working lifetime. While the inhaled dose (mg) could not be measured directly, it is biologically and quantitatively related to the accumulated exposure (*i.e.,* airborne concentration multiplied by duration, summed across jobs for each miner) used to predict CWP and PMF prevalences in the Attfield-Seixas models used in this QRA. If a miner inhales ten cubic meters of air on a shift (U.S. EPA, 1980), reducing the respirable coal mine dust concentration in that air by 1.04 mg/m^3 will result in 10.4 mg less dust inhaled on that shift alone. Assuming the miner works 240 shifts per year, then reducing inhaled respirable dust by an average of 10.4 mg on 19.3 percent of the shifts will reduce the total respirable coal mine dust inhaled by 482 mg per year, or nearly 22,000 mg over a 45-year working lifetime:

1.04 mg less respirable coal mine dust per m^3 of inhaled air
$\times$ 10 m^3 inhaled air per shift
$\times$ 46.32 affected shifts (*i.e.,* 19.3% of 240) per work year
$\times$ 45 work years per working lifetime
= 21,678 mg less respirable coal mine dust inhaled per working lifetime.

In Section V, the strengths and weaknesses of various epidemiological

[2] MSHA estimates an MMU average of 384 production shifts per year. At MMUs exhibiting a pattern of recurrent overexposures in 2001, valid DO samples were obtained on an average of about 30 of these 384 production shifts. If dust concentrations on two or more of the sampled shifts exceed the standard, then it follows, at a 95-percent confidence level, that the standard is exceeded on at least six shifts over the full year.

If a different definition of ''exhibiting a recurrent pattern of overexposures'' had been used in the QRA, the estimate of the reduction in risk and associated benefits would have been different. For example, if the criterion were that four or more bimonthly DO exposure measurements exceeded the applicable standard then overexposures would be expected, with 95% confidence, to occur on at least 20 shifts in a year of 384 shifts. Using more than two recorded overexposures as the criterion would arbitrarily reduce the population for which MSHA is estimating benefits and decrease the estimated number of prevented cases.

[3] Appendix VI.1 compares the pattern observed in 2001 to that in earlier years.

studies were presented, supporting the selection of Attfield and Seixas (1995) as the study that provides the best available estimate of material health impairment with respect to CWP. Two strengths of this study are its quantitative description of exposure-response among both miners and ex-miners (who had worked as miners for approximately 13–40 years) and the fact that it reflects recent conditions experienced by coal miners in the U.S. Using the exposure-response relationship it is possible to estimate the health impact of bringing dust concentrations down to or below the applicable standard on every shift. This is the only contemporary epidemiological study of CWP in U.S. miners providing such a relationship.

Attfield and Seixas (op cit) used two or three B readers to identify the profusion of opacities based on the ILO classification scheme.[4] The most inclusive category defined in their paper was CWP 1+, which include simple CWP categories 1, 2, and 3, as well as PMF. The second category CWP 2+, does not include simple CWP, category 1, but does include the more severe simple CWP categories, 2 and 3, as well as PMF. The third category used in their report was PMF, denoting any category (A, B, or C) of large opacities. The authors applied logistic regression models to the prevalence of CWP 1+, CWP 2+, and PMF as a function of accumulated coal mine exposure calculated for each miner included in the study. In the absence of data differentiating the inhalation rates of individual miners, the accumulated exposures in these models were expressed in units of mg-yr/m^3.

At the MMUs being considered (those exhibiting a pattern of recurrent overexposures), bringing dust concentrations down to no more than the applicable standard on each and every production shift would reduce DO exposures on the affected shifts by an average of 1.04 mg/m^3. Assuming this average reduction applies to only 19.3 percent of the shifts, the effect would be to reduce cumulative exposure, for each miner exposed at or above the DO level, by 0.20 mg-yr/m^3 over the course of a working year (i.e., 19.3 percent of shifts in one year, times 1.04 mg/m^3 per shift). Therefore, over a 45-year working lifetime, the benefit to each affected miner would, on average, amount to a reduction in accumulated exposure of approximately 9.0 mg-yr/m^3 (i.e., 45 years times 0.20 mg-yr/m^3 per year). If, as some miners have testified, operator dust samples submitted to MSHA tend to under-represent the frequency or magnitude (or both) of individual full-shift excursions above the applicable standard, then eliminating such excursions would provide a lifetime reduction of even greater than 9.0 mg-yr/m^3 for each affected miner.

