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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH21

General License for Import of Major Nuclear Reactor Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to issue a general license for the import of major components of utilization facilities for end-use at NRC-licensed reactors. The amendment is necessary to facilitate imports of major components of domestic nuclear reactors in furtherance of protection of public health and safety and will also reduce unnecessary regulatory burdens related to the maintenance of NRC-licensed reactors.

DATES: The final rule will become effective August 11, 2003, unless significant adverse comments on the amendment are received by June 27, 2003. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after June 27, 2003, will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number [RIN 3150–AH21] in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email *CAG@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Grace H. Kim, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3605, e-mail *GHK@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. The Direct Final Rule Process

The rulemaking has the simple aim of issuing a new general license to facilitate the import of major nuclear reactor components. Because the NRC believes that this action should not cause controversy, the NRC is using the direct final rule process for this rule. The amendment in this rule will become effective on August 11, 2003. However, if the NRC receives significant adverse comments on this direct final rule by June 27, 2003, the NRC will publish a document that withdraws this action. In that event, the comments received in response to these amendments would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

II. Background

Increasingly, NRC licensees need to import nuclear reactor vessel closure heads (which are not currently manufactured in the United States) to replace vessel closure heads at NRC-licensed reactors. Under the NRC's regulations governing the import and export of nuclear equipment in 10 CFR Part 110, this item, constituting a

significant part of the reactor pressure vessel, is categorized as a ''major component'' of a nuclear reactor, along with three other significant parts of a nuclear reactor. See 10 CFR 110.2 (definition of ''Utilization facility''); 10 CFR Part 110, Appendix A (defining ''Reactor pressure vessels''). The NRC's regulations currently require a specific license for importing and exporting any of these four major components of a nuclear reactor into and out of the United States. See 10 CFR 110.5 and 110.20(a)(2).

In anticipation of requests for imports of reactor vessel closure heads and possibly other major components, the NRC reexamined the need for a specific license authorization for import of major components into the United States. After consultation with the U.S. Department of State, the NRC has concluded that major components of a nuclear reactor should be permitted to be imported into the United States under general license, provided that legally binding arrangements are in place establishing that the import is for end-use by a 10 CFR Part 50 or Part 52 licensee. The NRC believes that such a general license will facilitate domestic reactor licensees' obtaining needed major components for safety-related maintenance and refurbishing of the reactor by permitting import of these items. The NRC has determined that the promulgation of this general license will not be inimical to the common defense and security or constitute an unreasonable risk to the public health and safety and will otherwise meet applicable statutory requirements.

The NRC emphasizes that the amendment set forth in this rule does not apply to exports of those components addressed in this regulation.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC is adopting a general rule for a certain category of imports. This action does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This direct final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0036.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC already controls imports of major components of utilization facilities. Currently, the NRC's import regulations in part 110 require a specific license to import these components into the United States. The NRC's sole objective in developing the revision is to facilitate imports of major nuclear reactor components for end-use in safety-related maintenance and refurbishment efforts at NRC-licensed reactors by reducing the unnecessary burdens imposed by specific licensing. The direct final rule accomplishes this objective by permitting imports of major components to be made under general license. There are no alternatives for achieving the stated objective. By facilitating maintenance of NRC-licensed reactors, this NRC rulemaking action will have a positive impact on protection of the public health and safety and the common defense and security and, at the same time, reduce unnecessary regulatory burdens. In this respect, the NRC believes that no persons will be adversely affected by this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule affects only companies importing major components for end-use at nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act (5 U.S.C. 601(3)), or the Size Standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this direct final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter I.

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec 5, Pub. L. 101–575, 104 Stat 2835 (42 U.S.C.2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 2. Section 110.27 is amended by adding new paragraph (e), to read as follows:

§ 110.27 General license for imports.

* * * * *

(e) A general license is issued to any person to import the major components of a utilization facility as defined in § 110.2 for end-use at a utilization facility licensed by the Commission.

Dated at Rockville, Maryland, this 9th day of May, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director For Operations.

[FR Doc. 03–13216 Filed 5–27–03; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1145]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules; official staff commentary.

SUMMARY: The Board is publishing final amendments to the official staff commentary to Regulation C (Home Mortgage Disclosure). The amendments provide transition rules for applications received before January 1, 2004, on which final action is taken on or after January 1, 2004.

DATES: The amendments are effective June 27, 2003.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, Kathleen C. Ryan, Senior Attorney, or Dan S. Sokolov, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or (202) 452–2412. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801–10) has three purposes. One is to provide the public and government officials with data that will help show whether lenders are serving the housing needs of the neighborhoods and communities in which they are located. A second purpose is to help public officials target public investment to promote private investment where it is needed. A third purpose is to provide data that assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA accordingly requires certain depository and for-profit nondepository lenders to collect, report, and disclose data about originations and purchases of home purchase loans, home improvement loans, and refinancings. Lenders must also report data about applications that did not result in originations.

The Board's Regulation C (12 CFR part 203) implements HMDA. Regulation C generally requires that lenders report data about:

- *Each application or loan,* including the application date; the action taken and the date of that action; the loan amount; the loan type and purpose; and, if the loan is sold, the type of purchaser;
- *Each applicant or borrower,* including ethnicity, race, sex, and income; and
- *Each property,* including location and occupancy status.

Lenders report this information to their supervisory agencies on an application-by-application basis using a loan application register format (HMDA/LAR) set forth in appendix A to the regulation. Each application must be recorded within 30 calendar days after the end of each calendar quarter in which final action is taken (such as origination or purchase of a loan, or denial or withdrawal of an application) on the lender's HMDA/LAR. Lenders must make their HMDA/LARs—with certain fields redacted to preserve applicants' privacy—available to the public. The Federal Financial Institutions Examination Council (FFIEC), acting on behalf of the supervisory agencies, compiles the reported information and prepares an individual disclosure statement for each institution, aggregate reports for all covered lenders in each metropolitan area, and other reports. These disclosure statements and reports are available to the public.

II. Revisions to Regulation C

The Board published final revisions to Regulation C on February 15, 2002, and June 27, 2002 (''the 2002 revisions''). 67 FR 7222; 67 FR 43218. The 2002 revisions include, among other things, requirements that lenders report the difference between a loan's annual percentage rate (APR) and the yield on Treasury securities with comparable maturity periods, if the difference equals or exceeds thresholds set by the Board; whether a loan is subject to the Home Ownership and Equity Protection Act (HOEPA); the lien status of applications and loans; and whether an application or loan involves a manufactured home. Certain definitions have also been revised. The definition of an application has been revised to include a request for preapproval as defined in the regulation, for purposes of reporting denials of such requests and identifying loan applications that result from a request for preapproval. The definition of a home improvement loan and the definition of a refinancing have been revised to provide more consistent and useful data. In addition, the 2002 revisions require lenders to request information on applicants' ethnicity, race, and sex in applications taken by telephone, and conform the collection of data on ethnicity and race to standards established by the Office of Management and Budget (OMB) in 1997.

The 2002 revisions were initially scheduled to take effect on January 1, 2003. In May 2002 the Board delayed the effective date, with two exceptions, to January 1, 2004. 67 FR 30771, May 8, 2002. The Board based its decision on a determination that some HMDA reporters, especially the largest ones, would not be able to fully implement the revised rule by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. The two exceptions related to telephone applications and to census tract data: (1) for all applications taken on or after January 1, 2003, lenders must ask telephone applicants for information on the applicant's race or national origin and sex; and (2) for all applications and loans reported on lenders' 2003 HMDA/LARs, lenders must use the census tract numbers and corresponding geographic areas from the 2000 Census.

III. Transition Rules

On March 7, 2003, the Board proposed for comment rules on how to report data for applications received before January 1, 2004, but for which final action is taken in 2004. The rules are set forth in a new comment added to section 203.4 of the Staff Commentary to Regulation C. The Board received approximately 40 comments on the proposed comment. Most industry commenters supported the proposal's flexibility in providing that lenders may, but need not, use revised definitions and identify applications relating to manufactured homes for applications received before January 1, 2004. Industry commenters expressed varying views on the conversion rules for reporting information on ethnicity, race, and sex, and the requirement to report the rate spread beginning January 1, 2004, as discussed below.

Community groups generally opposed the comment, arguing that it would delay the effective date of the 2002 revisions. A few industry commenters opposed the comment on the grounds that flexibility could pose training problems for lenders and could impose additional programming costs if lenders must distinguish between applications received in 2003 and all other applications. Some of these commenters believed that the 2002 revisions should apply only to applications received on or after January 1, 2004.

The Board is adopting the comment substantially as proposed. Under the comment, lenders (1) will not have to indicate whether a loan applied for in 2003 involved a request for preapproval or related to a manufactured home; and (2) may, at their option, apply the current definitions of a home improvement loan and a refinancing in reporting loans applied for in 2003 and acted upon in 2004. The Board believes that the benefit of obtaining data on these items does not warrant the burden associated with revising systems to begin recording the necessary information before January 1, 2004. A lender may, however, opt to begin recording the information before January 1, 2004. If it does, the lender must be generally consistent in its approach; for example, a lender that opts to apply the revised definition of a home improvement loan must do so for all applications received in 2003 and reported in 2004.

The comment provides that lenders must follow special rules for reporting applicants' race and ethnicity for transitional applications, to take account of the changed categories. One technical clarification relating to the sex of a co-applicant has been made, as discussed below.

The Board proposed no transition rules for reporting the type of purchaser, whether a loan is subject to HOEPA, the lien status of applications and originated loans, and the rate spread, because information about these items is available at the time of final action. The final comment provides some flexibility in the case of the rate spread. For the reasons discussed below, lenders will not be required to report the rate spread for loans in which the rate lock occurs before January 1, 2004.

The affected data items are discussed below, in the order in which they appear on the revised HMDA/LAR.

203.4(a)

Property Type

Currently lenders must report in the ''loan purpose'' field whether an application or loan involves a one-to four-family dwelling or a multifamily dwelling, and manufactured homes are reported as one-to four-family dwellings. The 2002 revisions add a new field for ''property type'' and require lenders to identify applications and loans that involve manufactured homes. The final comment provides, as proposed, that for applications received before January 1, 2004, and acted upon in 2004, lenders may, but need not, indicate whether an application involves a manufactured home; lenders may report the property type as one-to four-family.

Purpose of Loan—Home Improvement and Refinancing

Regulation C requires lenders to report home improvement loans and refinancings. The definitions of a home improvement loan and a refinancing were substantially revised in the final rules adopted in 2002. A home improvement loan is defined in § 203.2(f) as a loan intended in whole or in part for home improvement *and* that the lender classifies as a home improvement loan. Under the 2002 revisions, dwelling-secured loans for home improvement purposes must be reported as home improvement loans beginning in 2004, whether or not the loans are classified as home improvement loans. Loans for home improvement purposes that are not dwelling-secured will continue to be reported only if the lender classifies the loans as home improvement loans.

A refinancing is defined as a transaction in which a new obligation satisfies and replaces an existing obligation by the same borrower. Currently, the commentary to § 203.1(c) allows lenders to select from among four scenarios in deciding which refinancings to report:

(1) The existing obligation was a home purchase or home improvement loan, as determined by the lender (for example, by reference to available documents);

(2) The applicant states that the existing obligation was a home purchase or home improvement loan;

(3) The existing obligation was secured by a lien on a dwelling; or

(4) The new obligation will be secured by a lien on a dwelling.

Under the 2002 revisions, reportable refinancings are those in which both the existing loan and the new loan are secured by a lien on a dwelling.

The proposed comment provided that for applications received before January 1, 2004, but for which final action is taken on or after January 1, 2004, lenders may continue to apply the current definitions. Based on comments received and its own analysis, the Board is adopting the guidance as proposed. The comment permits lenders, at their option, to apply the revised definitions to applications received before January 1, 2004.

Requests for Preapproval

Under the 2002 revisions, beginning in 2004, lenders must identify whether an application for a home purchase loan is a request for preapproval as defined in the revised regulation. Lenders must also report information on requests for preapproval that are denied; lenders may, but are not required to, report requests for preapproval that are approved but not accepted by the applicant.

The proposed comment provided that lenders may, but need not, report requests for preapproval received before January 1, 2004, that do not result in a traditional loan application. In addition, the proposed comment provided that lenders may, but need not, identify requests for preapproval as such if they were received before January 1, 2004. The Board is adopting the comment as proposed. Thus, for applications received before January 1, 2004, lenders will be permitted to use the code for ''Not Applicable'' in the preapproval field on the HMDA/LAR.

Applicant Information

Ethnicity and Race. The 2002 revisions included changes to the requirement to collect information about an applicant's ethnicity and race, and to the codes that must be used to report this information on the HMDA/LAR. These changes were made to conform collection of information under Regulation C to standards established by OMB in 1997. Under the proposed transition rules, lenders would report monitoring data collected during 2003 on the 2004 LAR in accordance with conversion rules set forth in proposed comment 4(a)–4(iv).

Most commenters supported the proposed comment requiring lenders to convert the data on ethnicity and race to the new OMB standards. Some lenders suggested that the Board provide a table showing the conversion rules for information on ethnicity and race. Community groups, on the other hand, believed that the proposed comment was an unwarranted delay in the effective date of the 2002 revisions. In addition, a few lenders believed that transition rules are unnecessary, if the 2002 revisions are applied only to applications received on or after January 1, 2004.

Some industry commenters supported the conversion rules, but requested additional guidance. For example, some lenders asked whether they could begin to use the revised ethnicity and race categories to take applications before January 1, 2004. Some of these commenters stated that they wanted to program their systems to collect data using the revised categories in October 2003, because making changes to their data collection and processing systems after November 1, 2003, could result in system disruption and difficulty in generating year-end reports. These lenders stated that if they were not permitted to use the revised categories in the fall of 2003, they would prefer to continue to use the current categories through February 2004, and convert the data using the conversion rules provided by the Board.

Other lenders requested guidance that would allow them to report ''NA'' for ethnicity and race on applications received during the first quarter of 2004 on application forms that have not been updated to reflect the revised rules on collecting information on ethnicity and race. For example, a lender might receive an application by mail in early 2004 that had been mailed out to an applicant in 2003 using the current format for reporting race or national origin. In addition, some lenders noted that brokers might want to use up all of their old forms and thus might continue to use the current format even for applications received in 2004. These commenters suggested that the Board allow lenders to convert applications taken on the current form to the revised rules through April 1, 2004.

The comment is adopted as proposed. The Board believes that converting data collected under the current rules to the revised OMB standards is necessary to ensure the quality and utility of the data. At the request of commenters, the conversion rules are presented in tabular format in section V of this notice.

The rules for converting information on race and ethnicity apply only to applications received in 2003. In the case of an application provided to an applicant in 2003 that is not returned to the lender until 2004, the existing commentary provides that the lender may consider such an application as received in 2003 if the date shown on the application is in 2003. *See* 203.4(a)–1. Thus lenders may use the conversion rules provided in the final comment if an application is provided to an applicant in 2003 and is dated in 2003, but is received by the lender in 2004. The conversion rules may not be used, however, where lenders or brokers continue to use loan application forms with the current race format on or after January 1, 2004. Lenders and brokers are responsible for ensuring that applications are taken on the appropriate form.

Sex. A few commenters pointed out that under the current rules lenders must use code 4 (Not Applicable), where the loan is a purchased loan, there is no co-applicant, or the co-applicant is not a natural person. Under the revised rules, code 4 is reserved for applications in which the co-applicant is not a natural person or the information is not available on a purchased loan, and a new code 5 is to be used where there is no co-applicant. The final comment provides that for applications received before January 1, 2004, in which there is no co-applicant, code 4 may be used on the 2004 HMDA/LAR for sex.

Rate Spread

The Board did not propose transition guidance relating to the requirement to report the rate spread between the APR on the loan and the yield on Treasury securities with a comparable maturity. The Board did solicit comment, however, on whether there might be less burdensome alternatives to requiring lenders to use the rate lock date for applications received before and closed on or after January 1, 2004—for example, allowing them to use the date the application was received, the date of consummation, or a date specified by the Board (such as January 1, 2004) that would not require lenders to look back to an earlier period to calculate the rate spread. The Board noted that if lenders used the date of application or consummation, lenders would not have to modify their systems because they already capture these dates for current reporting requirements.

Some industry commenters supported requiring lenders to use the rate lock date to calculate the rate spread. These commenters noted that using the date of application or consummation could distort the pricing data. Other industry commenters urged the Board to allow lenders to use the date of application or of consummation. A few commenters suggested that the Board require lenders to report the rate spread only if the rate lock occurred on or after January 1, 2004. Still other industry commenters said that the Board should require rate spread information only if the application was received on or after January 1, 2004, because of difficulties in collecting the rate lock date and training personnel before then.

Based on the comments and on the Board's analysis, the final comment provides that lenders need not report the rate spread for any loan in which the rate lock occurs before January 1, 2004. The Board recognizes that lenders may not be able to track and report rate lock dates accurately until the 2002 revisions take effect, in January 2004. Although use of the application or consummation date might reduce burden to some degree because lenders are currently responsible for collecting and reporting them, their use of these dates in the rate spread system nonetheless would require special programming. The comment provides examples to illustrate when lenders must calculate and report the rate spread for applications received before January 1, 2004.

IV. Other Reporting Requirements

The Board did not propose any transition guidance for reporting requirements relating to type of purchaser, HOEPA status, and lien status because these data items do not impose a significant burden on lenders to ''look back'' to applications received prior to 2004. The majority of comments supported the Board's view. The Board is adopting the comment as proposed, without any exceptions for type of purchaser, HOEPA status, and lien status.

V. Table of Rules for Converting Applicant Information

The rules in the final comment for converting information on race and national origin collected under the current regulation to the revised categories for ethnicity and race under the 2002 revisions are provided in tabular format in response to commenters' requests.

Current category	New category—ethnicity	New category—race
Code 1—American Indian or Alaskan Native	Code 4—Not Applicable	Code 1—American Indian or Alaska Native.
Code 2—Asian or Pacific Islander	Code 4—Not Applicable	Code 2—Asian.
Code 3—Black	Code 4—Not Applicable	Code 3—Black or African American.
Code 4—Hispanic	Code 1—Hispanic or Latino	Code 7—Not Applicable.
Code 5—White	Code 4—Not Applicable	Code 5—White.

Current category	New category—ethnicity	New category—race
Code 6—Other	Code 4—Not Applicable	Code 7—Not Applicable.
Code 7—Mail or Telephone	Code 3—Mail, Internet, or Telephone	Code 6—Mail, Internet, or Telephone.
Code 8—Not Applicable	Code 4—Not Applicable	Code 7—Not Applicable.

List of Subjects in 12 CFR part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and Recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under Section 203.4—Compilation of Loan Data, under 4(a) *Data Format and Itemization,* a new paragraph 4 is added:

Supplement I to Part 203–Staff Commentary

* * * * *

Section 203.4—Compilation of Loan Data

4(a) *Data Format and Itemization.*

* * * * *

4. *Transition rules for applications received before January 1, 2004, when final action is taken on or after January 1, 2004.* For applications received before January 1, 2004, on which final action is taken on or after January 1, 2004, data must be collected and reported on the HMDA/LAR under the revisions to Regulation C that take effect on January 1, 2004, subject to the exceptions for property type, loan purpose, requests for preapproval, applicant information, and rate spread set forth in this comment.

i. *Property type.* Lenders need not determine whether an application received before January 1, 2004, involves a manufactured home, and may report the property type as 1-to 4-family.

ii. *Loan purpose.* For applications received before January 1, 2004, lenders may use the definitions of a home improvement loan and a refinancing that were in effect in 2003. For example, a lender need not report data on an application received before January 1, 2004, for a dwelling-secured loan made for the purpose of home improvement, if the lender did not classify the loan as a home improvement loan. Similarly, a lender may report data on an application for a refinancing received in 2003, where the new obligation will be, but the existing obligation was not, secured by a lien on a dwelling.

iii. *Requests for preapproval.* For requests received before January 1, 2004, lenders need not report requests for preapproval (as that term is defined in § 203.2(b)(2) of the revised Regulation C) that do not result in a traditional loan application. Lenders may, at their option, report requests for preapproval that are denied or that are approved but not accepted. In addition, lenders need not specify whether an application for a home purchase loan involved a request for preapproval, and should use code 3 (Not Applicable) in the preapproval field on the HMDA/LAR.

iv. *Applicant information.* For applications received before January 1, 2004, lenders must collect data on race or national origin using the categories in effect in 2003, and must convert the data to the codes in effect in 2004 for reporting, using the following conversion guide:

(A) Ethnicity. The revised Regulation C requires lenders to request an applicant's ethnicity first (Hispanic or Latino, Not Hispanic or Latino), and then to request the applicant's race. The HMDA/LAR has been revised accordingly, so that ethnicity and race are distinct fields.

(*1*) If the applicant's race was identified as Hispanic (code 4) in 2003, use code 1 (Hispanic or Latino) for reporting ethnicity.

(*2*) If the applicant's race was identified as American Indian or Alaskan Native, Asian or Pacific Islander, Black, White, Other, or Not Applicable (codes 1, 2, 3, 5, 6, or 8) in 2003, use code 4 (Not Applicable) for reporting ethnicity.