The Attfield-Seixas models predict the prevalence of CWP 1+, CWP 2+, and PMF for miners who have accumulated a given amount of exposure, expressed in units of mg-yr/m^3, by the time they attain a specified age. Benefits of reducing cumulative exposure can be estimated by calculating the difference between predictions with and without the reduction. For example, suppose a miner at one of the MMUs under consideration begins work at age 20 and retires at age 65. At these MMUs, the mean DO concentration reported in 2001 was 1.15 mg/m^3; so, after 45 years, a miner exposed at this level can be expected to have accumulated a total exposure of nearly 52 mg-yr/m^3 (*i.e.*, 45 yr $\times$ 1.15 mg/m^3). By the year of retirement, such a miner is expected to accumulate, on average, 9.0 mg-yr/m^3 less exposure if individual shift excursions are eliminated. For 65-year-old miners, reducing an accumulated total dust exposure of 52 mg-yr/m^3 by 9.0 mg-yr/m^3 reduces the predicted prevalence of ''CWP 1+'' by more than 16 per thousand (see the entry for affected DO miners in Table VI–1).[5]

This result, however, applies only to DO miners at age 65. The Attfield-Seixas models provide different predictions for each year of age that a miner attains. The predicted benefit turns out to be smaller for younger miners and larger for older miners. This is partly because younger miners will have accumulated less exposure reduction as a result of the single sample and plan verification proposals, and partly because the Attfield-Seixas models depend directly on age as well as on cumulative exposure. The health effects of recurrent overexposures can occur long after the overexposures occurred. Even after a miner retires and is no longer exposed to respirable coal mine dust, the additional risk attributable to an extra 9.0 mg-year/m^3, accumulated earlier, continues to increase with age. Consequently, the benefit to be gained from eliminating individual shift excursions also continues to increase after a miner is no longer exposed. For example, assuming no additional exposure after age 65, the predicted reduction in average prevalence of CWP 1+ increases from 16.6 per thousand at age 65 to 21.4 per thousand at age 70. Presumably, the increasingly greater predicted reduction in risk of disease after age 65 is due to the latent effects of the reduction in earlier exposure and the progressive nature of CWP.

To quantify benefits expected from eliminating overexposures on each and every shift, MSHA applied the Attfield-Seixas models to a hypothetical population of miners who, on average, begin working at age 20 and retire at age 65, assuming different lifetimes.[6] To show the range of potential reductions in risk depending on a miner's lifetime, Table VI–1 presents the risk reductions predicted at three different attained ages: 65, 73, and 80 years. The projected benefit increases with attained age. However, MSHA's best estimate of the benefit to exposed miners is expressed by the reduction in prevalence of disease predicted at age 73.[7] Since not all underground coal miners are overexposed to dust with the same frequency or at the same level, Table VI–1 shows the risk reductions projected for three different categories of affected miners: (1) DO miners, (2) NDO miners who are faceworkers neither classified as a DO nor subject to a separate dust standard applicable to a RB–DA, and (3) DA roofbolters. The reduction in risk predicted for each of these three categories will now be discussed in turn.

(1) DO Miners

As explained earlier, for DO miners the predicted lifetime exposure reduction accumulates at a rate of 0.20 mg/m^3 of reduced exposure per year during the 45 ''working years'' between

[4] If three readings were available, the median value was used. If two readings were available, the higher of the two ILO categories was recorded. Eighty radiographs were eliminated because only one reading was available.

[5] The Attfield-Seixas model predicts a higher prevalence of CWP, and consequently a greater risk reduction (35 per thousand DO miners at age 65), after 45 years of occupational exposure to coal mine dust in central Pennsylvania or southeastern West Virginia. (Attfield and Seixas attribute this effect to the type of coal mined in those geographic areas.) However, few underground coal mines in central Pennsylvania or southeastern West Virginia are still operating. In fact, only about 29 of the 716 MMUs exhibiting a pattern of recurrent overexposures in 2001 were from those areas. Therefore, the risk assessment presented here, along with projected benefits of the rule, are based on the lower risks predicted for miners working outside central Pennsylvania and southeastern West Virginia.

[6] Appendix VI.2 contains a technical description of the Attfield-Seixas models and an explanation of how MSHA applied them to obtain the results shown in Table VI–1. The method used in applying the models differs slightly from that used in the previous proposed rule, and Appendix VI.2 also explains this difference. In addition, an EXCEL workbook entitled ''RiskRdxn.xlw'' showing the formulas used in the calculations has been placed into the public record for these proceedings.