(*3*) If the applicant did not provide information on race in a mail, Internet, or telephone application (code 7) in 2003, use code 3 (information not provided by applicant in mail, Internet, or telephone application) for reporting ethnicity.

(B) Race.

(*1*) If the applicant's race was identified as American Indian or Alaskan Native, Black, or White in 2003, use the corresponding code for 2004. For example, if the applicant's race was identified as Black (code 3) in 2003, use code 3 (Black or African-American) for reporting race in 2004.

(*2*) If the applicant's race was identified as Asian or Pacific Islander in 2003, use code 2 (Asian).

(*3*) If the applicant's race was identified as Hispanic in 2003, use code 7 (Not Applicable).

(*4*) If the applicant's race was identified as Other in 2003, use code 7 (Not Applicable).

(*5*) If the applicant did not provide information on race in a mail, Internet, or telephone application (code 7) in 2003, use code 6 (Information not provided by applicant in mail, Internet, or telephone application).

(*6*) If the applicant's race was identified as Not Applicable (code 8) in 2003, use code 7 (Not Applicable).

(C) Sex. For applications received before January 1, 2004, in which there is no co-applicant, the lender may use code 4 (Not Applicable) in the field provided for the co-applicant's sex.

v. *Rate Spread.* For applications received before January 1, 2004, in which the rate lock occurred before January 1, 2004, lenders may report NA (Not Applicable) for rate spread. For applications received before January 1, 2004, for which the rate lock occurred after January 1, 2004, lenders must calculate and report the rate spread in accordance with the rules set forth in new section 202.4(a)(12) (*see* 67 FR 7222 (Feb. 15, 2002); 67 FR 43223 (June 27, 2002)).

(A) Example: Assume an application is received on December 1, 2003; the rate lock occurs on December 26, 2003, and the loan is originated on January 15, 2004. The lender may report NA (Not Applicable) for rate spread.

(B) Example: Assume an application is received on December 15, 2003; the rate lock occurs on January 3, 2004, and the loan is originated on January 15, 2004. The lender must calculate and report the rate spread in accordance with the rules in new section 202.4(a)(12) (*see* 67 FR 7222 (Feb. 15, 2002); 67 FR 43223 (June 27, 2002)).

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, May 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–13203 Filed 5–27–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1150]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors is publishing a final amendment to appendix A of Regulation CC that updates the routing numbers for Federal Reserve Banks and Federal Home Loan Banks. Banks generally must provide next–day or second–day availability for checks drawn on these routing numbers. This amendment also reorganizes and clarifies existing information in the introductory material preceding the routing number list.

The Board also is providing information about a series of future amendments that the Board will make to appendix A to reflect the restructuring of check processing functions within the Federal Reserve System. These amendments collectively will reduce

the number of check processing regions listed in appendix A from 44 to 32, thereby resulting in more checks in the affected regions being local to one another. These amendments will take effect on a staggered basis beginning in the second half of 2003 and ending in late 2004. The Board will publish each amendment in the Federal Register at least 60 days before the effective date.

DATES: The final rule will become effective on July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), Michele Braun, Manager (202/452–2819), or Jeffrey S. H. Yeganeh, Senior Financial Services Analyst (202/728–5801), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division; for users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Regulation CC establishes the maximum period a bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1]

Generally, a bank must make funds available for withdrawal within one or two days of deposit if the funds are deposited by certain types of checks that have a relatively low risk of being returned and the deposit meets the other conditions described at § 229.10(c) of Regulation CC.[2] Items generally subject to next– or second–day availability include checks drawn on the U.S. Treasury; U.S. Postal Service money orders; checks drawn on a Federal Reserve Bank or a Federal Home Loan Bank; checks drawn by a state or unit of general local government; cashier's, certified, or teller's checks; and checks drawn on the same branch or another branch of the depositary bank if both branches are located within the same Federal Reserve check processing region. A depositary bank also must give next–day availability for up to the first $100 of any check or checks deposited on the same banking day that are not otherwise subject to the next–day availability rule.

For checks that are not subject to the next– or second–day availability rules discussed above, depositary banks generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check''. A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Otherwise, a check is nonlocal.

Appendix A to Regulation CC contains a routing number guide that assists banks in determining the maximum permissible hold periods for most deposited checks.[3] The appendix lists the 9–digit routing numbers for U.S. Treasury checks, postal money orders, and checks drawn on Federal Reserve Banks and Federal Home Loan Banks. Appendix A also lists each Federal Reserve check processing office and the first four digits of the routing numbers, known as the Federal Reserve routing symbol, of the banks that are served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

Final Amendment to Appendix A

Over the past few years, the Federal Reserve Banks and Federal Home Loan Banks have changed their check–related operations, including the routing numbers they use. The Board accordingly is updating appendix A to delete retired routing numbers and insert newly added ones.

With respect to the Federal Reserve Bank routing number list, the Board is deleting routing numbers 0112 0048 8 and 0214 0950 9; correcting the placement of two existing routing numbers, 0220 0026 6 and 0519 0002 3; and adding a new routing number, 0711 0711 0.

With respect to the Federal Home Loan Bank routing number list, the Board is deleting the following numbers: 0640 0091 0; 0654 0348 0; 0724 1338 2; 0820 0125 0; 1020 0603 8; 1030 0362 9; 1040 0019 7; 1130 1750 8; 1211 3994 4; and 1222 4014 6. In addition, the Board is adding the following numbers: 0430 1862 2 and 1240 0287 4.

The Board also has reorganized and clarified the existing introductory text of appendix A.

These amendments become effective July 28, 2003.

Information About Future Changes to Appendix A

A Federal Reserve study released in 2002 found that the number of checks written in the United States had declined from approximately 50 billion annually in the mid–1990s to about 40 billion annually in 2002. Correspondingly, the number of checks processed by the Federal Reserve Banks has also declined in recent years. The Federal Reserve Banks have decided to reduce the number of locations at which they process checks in response to this changing trend in check usage and to position themselves more effectively to meet the cost recovery requirements of the Monetary Control Act of 1980. Thirteen Reserve Bank offices will no longer process checks, and the checks currently processed at those offices will be processed at other nearby offices, as follows:

Offices that will no longer process checks:	Offices to which check processing will be transferred
Pittsburgh, PA	Cleveland, OH
Richmond, VA	Baltimore, MD
Charleston, WV	Cincinnati, OH
Columbia, SC	Charlotte, NC
Miami, FL	Jacksonville, FL
Indianapolis, IN	Cincinnati, OH
Milwaukee, WI	Chicago, IL
Peoria, IL[4]	Chicago, IL
Little Rock, AR	Memphis, TN
Louisville, KY	Cincinnati, OH
Omaha, NE	Des Moines, IA
El Paso, TX	Dallas, TX
San Antonio, TX	Dallas, TX

[4] The Peoria office does not serve a separate check processing region. Rather, it is a satellite office of the Federal Reserve Bank of Chicago that is located in the Chicago check processing region.

Because this restructuring will reduce the number of check processing regions, some banks that now are nonlocal to one another will become local. As a result, the status of some nonlocal checks in the affected regions will change. Specifically, some checks that are drawn on and deposited at banks located in the affected regions that currently are nonlocal checks will become local checks subject to faster

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] Other requirements for next–day availability are that the check be deposited in person to an employee of the depositary bank into an account held by the payee of a check. In some cases, next–day availability also requires the use of a special deposit slip and, in the case of a check issued by a state government or unit thereof, that the depositary bank be located in the state in which the check was issued. If a deposit meets all the requirements for next–day availability except that it was not made in person to an employee of the bank, the check is entitled to second–day availability. Otherwise, the check is subject to the general availability schedule at 12 CFR 229.12 that applies to local and nonlocal checks. In addition, banks may invoke the exception holds described at 12 CFR 229.13 with respect to checks that generally are subject to next–day or second–availability.

[3] Official checks (certified, cashier's and teller's checks) are the exception, because they are identified by routing number information that is not included in the appendix.

availability schedules. Banks in the affected regions therefore might need to realign their internal operating systems to reflect the restructuring. Depending on their funds availability practices, banks also might need to modify their funds availability schedules and related disclosures to reflect any improved availability of funds resulting from the restructuring. Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days of implementing a change that improves the availability of funds.

The restructuring of Reserve Bank check processing operations will take place in several phases, beginning in the second half of 2003 and ending in late 2004. The Board will amend appendix A in connection with each phase of the restructuring to delete the name of the office(s) that will no longer process checks and transfer the affected Federal Reserve routing symbols to another check processing office.[5] The Board will announce each phase of the restructuring and the associated amendments to appendix A at least 60 days prior to the effective date of the amendment in order to give affected banks ample time to make processing changes, and, if necessary, amend their availability schedules and related disclosures and provide their customers with notice of any changes to their availability schedules.

[5] Appendix A to Regulation CC has been amended on several occasions in the past to reflect the restructuring of the Reserve Banks' check processing operations. In 1994, the Utica regional check processing center began serving the Buffalo check processing territory (59 FR 48789, Sept. 23, 1994). In 1996, the East Rutherford operations center began serving the Jericho check processing territory (61 FR 25389, May 21, 1996). In 1997, the Boston head office began serving the Lewiston check processing territory (62 FR 26220, May 13, 1997).

Some affected banks might prefer to make some or all of their processing and availability changes prior to the effective dates of the relevant amendments. For the information and planning needs of affected banks, the Board today is describing below all the Federal Reserve routing symbol changes to appendix A that will be made between now and the end of 2004.