[7] The expected lifetime for all American males, conditional on their having reached 20 years of age, is 73 years (calculated from U.S. Census, March 1997, Tables 18 and 119).

20 and 65, reaching a maximum of 9.0 mg-yr/m^3 upon retirement at age 65. Between ages 65 and 80, the accumulated reduction in dust exposure remains at an estimated average of 9.0 mg-yr/m^3, but (as also explained previously) the benefit in terms of both simple CWP and PMF risk continues to increase.

The first row of Table VI–1 presents the reductions in risk expected among affected DO miners who work at an MMU exhibiting a pattern of recurrent overexposures. For this group of miners, the calculation at an average lifetime of 73 years shows that bringing dust concentrations down to no more than the applicable standard on each shift would:

- Reduce the combined risk of simple CWP and PMF;
- Reduce the combined risk of simple CWP and PMF by 24.4 cases per 1000 affected DO miners; [8]
- Reduce the combined risk of simple CWP (category 2 and 3) and PMF by 15.5 cases per 1000 affected DO miners;
- Reduce the risk of PMF by 7.6 cases per 1000 affected DO miners.

When the dust concentration measured for the DO exceeds the applicable standard, measurements for at least some of the other miners in the same MMU may also exceed the standard on the same shift, though usually by a lesser amount. Furthermore, although the DO represents the occupation most likely to receive the highest exposure, one or more of these other miners may be exposed to even higher concentrations than the DO on some shifts. Therefore, the second category of affected miners addressed in Table VI–1 is the population of NDO faceworkers other than those working in roofbolter DAs (who are addressed as a separate, third category).

(2) NDO Miners

This category covers all faceworkers other than the DO, except those roofbolters for which a separate DA dust standard has been established. (Roofbolters not coming under a DA standard are included in the NDO category.) To estimate how NDO miners (other than those subject to a DA standard) would be affected by the proposed rules, MSHA examined the results from all valid dust samples collected by MSHA in underground MMUs during 2001 (MSHA, data file: Insp2001.zip). Within each MMU, MSHA typically takes one sample on the DO and, on the same shift, four or more additional samples representing other occupations. In 2001, there was an average of 1.0 NDO measurement in excess of the standard on shifts for which the DO measurement exceeded the standard.[9] For non-DO measurements that exceeded the standard on the same shift as a DO measurement, the mean excess above the standard was approximately 0.6 mg/m^3.[10]

Combining these results with the 19.3 percent rate of excessive exposures observed for the DO on individual shifts, it is reasonable to infer that, at the MMUs under consideration, an average of 1 other miner, in addition to the one classified as DO, is currently overexposed on at least 19 percent of all production shifts. In 2001, the mean of the highest dust concentration reported for any NDO miner on sampled shifts was 1.08 mg/m^3. Over the course of each working year, the reduction in exposure expected for such miners as a result of implementing the proposed rules is 0.12 mg-yr/m^3 (*i.e.*, 19.3 percent of one year, times 0.6 mg/m^3).

To assess the reduction in risk expected from eliminating all single-shift exposures for these NDO miners, MSHA again applied the Attfield and Seixas models to miners who begin working at age 20 and retire at age 65, assuming lifetimes of 65, 73, and 80 years. This time, however, the resulting decrease in predicted prevalence was multiplied by 1.0/6 = 0.167, to reflect the fact that the assumed rate of overexposure applies, on average, to about one-sixth of the faceworkers not classified as the DO.[11]

The second row of Table VI–1 contains the risk reductions for NDO miners expected as a result of eliminating all individual shift overexposures. Over an occupational lifetime, the average reduction in risk for simple CWP and PMF combined, and for PMF alone, increases with age. However, the risk reduction at each age is smaller for the affected NDOs than for the affected DOs. This is expected because the estimated probability that a NDO (other than a RB–DA) will, under current conditions, be overexposed on a given shift is only 16.7 percent of the corresponding probability for the DO. For the MMUs under consideration, the predicted reduction in risk for faceworkers other than the DO who live an expected lifetime of 73 years is: 2.3 fewer cases of ''CWP 1+'' per thousand affected NDO miners; 1.5 fewer cases of ''CWP 2+'' per thousand affected NDO miners; and 0.7 fewer cases of PMF per thousand affected NDO miners.