1. Cleveland.

The operations of the Pittsburgh branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Cleveland head office:

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434

2. Cincinnati.

The operations of the Charleston and Indianapolis offices and the Louisville branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Cincinnati branch:

0420	2420
0421	2421
0422	2422
0423	2423
0515	2515
0519	2519
0740	2740
0749	2749
0813	2813
0830	2830
0839	2839
0863	2863

3. Baltimore.

The operations of the Richmond head office will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Baltimore branch:

0510	2510
0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570

4. Charlotte.

The operations of the Columbia office will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Charlotte branch:

0530	2530
0531	2531
0532	2532
0539	2539

5. Jacksonville.

The operations of the Miami branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Jacksonville branch:

0630	2630
0631	2631
0632	2632
0660	2660
0670	2670

6. Chicago.

The operations of the Milwaukee office will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Chicago head office:

0710	2710
0711	2711
0712	2712
0719	2719
0750	2750
0759	2759

7. Des Moines.

The operations of the Omaha branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Des Moines office:

0730	2730
0739	2739
1040	3040
1041	3041
1049	3049

8. Memphis.

The operations of the Little Rock branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Memphis branch:

0820	2820
0829	2829
0840	2840
0841	2841
0842	2842
0843	2843

9. Dallas.

The operations of the El Paso and San Antonio branches will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Dallas head office:

1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122
1123	3123
1140	3140
1149	3149
1163	3163

The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of the final rule. The revisions to the introductory language and routing number lists are technical in nature. In addition, the routing number revisions are required by the statutory and regulatory definitions of ''check–processing region.'' Because there is no substantive change on which to seek public input, the Board accordingly has determined that the § 553(b) notice and comment procedures are unnecessary.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the final rule will not have a significantly adverse economic impact on a substantial number of small entities. These amendments are technical, and the routing number changes are required by law. Moreover, these amendments apply to all banks regardless of their size. Many small banks generally provide next–day availability for all checks and will not be affected by this amendment. For the subset of small banks that does distinguish between checks subject to next–day availability and those subject to longer holds, the final rule should necessitate only minimal programming changes. Some of these affected banks might also have to modify their funds availability disclosures and notify both new and existing customers of the modified funds availability schedules.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. Appendix A to Part 229 is amended as follows:

a. Introductory paragraphs A and B are revised and a new paragraph C is added.

b. The heading and text of the Federal Reserve Offices routing list are revised.

c. The Federal Home Loan Banks routing list is revised.

The additions and revisions read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks.

A. Each bank is assigned a routing number by Thomson Financial Publishing Inc., as agent for the American Bankers Association. The routing number takes two forms: a fractional form and a nine–digit form. A paying bank generally is identified on the face of a check by its routing number in both the fractional form (which generally appears in the upper right–hand corner of the check) and the nine–digit form (which is printed in magnetic ink along the bottom of the check). Where a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable–through bank, not the payor bank.

B. The first four digits of the nine–digit routing number (and the denominator of the fractional routing number) form the ''Federal Reserve routing symbol,'' and the first two digits of the routing number identify the Federal Reserve District in which the bank is located. Thus, 01 will be the first two digits of the routing number of a bank in the First Federal Reserve District (Boston), and 12 will be the first two digits of the routing number of a bank in the Twelfth District (San Francisco). Adding 2 to the first digit denotes a thrift institution. Thus, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

C. Each Federal Reserve check processing office is listed below, followed by the Federal Reserve routing symbols of the banks that are located within the check–processing region served by that office. Because some check processing regions cross Federal Reserve District lines, there are some cases in which banks in different Federal Reserve Districts are located in the same check–processing region and therefore considered local to each other. For example, banks in Fairfield County, Connecticut are located in Second District and have Second District routing numbers (0211 or 2211), but the Windsor Locks office of the First District processes the checks of these banks. Thus, as indicated below, checks drawn on banks with 0211 or 2211 routing numbers would be local for First District banks served by the Windsor Locks office but would be nonlocal for other Second District depositary banks.

* * * * *

FEDERAL RESERVE BANKS

0110 0001 5	0720 0029 0
0111 0048 1	0730 0033 8
0210 0120 8	0740 0020 1
0212 0400 5	0750 0012 9
0213 0500 1	0810 0004 5
0220 0026 6	0820 0013 8
0310 0004 0	0830 0059 3
0410 0001 4	0840 0003 9
0420 0043 7	0910 0008 0
0430 0030 0	0920 0026 7
0440 0050 3	1010 0004 8
0510 0003 3	1020 0019 9
0519 0002 3	1030 0024 0
0520 0027 8	1040 0012 6
0530 0020 6	1110 0003 8
0539 0008 9	1120 0001 1
0610 0014 6	1130 0004 9
0620 0019 0	1140 0072 1
0630 0019 9	1210 0037 4
0640 0010 1	1220 0016 6
0650 0021 0	1230 0001 3
0660 0010 9	1240 0031 3
0710 0030 1	1250 0001 1
0711 0711 0	

FEDERAL HOME LOAN BANKS

0110 0053 6	0740 0101 9
0212 0639 1	0810 0091 9
0260 0973 9	0910 0091 2
0410 0291 5	1010 0091 2
0420 0091 6	1011 0194 7
0430 0143 5	1110 1083 7
0430 1862 2	1119 1083 0
0610 0876 6	1210 0070 1
0710 0450 1	1240 0287 4
0730 0091 4	1250 0050 3

By order of the Board of Governors of the Federal Reserve System, May 20, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–13030 Filed 5–27–03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 153, 157, and 375

[Docket Nos. RM03–4–000 and AD02–14–000; Order No. 633]

Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act

Issued May 19, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without prior notice and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity for protection of life or health or for maintenance of physical property. In addition, the Commission is revising reporting requirements so that a natural gas company, in responding to an emergency, would submit a report describing intended actions to the Commission in advance of commencing construction, rather than reporting actions taken after the fact, as is currently the case. The Commission revises its regulations to state that the requirement to provide landowners with 30-day prior notice is met if all affected landowners grant easements. The Commission is also amending its regulations to specify that the revisions related to emergency reconstruction will apply to facilities subject to Section 3 of the Natural Gas Act (NGA). Finally, the Commission is amending its regulations to delegate authority to waive certain landowner notice requirements and to make certain judgments in the field regarding the construction and operation of gas facilities. An important objective of the final rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property.

EFFECTIVE DATE: The rule will become effective July 14, 2003.

FOR FURTHER INFORMATION CONTACT:

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Berne Mosley, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8625.

SUPPLEMENTARY INFORMATION: Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending part 157, subpart F, of its regulations to enable natural gas interstate pipeline companies to replace mainline facilities using a route other than the existing right-of-way, and to commence construction without 45-day prior

notice and without project cost constraints, when immediate action is required to restore service in an emergency due to a sudden unanticipated loss of natural gas or capacity for protection of life or health or for maintenance of physical property. In addition, the Commission is revising reporting requirements so that a natural gas company acting under part 157 in responding to an emergency would submit a report describing intended actions to the Commission in advance of commencing construction, rather than reporting actions taken under part 157 after the fact, as is currently the case. The Commission revises part 157 to state that the requirement to provide landowners with 30-day prior notice is met if all affected landowners grant easements. The Commission is also amending part 153 to specify that the regulatory revisions related to emergency reconstruction will apply to facilities subject to Section 3 of the Natural Gas Act (NGA). Finally, the Commission is amending part 375 of its regulations to delegate authority to waive certain landowner notice requirements and to make certain judgments in the field regarding the construction and operation of gas facilities. An important objective of the proposed rule is the reconciliation of the Commission's regulatory responsibilities under its enabling statutes and federal environmental and safety laws with the need to protect persons and property.

Background

2. On January 17, 2003, the Commission issued a notice of proposed rulemaking (NOPR),[1] seeking comments on how it might facilitate the restoration of gas service in an emergency due to a sudden unanticipated loss of gas or capacity threatening loss of life, impairment of health, or damage to property. The NOPR was prompted, in part, by Commission and energy industry attention to operational safety concerns, in particular, the potential impacts of deliberate damage to energy facilities. On April 22, 2002, staff from the Commission and from the Department of Transportation Office of Pipeline Safety (OPS) jointly convened a technical conference to consider whether and how to clarify, expedite, and streamline permitting and approvals for interstate pipeline reconstruction following a sudden unanticipated service disruption.[2] Efforts to ensure the security of the nation's energy infrastructure have generally focused on maintaining the physical integrity of facilities and preparing to respond to accidents, such as excavation that breaches a buried pipe, natural disasters, such as earthquakes and landslides, and foreseeable equipment failure. The conference broadened this focus to consider how best to respond to damage due to a deliberate effort to disrupt the flow of natural gas.

3. At the conference, Commission and OPS staff provided an overview of current regulatory processes and presented examples of recent natural gas emergencies. Conference participants—representing federal, state, and local agencies, energy industry sectors, trade groups, and interested individuals—suggested various means to speed the reconstruction of interstate gas facilities, including: revising existing legislative mandates, revising Commission regulations, and enhancing coordination among federal, state, and local entities. A transcript of the conference and the comments subsequently submitted are contained in the record in Docket No. AD02–14–000.[3]

4. In general, it appears the Commission's existing authorities and policies are sufficient, and sufficiently flexible, to enable pipelines to respond to emergencies in a timely manner. However, in view of the April 2002 conference, and comments in response to the January 2003 NOPR, the Commission has identified circumstances under which its present practices could constrain a pipeline from implementing a timely response. Accordingly, as discussed below, the Commission is amending its regulations to better enable pipelines to recover from an emergency interruption in service.

Comments in Response to the January 2003 NOPR

5. Timely comments in response to the NOPR were filed by the American Gas Association (AGA); Duke Energy Gas Transmission (Duke); INGAA; KM Pipelines;[4] KO Transmission Company (KO Transmission); MidAmerican Energy Company (MidAmerican); NiSource Pipelines (NiSource);[5] Northern Natural Gas Company (Northern Natural); the Process Gas Consumers Group (Process Gas Consumers); the Public Service Commission of the State of New York (New York PSC); and Williston Basin Interstate Pipeline Company (Williston Basin). Untimely comments were submitted by the United States Department of the Interior, Fish and Wildlife Service (FWS) and the Public Utilities Commission of Ohio (Ohio PUC), which we accept, as to do so will not delay, disrupt, or otherwise prejudice this proceeding.

Revisions to the Commission's Regulations

6. In the NOPR, we requested comments on the adequacy of the Commission's existing authority to expedite the restoration of service following an emergency gas disruption, and whether the expansion of authority proposed would be sufficient to meet pipelines' emergency reconstruction requirements. In the NOPR, we described a situation where a pipeline could experience damage to its facilities, and then be unable to gain access to the site of the damage (for example, access may be obstructed in the case of a landslide, or restricted in the case of an investigation). In such circumstances, we seek to ensure that pipelines have authority adequate to be able to restore service rapidly. In particular, we question whether a traditional NGA Section 7(c) certificate application will prove practical, since even with accelerated processing of the application, the optimal time line to take action will inevitably be extended. An NGA Section 7(c)(1)(B) temporary certificate may be issued with dispatch, but may be inadequate if repairs require more than minor enlargements or extensions of existing facilities. Under § 2.55 of our regulations, a pipeline can

[1] Emergency Reconstruction of Interstate Natural Gas Facilities Under the Natural Gas Act, 68 FR 4120 (Jan. 28, 2003), FERC Stats. & Regs. ¶ 32,567 (Jan. 17, 2993).

[2] On the following day, staff from the Commission and from the Department of Energy (DOE) jointly convened a technical conference to consider whether to or how to clarify, expedite, and streamline the reallocation of gas supplies in the event of a sudden unanticipated service disruption. That proceeding, in Docket No. AD02–15–000, is not addressed here.

[3] The conference comments are available on FERC's Web site at *http://ferc.gov* using the Federal Energy Regulatory Records and Information System (FERRIS) to access filings in Docket No. AD02–14–000. The Interstate Natural Gas Association of America (INGAA) submitted scenarios describing how interstate pipelines might respond to various types of facility-related emergencies. Because of security concerns associated with disclosing this information, these scenarios are not included in the public record in Docket No. AD02–14–000; however, while the particulars of the scenarios are not described in detail in the public record, the results are discussed in general.

[4] KM Pipelines consists of Kinder Morgan Interstate Gas Transmission, LLC; Natural Gas Pipeline Company of America; Trailblazer Pipeline Company; and TransColorado Gas Transmission Company.

[5] NiSource consists of Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company; Granite State Gas Transmission, Inc.; and Crossroads Pipeline Company.

replace or repair facilities, but only within the footprint of the existing facilities, and where costs are expected to exceed $7.5 million,[6] only after 45 days advance notice to the Commission. In view of these constraints, we have elected to expand the scope of construction currently allowed under part 157, subpart F, of our regulations.

7. Almost all interstate gas pipelines now hold part 157 blanket certificates that permit the automatic construction, operation, abandonment, replacement, and rearrangement of certain ''eligible facilities.'' To facilitate pipelines'' capability to act expeditiously to respond to an emergency,[7] we propose to expand the scope of ''eligible facilities'' to include mainline facilities that require a new right-of-way, and system modifications such as adding compression, that could compensate for impaired gas flows. Further, for emergency reconstruction, we propose to lift the current $21 million project cost limit and forego the prescribed 45-day public notice requirement.[8] In addition to the 45-day public notice, a gas company acting under blanket authority is required to make a good faith effort to notify all affected landowners 30 days prior to commencing construction or at the time it initiates easement negotiations. We retain this landowner notification requirement, but as stated in the January 2003 NOPR, once a company has contacted landowners, we will consider a company request to waive the remainder of the 30-day landowner notice period.[9]

Defining an Emergency

8. The expanded reconstruction authority applies to activities required to restore service for protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas or capacity. INGAA and Duke are concerned that under this criteria, ''eligible facilities'' as defined under § 157.202 of the Commission's regulations would not include repairs or replacement to respond to damage that did impair a company's ability to meet contractual commitments, but that did not present a direct threat to life, health, or property.

9. NiSource objects to describing an emergency as a ''sudden unanticipated'' loss of gas or capacity, characterizing ''sudden'' as an unnecessary qualification. NiSource would curtail the definition of an emergency to an ''unanticipated'' loss of gas or capacity.

10. The Process Gas Consumers Group, representing industrial end users, believes that the economic harm a factory may incur due to an interruption in gas deliveries should be construed as property damage qualifying for reconstruction authorization under the emergency blanket regulations. To this end, the Process Gas Consumers Group endorses expanding § 157.205(a) and § 157.208 of our regulations to include reconstruction ''activity required to restore service in an emergency due to a sudden unanticipated loss of natural gas supply or capacity in order, for example, to prevent loss of life, impairment of health, economic harm to end users, or damage to property.''

Commission Response

11. Restricting the expanded part 157 authority to emergencies that require an immediate response for protection of life or health or for maintenance of physical property is deliberate. Circumstances that frustrate a pipeline's capability to meet certain customer needs—but that do not otherwise pose a direct threat to life, health, or property—are most appropriately addressed, as has been the case until now, under the terms of a pipeline's existing tariff and our non-emergency rules and regulations. Rather than expanding the definition of emergency to include economic damages, as the Process Gas Consumers Group proposes, we suggest such damages, particularly business losses due to disrupted gas deliveries to end users, may be managed by being insured against, or by employing dual fuel capabilities, or by addressing parties' responsibilities in the terms of service. We seek to keep emergencies focused on threats to life, health, or property, and including economic damage in the definition of emergency risks is an inappropriate expansion of the new regulatory provisions, given that a reasonable argument might be made that any gas curtailment constitutes a threat to economic welfare. In view of this, we will not enlarge the definition of emergency to include economic damage.

12. To emphasize that an emergency be precipitated by events which a company could not be expected to predict or prepare for, we retain both ''sudden'' and ''unanticipated.'' We note this definition of emergency is consistent with that of § 284.262(2) of our regulations, which also defines an emergency as a ''sudden unanticipated loss of natural gas supply or capacity.''

Eligible Facilities

13. INGAA, Duke, and Williston Basin observe that the NOPR focuses on reconstruction that necessitates a pipeline's deviating from its existing right of way, and ask that in the final rule the Commission explicitly apply the expanded emergency blanket authority, *i.e.*, waiver of prior notice and lifting the project cost cap, to construction within the existing right of way. INGAA and Duke propose that the § 157.202(b)(2)(i) definition of ''eligible facilities'' read as follows:

> Emergency replacements are any restoration of pre-existing mainline capacity, including the reconstruction of mainline facilities either inside or outside the existing right of way and the modification of facilities to rearrange gas flows or increase compression for the primary purpose of restoring pre-existing service and/or capacity to protect life, prevent impairment of health, or damage to property due to the sudden unanticipated damage to mainline facilities.

14. The New York PSC observes that in addition to rebuilding to replace damaged facilities, it may be possible, and potentially more efficient, to restore essential service by making modifications to undamaged portions of a pipeline's system. To allow for such modifications, the New York PSC would expand ''eligible facilities'' to include construction intended to redirect gas flows on a pipeline's system.

15. To ensure that the expanded authority is employed prudently, FWS recommends that § 157.202(B)(2)(i) apply ''only when the construction within the existing footprint may be prohibited due to natural disasters, or acts of national security.''

16. KM Pipelines state that from an operational standpoint, compressors and storage facilities are integral parts of mainline systems, and so argues that compressors and storage facilities should be explicitly included within the meaning of mainline facilities. Duke asks that the Commission clarify that the emergency blanket provisions will cover conventional storage facilities.

17. INGAA requests the Commission specify that when replacing damaged facilities, a pipeline need not duplicate the damaged facilities, but may make use of components of ''substantially similar capacity.'' INGAA points out that emergency repairs can be made most rapidly by using supplies readily available in inventory. INGAA therefore

[6] This amount is adjusted annually. See 18 CFR 157.208(d) (2002), Table 1, column 1.

[7] We add §157.202(b)(13) to define an emergency as ''a sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service for protection of life or health or for maintenance of physical property.''

[8] *Id.* The cost cap is adjusted annually. Currently, the 45-day prior notice only applies to projects costing more than $7.5 million.

[9] We note that §157.203(d)(3) of our regulations provides for exceptions to the landowner notification requirements.

requests regulatory leeway to use substantially similar accessible supplies when duplicate replacement supplies are not readily available. INGAA observes that § 2.55(b)(ii) of the Commission's regulations already specifically accepts the substitution of approximately equivalent components.

Commission Response

18. Our aim is to enable a company to recover from an emergency as soon as possible, and we assume recovery will be quickest (and most cost effective) when a company can repair or replace damaged facilities within the original footprint, since such efforts can be expected to minimize the need for easements and environmental approvals. Thus, we expect that reconstruction within the right-of-way will, when possible, be preferred. However, although an existing right-of-way may remain accessible, we can envision circumstances where new construction along a new right-of-way could be the more rapid means to restore service. We therefore want to offer pipelines options when rebuilding, and for this reason, we will not adopt the FWS proposal that we permit pipelines to use the new blanket authorization to reconstruct on a new right-of-way only when the existing right-of-way is unavailable. We clarify that although the NOPR emphasized the applicability of expanded emergency blanket authority to reconstruct outside of an existing right-of-way, we also intend for emergency blanket authorization to apply to reconstruction within the existing right-of-way. Consequently, we find no need to alter the revised regulatory language as suggested by INGAA, Duke, and Williston Basin.

19. As proposed, we will add ''the modification of facilities to rearrange gas flows or increase compression'' to § 157.202(b)(2)(i), as we find this phrase better expresses our intent to make it possible for a damaged pipeline to rely on the new emergency blanket provisions to modify its system as needed to restore service. We are concerned that absent this additional description of potential authorized actions, the emergency blanket provisions could be construed as restricting a pipeline to either the repair or replication of damaged facilities, with the sole exception of rerouting a mainline. Such an interpretation could constrain a pipeline's emergency recovery efforts, thereby prolonging service shortfalls, and thereby limit the utility of the new blanket regulations and undermine our aim to speed recovery efforts. Thus, if a pipeline finds it is able to restore interrupted service faster by adding new facilities—such as compression at an undamaged site or equipment to enhance storage withdrawals—than by replacing or repairing damaged facilities, we want pipelines to have emergency blanket authority to add such facilities. Further, if a pipeline can safely adjust operating parameters or can rearrange facilities on its system in order to compensate for a service interruption, the emergency blanket regulations should permit such modifications. Accordingly, we will add ''the modification of facilities to rearrange gas flows or increase compression'' to those actions permitted under emergency blanket authority. This revision may be interpreted as encompassing the redirection of gas flows, as requested by the New York PSC.

20. We note that in an emergency, pipelines are to focus on the immediate restoration of services essential for protection of life or health or for maintenance of physical property; thus, ''the modification of facilities'' applies only those modifications devoted to this priority. In reviewing pipelines' advance notice of emergency reconstruction, we will consider whether the described activities are consistent with this priority.

21. INGAA and Duke propose to employ emergency authorization to restore pre-existing service. We stress that unless a company's inability to fulfill its service contracts presents a direct threat to life, health, or property, no emergency exists, and where no emergency exists, it would be inappropriate to invoke emergency authority. We reiterate our observation in the NOPR that this ''enlargement in the scope of permissible actions under part 157, subpart F, is restricted to actions necessary to restore service after an interruption due to an emergency event,'' and does not apply to ''circumstances [that] would not qualify as an emergency.'' [10] However, provided an incident causing an interruption in service qualifies as an emergency, we clarify that a company may rely on the expanded blanket emergency provisions to replace or rearrange facilities in order to reinstate service up to the level it previously provided.

22. We believe it is reasonable to permit a pipeline to employ the most readily available materials in an emergency. The public interest in restoring service should not wait on the delivery of an order for new materials that match the damaged facilities. Accordingly, we clarify that in an emergency a pipeline may use components of substantially similar capacity. The current regulations implicitly permit such substitutions. As INGAA comments, the 'substantially similar capacity' allowance is the § 2.55(b)(ii) standard.'' [11] Section 157.202(b)(2)(i) of our regulations expands upon this, allowing ''replacements that do not qualify under § 2.55(b) of this chapter because they will result in an incidental increase in the capacity of main line facilities.'' Provided replacement facilities that differ from the original facilities result in no more than an incidental increase in capacity, we expect such replacements will be acceptable under the expanded emergency blanket certificate authorization. We note that the § 157.207 report of intended action under emergency blanket authority should serve, inter alia, to inform the Commission of circumstances that merit the use of replacement facilities that are not a one-to-one match for a system's existing facilities.