(3) Roofbolter DA (RB–DA) Miners

Because roofbolters are often exposed to higher quartz concentrations than other miners, the applicable dust standard for them is frequently different from the standard applicable to other miners working in the same MMU. Therefore, many roofbolters are classified as working in a ''roofbolter designated area'' (RB–DA). For purposes of this QRA, such roofbolters were excluded from the analysis of NDO miners presented above. Based on 2001 MSHA and operator data, 194 out of a total 659 RB–DAs met MSHA's criterion for exhibiting a pattern of recurrent overexposures—*i.e.*, dust concentrations exceeded the applicable standard on at least two of the sampled shifts (MSHA, datafile: RBDA2001.ZIP). Valid RB–DA samples were collected on a total of 3477 shifts at these 194 RB–DAs, and the applicable standard was exceeded on 837 of these shifts, or 24.1 percent (95% confidence interval: 22.7 to 25.5). For this 24.1 percent, the mean excess above the standard, as measured for the RB–DA only, was 0.72 mg/m^3 (95-percent confidence interval: 0.64 to 0.80).

At these RB–DAs (*i.e.*, those exhibiting a pattern of recurrent overexposures), the mean concentration reported in 2001 was 0.94 mg/m^3; so, after 45 years, an RB–DA miner can be expected, if there is no change in current conditions, to have accumulated a total exposure of more than 42 mg-yr/m^3. By retirement at age 65, such a miner would be expected to accumulate, on average, 7.8 mg-yr/m^3 less exposure if overexposures on all individual shifts were eliminated. (45 years × 24.1% of 0.72 mg/m^3). The third row of Table VI–1 shows the estimated impact of the proposed rules on the risk predicted for RB–DA roofbolters. At age 73, reducing an accumulated total dust exposure of 42 mg-yr/m^3 by 7.8 mg-yr/m^3 reduces the predicted prevalence of ''CWP 1+'' by 19.6 per thousand, of ''CWP 2+'' by 12.1 per thousand, and of PMF by 6.0 per thousand.

[8] ''Affected DO miners'' include all miners who work at MMUs with a pattern of recurrent overexposures and who are exposed to dust concentrations similar to the DO over a 45-year working lifetime.

[9] With 95-percent confidence, on shifts for which the DO measurement exceeds the standard, the mean number of other occupational measurements also exceeding the standard is at least 0.91.

[10] With 95-percent confidence, the mean excess is at least 0.59 mg/m^3.

[11] There are an estimated 6 NDO miners for each DO miner, and an average of 1.0 of these 6 miners is overexposed. This does not include roofbolters working in designated areas, who are treated as a separate group in the present analysis.

Table VI-1. By age, average reduction in cases of occupational respiratory disease expected to result from implementation of single sample and plan verification rules.

Type of Miner	Reduction in Cases of Occupational Respiratory Disease per 1,000 Affected Miners								
	Simple CWP[a] (categories 1, 2 or 3) or PMF[b] ("CWP 1+")			Simple CWP (categories 2 or 3) or PMF ("CWP 2+")			PMF		
	Age			Age			Age		
	65	73	80	65	73	80	65	73	80
Affected Designated Occupation Miners[c] (DO)	16.6	24.4	30.6	6.3	15.5	28.0	2.8	7.6	16.1
Affected Non-Designated Occupation Miners[d] (NDO)	1.6	2.3	2.9	0.6	1.5	2.7	0.3	0.7	1.5
Affected Roof Bolter Designated Areas Miners[e] (RB-DA)	13.0	19.6	25.3	4.8	12.1	22.5	2.2	6.0	12.8

[a] Simple CWP: simple coal workers' pneumoconiosis.

[b] PMF: progressive massive fibrosis.

[c] Affected Designated Occupation (DO) Miners: includes all miners who work at the 57 percent of the Mechanized Mining Units under consideration and who are exposed to dust concentrations similar to the DO, over a 45-year occupational lifetime. Risk reduction estimates are based on reducing the mean dust concentration of 1.15 mg/m^3 (Std. Error = 0.018) observed in 2001 for DOs at the MMUs under consideration.

[d] Affected Non-Designated Occupation (NDO) Miners: includes all underground faceworkers under consideration who are not classified as the DO or a "designated area roofbolter." Risk reduction estimates are based on reducing the mean dust concentration of 1.08 mg/m^3 (Std. Error = 0.011) observed in 2001 for the NDO sample showing the highest dust concentration on a given MSHA sampling day within an MMU.