Notice Requirements

23. INGAA, Duke, and NiSource support the proposal to omit the § 157.203(a) 45-day public notice period for emergency reconstruction, and urge the Commission to similarly exempt pipelines from the § 157.203(d) 30-day landowner notice requirement. Noting the Commission's stated willingness to consider requests to waive the 30-day landowner notice, the parties nevertheless view this approach as uncertain and time consuming, and favor omitting the § 157.203(d) landowner notice. INGAA and Duke contend this notice is unnecessary, as it is duplicative of a pipeline's obligation to either obtain voluntary easements from landowners or obtain easements through condemnation proceedings.

24. Northern Natural believes that in an emergency that threatens life, health, or property, the public interest in prompt remedial action should outweigh the landowners' interest in notification.[12] Therefore, Northern Natural recommends that the Commission modify § 157.203(d)(3) to exclude landowner notice in an emergency; with emergency construction limited to the minimal disturbance needed to restore service and to landowners directly impacted. Alternatively, Northern Natural suggests that landowner notification and

[10] FERC Stats. & Regs. ¶ 32,567, at 34,683.

[11] Specifically, §2.55(b)(ii) states that ''replacement facilities will have a substantially equivalent designed delivery capacity.''

[12] Northern Natural speculates that in an emergency, property owners may be unavailable and communications unreliable.

construction be allowed to take place concurrently.

25. Duke, Northern Natural, and KM Pipelines are concerned that efforts to negotiate in good faith with landowners to obtain easements prior to exercising eminent domain authority could delay reconstruction. Recognizing that the mechanics and pace of this judicial process are outside of the Commission's domain, Duke asks the Commission to ''acknowledge * * * the need for and benefit of an expedited eminent domain process'' in an emergency, so as to encourage courts to facilitate expedited entry onto lands and Congress to modify statutory limitations. Northern Natural similarly urges the Commission to coordinate regulatory and statutory changes with other agencies to expand powers of eminent domain and blanket waivers, and ''employ its maximum allowable authority to expedite the process in an emergency.'' KM Pipelines encourage the Commission to seek legislative revisions so that in an emergency, environmental statutes and related regulations may be waived to allow for immediate reconstruction. KM Pipelines propose that such revisions provide for the Commission to declare an emergency exists, after which pipelines will be able to obtain an expedited court condemnation order to gain access to land, with a separate determination on compensation to follow at a later date.

Commission Response

26. It is necessary to find the proper balance between facilitating the immediate restoration of service in an emergency, via a new right-of-way if necessary, and safeguarding the due process rights of affected landowners, but we believe eliminating landowner notice shifts the balance too far. The landowner notice requirements protect the public interest by ensuring that property rights are respected and that any necessary new easements adhere to applicable state procedures.[13] Thus, we will retain the § 157.203(d) requirement that a pipeline make a good faith effort to provide all affected landowners with 30-day notice. We note that regardless of the Commission's regulations, landowners must be contacted for the purpose of obtaining an easement, and this contact may serve as notice for the purpose of complying with § 157.203(d) of our regulations.

27. We suggest that the greater the magnitude and urgency of an emergency, the more persuasive pipelines may be in negotiating voluntary easements. Involuntary easements compelled through the exercise of the right of eminent domain are subject to state law, and we suggest that the nature of the emergency may influence the willingness of state authorities to intervene to expedite their procedures. In view of this, we are not willing to forego prior notice to landowners, as requested, in its entirety.

28. We nevertheless believe that modifications may be made to the landowner notice requirements to speed the process while retaining relevant landowner protections. Under § 157.203(d) of our current regulations, a landowner, once notified in accordance with § 157.6(d)(2) and § 157.203(d)(2) of our regulations, may waive the 30-day aspect of the prior notice requirement. We will expand this and revise § 157.203(d) to state that ''For activity required to restore service in an emergency, the 30-day prior notice period is satisfied in the event a company obtains all necessary easements.'' We believe that once a company has reached voluntary agreements with all landowners affected by a new right-of-way, there is no remaining landowner interest to be protected by awaiting the expiration of the remainder of the 30-day prior notice period. In addition, we will provide the Director of the Office of Energy Projects (OEP) with the authority to waive landowner notice requirements, as necessary or appropriate, by adding a new § 375.308(w)(5), to state that the OEP Director, or the Director's designee, has the delegated authority to take appropriate action on ''Requests for waiver of the landowner notification requirements in § 157.203(d) of this chapter.''

29. We agree with those comments that stress the need for pipelines to be able to obtain new right-of-way to build around damaged portions of pipe. That said, as commenters observe, the mechanics and pace of the process of obtaining a new easement by right of eminent domain are beyond the scope of this Commission's jurisdiction.[14] Consequently, we are unable to commit to effecting changes in other agencies' regulations or our own statutory authority. We nevertheless can and do commit to working with local, state, and federal authorities to coordinate and expedite emergency reconstruction efforts.

Advance Report of Emergency Reconstruction Activities

30. In the NOPR, we noted that under the existing § 157.207 reporting requirements, companies submit a retrospective annual report describing the projects completed under blanket authority during the prior year. Because the expanded emergency blanket authority provisions omit the requirement that companies give 45-day prior notice for public comment on projects costing more than $7.5 million, we modified this section to require that companies intending to rely on emergency blanket authority submit an advance report to the Commission describing their preparations and plans before commencing reconstruction.

31. NiSource does not object to notifying the Commission prior to proceeding with emergency reconstruction activities, as long as the Commission acknowledges and accepts that the initial description of the problem and remedial plan may be inexact and subject to change in light of the incomplete information and urgency inherent in an emergency.

32. Northern Natural observes that § 260.9(b) allows companies to deliver notices of gas service disruptions to the Commission ''by any electronic means'' and asks that if the Commission retains an emergency advance report requirement, it should permit pipelines to deliver this report by electronic means. Further, Northern Natural seeks clarification that the advance report filing applies only to emergency activities under the proposed expanded blanket authority, and will not be interpreted to apply to activities that come under current no-notice blanket authority. Northern Natural worries that an emergency may disrupt communications between pipelines and governmental agencies.

Commission Response

33. We accept that in attempting to restore service in response to an emergency, a pipeline's preparation and planning will not be as thorough and predictable as would be the case in describing a proposed non-emergency construction project. Accordingly, we do not expect to hold a pipeline to the precise parameters set forth in the advance report describing its intended emergency reconstruction.

Further, while we will expect a pipeline to submit as complete and accurate a report as is practical, as stated in the NOPR, we recognize that it will not be possible ''to supply all the information routinely set forth in a

[13] Note that landowner notice is not required under the exemptions specified in § 157.203(d)(3) of the Commission's regulations.

[14] We specifically requested views on the need for further or broader action by the Commission or Congress to inform our consideration of changes we might make to ensure the continued integrity of the energy infrastructure.

standard annual blanket report.''[15] It is in part in anticipation of inevitable infirmities in an advance report that we expect a company undertaking emergency reconstruction to consult with the Commission during reconstruction, and to that end, where necessary, the Commission will have a staff member present on site.

34. In response to Northern Natural, we observe that the existing § 260.9 requirement to report serious service interruptions occurring on a pipeline system is not affected by the new regulations set forth herein. We acknowledge the utility of allowing an advance report, described in the new § 157.207 general reporting requirements, to be filed by electronic means. Accordingly, we will provide an electronic filing option for these advance reports via the eFiling link on the Commission Web site at *www.ferc.gov.* Companies filing advance reports in accordance with the emergency blanket certificate provisions should select the filing type ''Notice/Report of Intent to Use Emergency Procedures'' from the eFiling System Filing Type Selection menu for Gas. If the report cannot be electronically filed due to file size or content restrictions (*e.g.,* large maps) in the Commission's eFiling system, then the report may be submitted on CD ROM. We will post procedures for filing these advance reports on our Web site and update those procedures as the eFiling system expands to accommodate more complex filings.

35. We clarify that the requirement for advance notice only applies, as described in § 157.207, ''[i]n the case of an emergency due to a sudden unanticipated loss of natural gas supply or capacity.'' When a pipeline is acting under existing non-emergency blanket authority, the existing annual report requirement applies, as do the existing project cost limit and 45-day prior notice requirements. Pursuant to the existing blanket regulations, non-emergency projects under the current $7.5 million cost cap qualify for automatic no-notice authorization.

Compliance With Environmental Obligations

36. INGAA urges that the Commission work with other relevant governmental entities in order to coordinate the environmental review process to expedite permits and approvals needed to effect pipeline repairs. INGAA observes that for emergency actions subject to an EIS—but not for emergency actions subject to an EA—the Commission may consult with CEQ with the aim of developing alternative NEPA compliance arrangements.[16] To address this regulatory asymmetry, INGAA proposes that the Commission expressly waive its requirement that an EA be prepared in the case of an emergency.

37. NiSource suggests that ''[t]he presence of a Commission Staff inspector (with stop work authority)'' on site may prove ''inconsistent with the emergency response action environment that will dominate the construction project.''[17] However, if the Commission chooses to send a representative to oversee emergency reconstruction, NiSource requests that the representative have broad authority to grant on-site variances, including variances of the Commission's environmental construction guidelines.

38. The Ohio PUC advocates deploying Commission staff to the affected site to coordinate with other federal, state, and local agencies to review routing and environmental mitigation. FWS recommends Commission staff be present and actively involved where reconstruction cuts a new right-of-way.

39. FWS asks that we clarify the applicability of the environmental compliance conditions of § 157.206(b) to actions proceeding under the expanded emergency blanket provisions. In addition, FWS proposes that the Commission introduce an emergency action plan into its certification of interstate pipeline facilities that would include the consideration of alternative right-of-way routes, surveyed in advance to determine areas of environmental sensitivity, and list contact numbers for the appropriate agencies' field offices.

Commission Response

40. Under § 380.4(a)(21) of our regulations, certain activities authorized under the part 157, subpart F, blanket certificate regulations are categorically excluded from environmental review. However, construction projects subject to prior notice under § 157.208(b) normally require an EA.[18] In addition, in all cases, projects constructed under blanket certificate authorization are subject to the environmental conditions of § 157.206(b). That section requires that the certificate holder adopt specific siting and maintenance provisions, that the project activities are consistent with all applicable environmental statutes, regulations, and compliance plans, and that the project ''shall not have a significant adverse impact on a sensitive environmental area.''

41. Construction performed under the emergency rule adopted herein is subject to the environmental requirements of § 157.206(b). Among other things, these provisions require all authorized activities to be consistent with applicable environmental laws, impose limits on compressor noise, require companies to adopt the environmental mitigation conditions set out in § 380.15 of the Commission's regulations, and prohibit any activity that would have an adverse effect on a sensitive environmental area. To the extent that a company cannot comply with the § 157.206(b) requirements, the company cannot rely on blanket certificate authority to complete the project, and would have to seek separate authorization. In addition, as provided in the new § 385.308(x)(7) discussed below, the regulations established herein specifically delegate to the OEP Director the authority to ensure the protection of environmental resources during the course of construction. This includes authority to employ staff with stop work authority to monitor construction activities. Under all of these circumstances, we find that a project undertaken in accordance with these expanded emergency blanket regulations, including the specified environmental limitations, will not constitute a major federal action significantly affecting the quality of the human environment and will not require a separate EA prior to construction.

42. We do not share NiSource's concern that having Commission Staff on site might impede emergency reconstruction efforts. To the contrary, we expect the presence of Commission Staff with authority to ensure compliance with environmental mitigation measures, including the authority to grant on-site variances to enable a company to adopt alternative means to meet environmental requirements, will speed reconstruction efforts. Accordingly, we will amend our § 375.308 regulations to specify that a staff member designated by the OEP Director, present on the emergency construction site as necessary or appropriate, shall have delegated authority sufficient to ensure environmental protection. Specifically, we will add a new § 375.308(x)(7), to state that the OEP Director, or the Director's designee, has the delegated authority to ''Take whatever steps are necessary to ensure the protection of all environmental resources during the construction or operation of natural gas

[15] FERC Stats. & Regs. ¶ 32,567, at 34,686.

[16] *See* 40 CFR 1506.11 (2002).

[17] NiSource's Comments, at 6 (February 27, 2003).

[18] *See* 18 CFR 380.5(b)(2) (2002).

facilities, including authority to design and implement additional or alternative measures and stop work authority.''

43. Recognizing that recovery from a gas emergency will call for actions and authorizations by entities other than this Commission, comments plead for a plan for inter-governmental interaction. The nature of an emergency as a sudden unanticipated event makes advance identification of the relevant authorities that will need to be involved in responding to an emergency, and the role each will play, impractical. Nevertheless, we can name those regional entities that are most likely to be involved in recovery efforts, and as a first step to facilitate communication and coordination, we will make contact information for these entities available via our Web site.[19]

44. FWS requests clarification with respect to § 157.206 of our regulations. As stated in the NOPR, the applicable conditions set forth in § 157.206(b) describe environmental requirements that must be satisfied as a prerequisite to construction under both the existing blanket authority and the expanded emergency blanket authority. FWS suggests that the Commission's certification authorization could incorporate an emergency action plan that would include surveying alternative routings. To a certain extent, we already do so in our NEPA consideration of alternatives to a proposed project. We agree with the principle that it is prudent to be prepared; however, since there is no way to predict if, when, or where damage might occur along the vast array of interstate gas facilities, we find it impractical to attempt to undertake an environmental inventory of possible alternative routing in advance of an actual incident. However, we agree with FWS that reconstruction efforts can be expedited by having relevant entities' contact information readily available, and to this end, we will compile, post, and update such information on our Web site.

Self-Implementation v. Prior Authorization

45. As proposed, under the expanded emergency blanket authority, a pipeline can invoke the expanded blanket authority, inform the Commission of its intended emergency reconstruction activities, and unless the Commission objects, go forward. In the NOPR we asked whether affirmative Commission authorization or a short review period (*e.g.*, three days) should be required before a pipeline would be permitted to act under emergency blanket authority.

46. INGAA, Duke, Northern Natural, KM Pipelines, Williston Basin, and KO Transmission state that to be able to respond as rapidly a possible in an emergency, blanket authorization for construction outside of an existing right-of-way should be self-implementing. These parties see no need for the Commission to first verify that an emergency exists, and then approve a pipeline's proposed emergency response, before permitting a pipeline to act.

47. INGAA believes that there is no cause for the Commission to assess a pipeline's reconstruction proposal for a period of time before breaking ground, because the Commission may rely on a representative on site to oversee repairs. Williston Basin agrees, and adds that the on-site Commission representative, in conjunction with the advance report describing emergency activities, should provide the Commission with adequate information and oversight.

48. Instead of granting pipelines self-implementing authority to undertake emergency repairs outside an existing right-of-way, FWS and the Ohio PUC propose the Commission should first declare that an emergency requiring immediate action exists, with the Commission's declaration serving as the trigger and authorization for emergency reconstruction activities. FWS recommends that the Commission have five calendar days from receiving notice of an emergency interruption in service to decide if circumstances merit rebuilding along a new right-of-way.

49. KO Transmission recommends allowing pipelines to commence reconstruction prior to contacting the Commission.[20] If an emergency incident occurs when Commission offices are closed, KM Pipelines propose permitting a pipeline to go forward with construction, with a report describing its remedial action to be submitted when Commission offices reopen. Alternatively, KN Pipelines suggest the Commission provide for some means of filing a report on emergency reconstruction when its offices are closed.

50. Instead of submitting a prospective plan of reconstruction to the Commission, the Process Gas Consumers Group suggests the Commission designate a contact person with the authority to immediately approve or disapprove emergency reconstruction activities. In the event of disapproval, the company could then submit its plan to the Commission, with the Commission taking up to three days to review the plan and the rationale for initial disapproval by the designated staff member.

51. NiSource does not object, in principle, to obtaining Commission confirmation that an emergency exists, as long as doing so does not delay the pipeline's response. To this end, NiSource suggests the Commission create a ''rapid response'' staff, capable of confirming that an emergency exists, assisting in formulating a plan to reconstitute service, and providing waivers as warranted—all within a 24- to 36-hour time frame. NiSource contends that involving the Commission in this manner could preclude after-the-fact challenges to the pipeline's emergency actions.

52. MidAmerican and the New York PSC endorse the proposal for prior notice to the Commission. The New York PSC believes it is prudent for the Commission to verify that the circumstances in fact constitute an actual emergency, and to assess the scope and impact of the proposed response. MidAmerican is concerned that if no-notice self-implementation is permitted, pipelines might take the opportunity to upgrade, rather than merely replace or repair, their damaged facilities. MidAmerican adds that in view of the public interest in a rapid restoration of interrupted service, in no circumstances should the Commission's review of a pipeline's advance report filing take more than three days.

[19] FWS, in response to the NOPR, invites the Commission to contact its ''appropriate regional office to expedite and facilitate a coordinated emergency response,'' which we expect to do. With respect to intergovernmental coordination in an emergency, as discussed in the NOPR, we expect the Department of Energy's Office of Energy Assurance to play a role in overseeing energy industry equipment stockpiles and mutual aid pooling and exchange programs; identifying critical facilities, equipment, and personnel; establishing communications protocol; and developing security and contingency plans. In addition, we anticipate the Department of Homeland Security will coordinate response resources in the event of a terrorist attack or other disaster. Further, pursuant to § 16(a)(1) of the Pipeline Safety Improvement Act of 2002, an interagency committee, headed by CEQ, with the Commission among its members, is charged ''to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry our pipeline repairs'' expeditiously. To the extent changes to the Commission's rules may be necessary to address safety concerns, we expect the interagency committee called for by this Act will provide a vehicle for identifying the relevant issues. We believe that this Commission can best support intra- and inter-governmental and industry coordination by contributing to and participating in these efforts.

[20] Specifically, KO Transmission suggests adding the qualification ''or currently underway,'' at the end of the proposed § 157.207(i) requirement that pipelines submit reports ''describing emergency activities to be undertaken;'' *i.e.*, effectively eliminating reporting in advance of commencing reconstruction.

Commission Response

53. In view of the comments, we will limit the revisions to our blanket certificate regulations to those proposed in the NOPR, and not require either Commission affirmation that emergency conditions exist or a time-out interval during which we review a pipeline's proposed emergency response. In effect, we will allow pipelines self-implementing authority to act to immediately reconstitute service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of natural gas or capacity. We retain the requirement that a pipeline submit an advance report of intended emergency reconstruction activities. In part, advance notice in an emergency serves the same purpose as the public notice requirement does for construction under a blanket certificate in a non-emergency in that it enables the Commission to confirm that the planned activities are consistent with environmental, safety, and land acquisition requirements. In addition, the Commission can consider whether the planned activities are narrowly tailored to restoring service as soon as possible and ensure that reconstruction will not include any system modifications that are not essential to alleviate threats to life, health, or property. Once an advance report is submitted, a company may proceed with its emergency reconstruction activities. Our consideration of the company's notice of planned reconstruction, and identification of any necessary modifications, will proceed concurrently with reconstruction activities.

54. In an emergency, in the interests of safety and environmental protection, a company acts immediately to limit damage and stabilize its system, and the new advance report provision is unrelated to actions taken in the context of this initial emergency response. The new advance report provision only comes into play after a company has isolated damaged facilities, assessed the status of its system, and formed a plan for recovery. Because currently effective provisions already authorize companies to act in an emergency and are effectively self-implementing, asking a company to describe how it intends to restore interrupted service in no way inhibits companies' existing capability (and obligation) to respond promptly to threats to the integrity of their facilities.[21] We have yet to encounter a situation whereby a company is prevented from immediately undertaking essential action in response to an emergency because Commission offices are closed. Hence, we do not anticipate a need to provide a means to present an advance report of planned reconstruction during non-business hours. However, if we find a delay in communicating with the Commission has inhibited urgently needed action, whether it be action pursuant to this expanded emergency blanket authority or in another time-critical context, we will seek a means to remedy any such delay and can do so in a way that supplements this rule.

Range of Reconstruction Activities

55. INGAA and Duke propose the Commission modify part 153 to specifically apply the emergency reconstruction provisions to import, export, and LNG terminal facilities. INGAA explains that because these facilities are subject exclusively to NGA Section 3, and not NGA Section 7, such facilities would be unaffected by the proposed expansion of the part 157 blanket certificate regulations.

56. MidAmerican would have the Commission expand the scope of the proposed rule to include not only authority for a pipeline to rebuild its own damaged facilities, but also for a damaged pipeline to make use of undamaged (or less damaged) facilities of another pipeline in the same region, or where more efficient in terms of time and cost, undertake new construction on another pipeline system's facilities to provide additional capacity to meet its own customer needs.

Commission Response

57. We strive to respond with dispatch when any portion of the energy infrastructure is damaged, including facilities subject exclusively to NGA Section 3. We have adopted and applied certain NGA Section 7 conditions governing construction, operation, and rates to ensure that NGA Section 3 facilities are in the public interest, and we will do so in this case to enable timely repairs in the event of damage to such facilities.[22] To this end, we add § 153.13, to state that ''The provisions of subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to Section 3 of the Natural Gas Act.''