[e] Affected Roofbolter Designated Area (RB-DA) Miners: includes all miners working as roofbolters in the 29.4 percent of RB-DAs exhibiting a pattern of recurrent overexposures. Risk reduction estimates are based on reducing the mean dust concentration of 0.94 mg/m^3 (Std. Error = 0.025) observed in 2001 for the RB-DAs under consideration.

Appendix VI.1 DO Overexposure Patterns

In 1998, MSHA attempted to enforce compliance on individual shifts. Therefore, to compare the 2001 pattern of excess exposures on individual shifts to that of previous years, MSHA examined the regular bimonthly DO sample data submitted by mine operators in the 10 years from 1990 through 1997 and 1999–2000. The same three parameters were considered as discussed above for 2001: (1) The percentage of MMUs exhibiting a pattern of recurrent overexposures, as indicated by at least two of the valid measurements being above the applicable standard in a given year; (2) for those and only those MMUs exhibiting recurrent overexposures, the overall percentage of production shifts on which the DO was overexposed, as estimated by the percentage of valid measurements above the applicable standard; and (3) for the MMUs identified as exhibiting recurrent overexposures, the mean excess above the applicable standard, as calculated for just those valid measurements that exceeded the applicable standard in a given year.

Although MSHA found minor differences between individual years, there was no statistically significant upward or downward trend in any of these three parameters over the 1990–1997 time period (see Table VI–2). Beginning in 1999, however, there was a significant and persistent decrease in the average excess above the applicable standard (Parameter #3) for MMUs exhibiting recurrent overexposures. MSHA attributes this decrease to two important changes in the Agency's inspection program, beginning near the end of 1998. These changes, which both resulted in increased inspector presence, were: (1) An increase in the frequency of MSHA dust sampling at underground coal mines; and (2) initiation of monthly spot inspections at mines that were experiencing difficulty in maintaining consistent compliance with the applicable dust standard.

Table VI-2. Parameters describing overexposure to respirable coal mine dust, based on operator DO samples.

1990-1997 1999-2000	Parameter #1 (Percent)	Parameter #2 (Percent)	Parameter #3 (mg/m^3)	
			1990-1997	1999-2000
Number of Years	10	10	8	2
Median	52.6	20.1	1.24	1.00
Mean (Std. Error)	51.0 (1.36)	20.5 (0.30)	1.26 (0.023)	1.00 (0.07)
2001	**51.6**	**20.8**	**1.08**	

Parameter #1: percentage of MMUs exhibiting a pattern of recurrent overexposures.

Parameter #2: for those MMUs exhibiting a pattern of recurrent overexposures, the percentage of production shifts on which the DO was overexposed.

Parameter #3: for those MMUs exhibiting a pattern of recurrent overexposures, the mean excess above the applicable standard among valid DO measurements that exceeded the applicable standard.

Appendix VI.2 Application of the Attfield-Seixas Models

Attfield and Seixas (1995) provide separate logistic regression models for CWP1+, CWP2+, and PMF as a function of cumulative dust exposure (mg-yr/m^3). These models all have the following form:

$$\frac{p}{1-p} = e^{a_0 + a_1 \times age + a_2 \times exposure + a_3 \times rank \times exposure} \qquad \text{(Eq. 1)}$$

where p is the probability of disease at a specified age and cumulative exposure. The constant e is the base of the natural logarithms. The empirically estimated coefficients a_0 (the intercept), a_1, a_2, and a_3 differ for the three health effects considered and are presented in Table IV of Attfield and Seixas (op cit). The values for these coefficients are also shown in the Excel workbook (RiskRdxn.xlw) MSHA has placed into the public record as part of these proceedings. The coefficient (a_3) of ''rank'' refers to an additional effect of cumulative exposure to coal mine dust in central Pennsylvania or southeastern West Virginia, which the authors attribute to the rank of the coal mined in those areas. Since few mines in those areas are currently operating, MSHA did not employ this additional effect in its application of the Attfield-Seixas models (*i.e.*, MSHA assumed that the value of the indicator variable for ''rank'' is zero).

From equation 1, assuming exposure outside central Pennsylvania and southeastern West Virginia, it follows that the prevalence of disease, assuming continued exposure at current levels and approximate linearity of the exposure effect, is (per thousand miners):

$$P_y = 1000 \times \frac{y}{1+y}$$

$$\text{where } y = e^{a_0 + a_1 \times age + a_2 \times (\text{years of exposure}) \times (\text{current mean annual exposure})} \qquad \text{(Eq. 2)}$$

Similarly, the prevalence of disease, assuming reduced cumulative exposure attributable to implementation of the proposed rules is (per thousand miners):

$$P_x = 1000 \times \frac{x}{1+x}$$

$$\text{where } x = e^{a_0 + a_1 \times \text{age} + a_2 \times (\text{years of exposure}) \times (\text{reduced mean annual exposure})} \qquad \text{(Eq. 3)}$$

Note that the ''reduced mean annual exposure'' is the current mean annual exposure (based on 2001 data) reduced by eliminating overexposures on just that percentage of shifts for which overexposures have been shown to currently occur.

MSHA then estimated the impact of eliminating all overexposures on individual shifts by calculating (for ages 65, 73, and 80) the differences:

$$\Delta = P_y - P_x \qquad \text{(Eq. 4)}$$

It is these differences that are presented in Table VI–1. The calculations for each specific entry are detailed in the EXCEL workbook, RiskRdxn.xlw, which has been placed into the public record.[12]

(c) *Technological Feasibility*

The following discussion is a Summary of Chapters 3 and 4 of the Preliminary Regulatory Economic Analysis (PREA). The PREA is available in hard copy by request and also available on MSHA's Web page under Statutory and Regulatory Information. This discussion parallels the Regulatory Impact Analysis discussion in the accompanying notice of proposed rulemaking, ''Verification of Underground Coal Mine Operators'' Dust Control Plans and Compliance Sampling for Respirable Dust,'' published by MSHA, RIN 1219–AB14, in today's **Federal Register**.

MSHA, in consultation with NIOSH, believes that compliance with the proposed Single Sample rule would be technologically feasible for the mining industry. The Single Sample rule would predominantly affect MSHA's procedures since MSHA alone conducts inspector sampling. However, due to the promulgation of the Single Sample rule, some operators would experience a slight increase in the number of abatement samples they would conduct using current technology. After the promulgation of the proposed Single Sample rule, coal operators would continue to comply with the existing respirable dust concentration limit of 2.0 mg/m^3. Such compliance with the applicable standard has proven feasible over the years. Furthermore, compliance determination based on an inspector, single sample result was found to be technologically feasible during the prior effective Interim Single-Sample Enforcement Policy (Single Sample), in effect from March 2, 1998 through September 4, 1998.

(d) Economic Feasibility

The following discussion is a Summary of Chapters 3 and 4 of the Preliminary Regulatory Economic Analysis (PREA). The PREA is available in hard copy by request and also available on MSHA's webpage under Statutory and Regulatory Information. This discussion parallels the Regulatory Impact Analysis discussion in the accompanying notice of proposed rulemaking, ''Verification of Underground Coal Mine Operators'' Dust Control Plans and Compliance Sampling for Respirable Dust published by MSHA, RIN 1219–AB14, in today's **Federal Register**.

MSHA, in consultation with NIOSH, believes that the Single Sample rule would be economically feasible for the coal mining industry based on its most recent cost estimates. The coal mining industry would incur costs of approximately $3.1 million yearly to comply with the proposed Single Sample rule. Coal mine operators would also incur approximately an additional $1.7 million yearly in penalty costs associated with the additional citations arising from the proposed Single Sample rule.[13] That the total $4.8 million borne yearly by the coal mining industry as a result of the proposed Single Sample rule is well less than 1 percent (about 0.03 percent) of the industry's yearly revenues of $17.7 billion provides convincing evidence that the proposed rule is economically feasible.

Since single sample and plan verification are complementary NPRMs intended to be promulgated at the same time, the detailed presentation of assumptions and estimates for each are available in the same Preliminary Regulatory Economic Analysis (PREA)(MSHA, February 2003).

(e) Costs and Benefits: Executive Order 12866

In accordance with Executive Order 12866, the Agencies have revised the PREA of the estimated costs and benefits associated with the proposed rule for the underground and surface coal mining sectors. The key findings are summarized below.

1. Compliance Costs

The Agencies estimate that the cost of this NPRM would be approximately $3.1 million annually, of which all but about $57,000 would be borne by underground coal mine operators (the residual $57,000 to be borne by surface coal mine operators). Table XIII–1 (Summary of Compliance Costs) summarizes the estimated compliance costs by provision, for underground and surface coal mines, for the following three mine size categories: (1) Those employing fewer than 20 workers; (2) those employing between 20 and 500 workers; and (3) those employing more than 500 workers.

The compliance costs arising from the Single Sample NPRM would occur as a result of an increase in the number of MSHA inspector citations issued to underground and surface coal mine operators due to the determination of noncompliance being based on the results of a MSHA single sample rather than the average of multiple-shift sample results. The additional citations

[12] The method used here provides an approximation of the expected risk reduction (Δ), assuming approximate linearity of the exposure-response relationship over the exposure range of interest. This differs from the method used in the previous proposed rule, where lower bounds on the risk reduction were calculated. The calculations in the previous proposed rule defined

$A = P_y, - P_x,$
where $y' = y / x$ and x and $x' = e^{a0 \times \text{age}}$

The previous method results in lower values than those shown in Table VI–1. For example, for ''CWP 1+'' among affected DO miners at age 73, applying the previous method to 2001 operator and MSHA data would have resulted in a calculated risk reduction of 16.3 per thousand instead of the 24.4 per thousand presented in Table VI–1. MSHA believes the method used in the current proposed rule more accurately represents the reduction in risk that can be expected if all individual shift overexposures are eliminated.

[13] The estimate of the number of additional citations MSHA anticipates issuing under the single sample rule reflects a substantial increase over the number of additional citations anticipated under the July 7, 2000 proposed rule. This is because the baseline period employed in the revised cost estimates (August through December 2001) reflects the time period after which MSHA ceased issuing citations based upon multiple samples collected over a single shift. As a result, the number of citations during the revised base period is lower than the number of citations for the base period used in the July 7, 2000 cost estimate. The estimate of the number of additional citations MSHA expects to issue under the single sample proposed rule rose from 561 in the July 7, 2000 PREA to 909 in the 2003 revised PREA. This increase in the number of additional citations is primarily responsible for the increase in the revised total cost estimate for the single sample proposed rule.

would require mine operators to undertake the following actions and to incur associated compliance costs: take corrective action(s) in order to get back into compliance with the applicable dust standard; perform abatement sampling; complete dust data cards; send abatement samples to MSHA; post abatement sample results; write respirable dust plans; and post a copy of dust plans.

In addition to these estimated compliance costs, mine operators would incur yearly penalty cost increases of about $1.7 million. Penalty costs conventionally are not considered to be a cost of a rule (and, in fact, are clearly not a compliance cost) but merely a transfer payment to the government from a party violating a rule. Therefore, the penalty costs are not included as part of the compliance costs of the proposed Single Sample rule. These penalty costs are relevant, however, in determining the economic feasibility of the proposed Single Sample rule.

The derivation of the above cost figures are presented in Chapter IV of the PREA that accompanies this rule.

Table XIII-1
Summary of Compliance Costs
for Single Sample Proposed Rule

Estimated Costs by Category	<20 emp.	≥20 emp. ≤500	>500 emp.	Total
UNDERGROUND COAL MINES				
Corrective Actions	$370,226	$2,247,736	$99,686	$2,717,648
Dust Plan Revisions	$659	$8,677	$330	$9,666
Mail Plan Revisions	$116	$785	$30	$930
Post or Provide Dust Plan	$125	$845	$32	$1,001
Abatement Sampling	$43,414	$229,250	$6,730	$279,395
Complete Dust Cards and Mail Cards and Samples	$2,438	$13,993	$675	$17,105
Post Sample Results	$270	$1,541	$72	$1,882

Total	$417,248	$2,502,826	$10,554	$3,027,627
SURFACE COAL MINES				
Corrective Actions	$7,680	$19,749	$0	$27,429
Dust Plan Revisions	$577	$1,483	$0	$2,060
Mail Plan Revisions	$101	$134	$0	$235
Post or Provide Dust Plan	$109	$144	$0	$253
Abatement Sampling	$13,112	$13,189	$0	$26,301
Complete Dust Cards and Mail Cards and Samples	$221	$386	$0	$607
Post Sample Results	$44	$57	$0	$101
Total	$21,844	$35,141	$0	$56,985
UNDERGROUND AND SURFACE COAL MINES				
Corrective Actions	$377,906	$2,267,484	$99,686	$2,745,076

Dust Plan Revisions	$1,236	$10,160	$330	$11,725
Mail Plan Revisions	$217	$919	$30	$1,165
Post or Provide Dust Plan	$234	$989	$32	$1,255
Abatement Sampling	$56,526	$242,439	$6,730	$305,695
Complete Dust Cards and Mail Cards and Samples	$2,659	$14,378	$675	$17,712
Post Sample Results	$314	$1,598	$72	$1,984
Grand Total	$439,092	$2,537,967	$107,554	$3,084,613

* Totals may vary due to rounding.

2. Benefits

This benefits analysis is in support of the proposed Single Sample and Plan Verification rules, and updates information used in the Single Sample NPRM (65 FR 42068) and Plan Verification (65 FR 42122) NPRM. The revised Plan Verification NPRM is published elsewhere in today's **Federal Register**. This benefit analysis has been updated to include the revised QRA;[14] the reduction in the number of active mines (and miners); and more recent information on the Black Lung Compensation Program.

For all categories of simple coal workers' (CWP) pneumoconiosis and progressive massive fibrosis (PMF) combined, MSHA estimates, over an occupational lifetime (45-years) for miners who live to age 73 and who worked at MMUs exhibiting a pattern of recurrent overexposures, a minimum of 42 fewer cases among affected DO, NDO, and RB–DA miners than would otherwise occur without the promulgation of the Single Sample and Plan Verification rules. MSHA and NIOSH believe that the 42 prevented cases of CWP identified understate the true benefit of these proposed rules. The

[14] The revised QRA is published in full in section VIII of the Plan Verification NPRM. The QRA has been expanded to include quantitative estimates of reduction in CWP risk estimates for affected roofbolters working in designated areas (RB–DA).

Benefits chapter of the PREA and the Benefits section of the proposed Plan Verification rule delineate the reasons why this quantitative estimate understates the health benefit to all coal miners (*http://www.msha.gov/flex.htm*).

(f) Paperwork Reduction Act of 1995

The proposed Single Sample rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA95). The proposed Single Sample rule would increase paperwork for surface and underground coal mine operators. Surface coal mines would incur an additional 323 burden hours annually costing $9,278. Underground coal mines would incur an additional 5,354 burden hours annually costing $142,690. All of the additional burden hours and costs for underground coal mines arising from the Single Sample rule would be eliminated as a result of the promulgation of the plan verification rule.

We invite public comments and are particularly interested in comments which:

(a) Evaluate whether the proposed collection of information (presented here and in the PREA for the proposed Single Sample rule) is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;

(b) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on respondents, 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.

We have submitted a copy of this proposed rule to OMB for its review and approval of these information collections. Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, if under 10 pages, by facsimile (202) 395–6974 to Attn: Desk Officer for MSHA; or by e-mail to: *cathomas@omb.gov.* All comments may be sent by mail addressed to the Office of Information and Regulatory Affairs, OMB New Executive Office Building, 725 17th St., NW, Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA. Please send a copy of your comments to MSHA at the address listed in the **ADDRESSES** section of the preamble. Submit written comments on the information collection not later than June 4, 2003.

Our paperwork submission summarized above is explained in detail in the PREA. The PREA includes the estimated costs and assumptions for each proposed paperwork requirement related to the proposed Single Sample rule. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. 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.

(g) Correction to the July 7, 2000 Preamble (65 FR 42068)

On page 42076, column two, line 25, change ''4.8%'' to ''5.6%''. The sentence should read, ''Across the eight surface cohorts surveyed, the prevalence rate of simple CWP and PMF combined, among participants was 5.6%.''

V. Public Hearings

MSHA and NIOSH plan to hold public hearings on the reopening notice. The hearings will be held under Section 101 of the Federal Mine Safety and Health Act of 1977. The hearings will be held in the following cities:

(a) Evansville, Indiana;
(b) Charleston, West Virginia;
(c) Grand Junction, Colorado;
(d) Birmingham, Alabama;
(e) Lexington, Kentucky; and
(f) Washington, Pennsylvania.

The specific dates, times and facilities for the hearings will be announced by a separate notice in the **Federal Register**.

Dated: March 3, 2003.

Elaine L. Chao,

Secretary, Department of Labor.

Dated: March 3, 2003.

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

Appendix E—References

The following is a list of references cited in this document. Some of these are additions to the existing rulemaking record.

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Accruals and allocations due to age attainment, reductions; and cash balance plans; nondiscrimination cross-testing rules application; comments due by 3-13-03; published 12-11-02 [FR 02-31225]
Hearing location and date change; comments due by 3-13-03; published 1-17-03 [FR 03-01159]

TREASURY DEPARTMENT
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Practice and procedure:
Accountants performing audit services; removal, suspension, and debarment; comments due by 3-10-03; published 1-8-03 [FR 03-00098]

LIST OF PUBLIC LAWS

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S. 141/P.L. 108–8

To improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes. (Feb. 25, 2003; 117 Stat. 555)

Last List February 24, 2003

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