58. We are not persuaded that there is a need for the Commission to coordinate multiple pipelines' cooperative response to an emergency, as MidAmerican proposes. We expect that the existing part 284, subpart I, regulations governing emergency gas sale, transportation, and exchange transactions, are adequate to enable one pipeline to rely on another to assist to respond to an emergency gas shortfall.[23]

Declaration of an Emergency

59. In the NOPR, we asked if expanded emergency blanket authority should be restricted, and apply only in response to emergencies due to natural disasters or deliberate damage. INGAA, AGA, Duke, Northern Natural, Process Gas Consumers Group, Shell Gas Transmission, NiSource, Williston Basin, the New York PSC, and KO Transmission maintain that regardless of the cause of a sudden unanticipated loss of gas or capacity, the effect is the same, namely, an urgent need to restore service. Accordingly, they ask that the Commission clarify that the proposed revisions will apply regardless of whether an emergency is the result of a natural disaster, equipment failure, human error, accident, or deliberate damage.

60. MidAmerican would restrict the applicability of the expanded blanket authority to ''an emergency situation or act of deliberate damage.'' For reconstruction requiring a new right-of-way, FWS would restrict expanded blanket authority specifically to natural disasters and acts of deliberate damage.

Commission Response

61. Comments convince us that it is appropriate to focus not on cause, but on effect. Consequently, we will not restrict the expanded blanket authority to emergencies attributable to deliberate damage. Besides, in the aftermath of an incident that interrupts service, it could prove counterproductive to have to first

[21] Given gas companies' existing authority to act to stabilize their system's facilities after a disruption in service, we expect the expanded blanket emergency authority will only be called upon in extreme and unambiguous emergency circumstances. Consequently, we do not expect companies to invoke blanket emergency authority unless it is the only regulatory option to restore service for the protection of life or health or for maintenance of physical property.

[22] This ensures that in an emergency, LNG facilities that are subject exclusively to NGA Section 3, or subject exclusively to NGA Section 7, or subject to both sections, can employ the expanded emergency blanket provisions.

[23] A gas disruption so severe and so sustained that remedial actions under the Commission's regulations prove unavailing, or conditions that cripple the Commission's or the industry's communication capabilities, would likely constitute a natural gas supply emergency, and trigger application of the Defense Production Act, 50 U.S.C. App. 2061, *et seq.*, which provides for federal coordination and direction.

establish, for example, whether it was a meteor or a missile that breached a gas line. Thus, regardless of the reason, in an emergency due to a sudden unanticipated loss of gas or capacity, when immediate action is required for the protection of life or health or for maintenance of physical property, the new emergency blanket regulations will apply.

Information Collection Statement

62. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[24] This rule will not impact information collection. Accordingly, there is no cause to submit this rule to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

Environmental Analysis

63. The Commission is required to prepare an EA or EIS for any action that may have a significant adverse effect on the human environment.[25] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[26] The actions herein fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[27] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

Regulatory Flexibility Act [Analysis or Certification]

64. The Regulatory Flexibility Act of 1980 (RFA)[28] requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have significant economic impact on a substantial number of small entities. Agencies are not required to make such an analysis if a rule would not have such an effect. The Commission does not believe that this rule would have such an effect on small business entities, since the amendments to our regulations apply only to interstate pipelines, most of which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this rule will not have a significant adverse impact on a substantial number of small entities.

Document Availability

65. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

66. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

67. User assistance is available for FERRIS and the FERC Web site during normal business hours by contacting FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov* or by telephone at 866–208–3676 (toll free) or TTY at 202–502–8659.

Effective Date and Congressional Notification

68. These regulations are effective July 14, 2003.

69. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 153, 157, and 375 of Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

■ 1. The authority citation for part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

■ 2. Section 153.13 is added, to read as follows:

§ 153.13 Emergency reconstruction.

The provisions of subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to section 3 of the Natural Gas Act.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. In § 157.202, the last sentence in paragraph (b)(2)(i) and paragraph (b)(2)(ii)(C) are revised, and a new paragraph (b)(13) is added, to read as follows:

§ 157.202 Definitions.

* * * * *

(b) *Subpart F definitions.* * * *

(2)(i) * * * Replacements for the primary purpose of creating additional main line capacity are not eligible facilities; however, replacements and the modification of facilities to rearrange gas flows or increase compression for the primary purpose of restoring service in an emergency due to sudden unforseen damage to main line facilities are eligible facilities.

(ii) *Exclusions:* * * *

[24] 5 CFR part 1320 (2002).

[25] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[26] 18 CFR 380.4 (2002).

[27] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27)(2002).

[28] 5 U.S.C. 601–612.

(C) A facility, including compression and looping, that alters the capacity of a main line, except replacement facilities and facility modifications covered under paragraph (b)(2)(i) of this section; * * *

* * * * *

(13) *Emergency* means a sudden unanticipated loss of gas supply or capacity that requires an immediate restoration of interrupted service for protection of life or health or for maintenance of physical property.

■ 3. In § 157.203, paragraph (d)(1), insert the following sentence after the last full sentence ending ''the notice has been provided.'':

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.*

(1) * * * For activity required to restore service in an emergency, the 30-day prior notice period is satisfied in the event a company obtains all necessary easements. * * *

* * * * *

■ 4. In § 157.205, paragraph (a) introductory text is revised to read as follows:

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.211(a)(2), 157.214 or 157.216(b), except for activity required to restore service in an emergency, is authorized by a blanket certificate granted under this subpart, unless, prior to undertaking such activity:

* * * * *

■ 5. In § 157.207, the introductory text is revised to read as follows:

§ 157.207 General reporting requirements.

On or before May 1, or each year, or in the case of emergency reconstruction activity, prior to any activity, the certificate holder must file, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter, an annual report signed under oath by a senior official of the company, that lists for the previous calendar year:

* * * * *

■ 6. In § 157.208, paragraph (a) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

(a) *Automatic authorization.* If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section, or if the project is required to restore service in an emergency, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility. The certificate holder shall not segment projects in order to meet the cost limitations set forth in column 1 of Table I.

* * * * *

PART 375—THE COMMISSION

■ 7. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 8. Section 375.308 is amended as follows:

■ a. In paragraph (w)(3), the word ''and'' is removed;

■ b. In paragraph (w)(4), remove the period at the end of the sentence and add ''; and'' in its place;

■ c. Paragraph (w)(5) is added,

■ d. In paragraph (x)(5), the word ''and'' is removed;

■ e. In paragraph (x)(6), remove the period at the end of the sentence and add ''; and'' in its place; and

■ f. Paragraph (x)(7) is added to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(w) * * *

(5) Requests for waiver of the landowner notification requirements in § 157.203(d) of this chapter.

* * * * *

(x) * * *

(7) Take whatever steps are necessary to ensure the protection of all environmental resources during the construction or operation of natural gas facilities, including authority to design and implement additional or alternative measures and stop work authority.

* * * * *

[FR Doc. 03–13202 Filed 5–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–048]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the ''Patuxent River Air Expo 2003'', an event to be held over the waters of the lower Patuxent River near Solomons, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the lower Patuxent River during the event.

DATES: This rule is effective from 6 p.m. on May 23, 2003 to 5 p.m. on May 25, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–048 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Because of the danger posed by low flying aircraft performing precision maneuvers and aerial stunts, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. The event will begin on May 23, 2003. There is not sufficient time to allow for a notice and comment period prior to the event. However, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

From May 23, through May 25, 2003, U. S. Naval Air Station Patuxent River will conduct a low-flying, high-speed aerial demonstration above a portion of the lower Patuxent River, between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at the Naval Air Warfare Center Patuxent River. A fleet of spectator vessels is expected to gather

near the event site to view the aerial demonstration. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the aerial demonstration.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the lower Patuxent River between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at the Naval Air Warfare Center Patuxent River. The regulated area is approximately 850 yards long and 700 yards wide. The temporary special local regulations will be in effect from 6 p.m. on May 23 until 5 p.m. on May 25, 2003. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the lower Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the lower Patuxent River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 6 p.m. on May 23 to 5 pm. on May 25, 2003. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170, 33 CFR 100.35.

■ 2. From 6 p.m. on May 23, 2003 to 5 p.m. on May 25, 2003, add a temporary § 100.35–T05–048 to read as follows:

§ 100.35–T05–048 Patuxent River, Solomons, Maryland.

(a) *Definitions.*

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

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

(3) *Regulated Area.* All waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at the Naval Air Warfare Center Patuxent River, within an area approximately 850 yards long and 700 yards wide, bounded by a line connecting position 38°17′58.4″ N, 076°25′28.0″ W, along the shoreline to position 38°17′38.6″ N, 076°25′47.7″ W, to position 38°17′51.5″ N, 076°26′08.6″ W, to position 38°18′10.7″ N, 076°25′48.8″ W, to position 38°17′58.4″ N, 076°25′28.0″ W. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.*

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

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

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

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

(c) *Effective period.* This section is effective from 6 p.m. on May 23, 2003 to 5 p.m. on May 25, 2003.

Dated: May 12, 2003.

Ben R. Thomason III,

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

[FR Doc. 03–13186 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–019]

RIN 1625–AA00

Safety Zone; Colorado River, Between Davis Dam and Laughlin Bridge (This Section of the Colorado River Divides Arizona and Nevada)

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard proposes a temporary safety zone within the Davis Camp Region on the navigable waters of the Colorado River for the Laughlin River Days boat race. This temporary safety zone consists of the navigable waters of the Colorado River between Davis Dam and the Laughlin Bridge.

This temporary safety zone is necessary to provide for the safety of the crew, spectators, and participants of the race, to protect the participating vessels and to protect other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 7:30 a.m. (p.d.t.) on May 31, 2003 until 5:30 p.m. (p.d.t.) on June 1, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–019] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date fewer than 30 days prior to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Laughlin, Nevada in support of the marine event Laughlin River Days. The marine event Laughlin River Days involves vessels racing at high speeds on an established course on the Colorado River in Laughlin, NV. This temporary safety zone is necessary to provide for the safety of the participants and spectators of this event, the participating vessels, and to protect other users of this waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Discussion of Rule

This temporary safety zone is necessary to provide for the safety of the participants, spectators, and sponsor vessels of the Laughlin River Days boat race. This temporary safety zone is also necessary to protect other vessels and users of the waterway.

This temporary safety zone consists of the navigable waters of the Colorado River between Davis Dam and the Laughlin Bridge. The limits of this safety zone are as follows: from that portion of the Colorado River, starting at Davis Dam, mile marker 276, to the Laughlin Bridge, mile marker 274.1.

Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

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

Due to the temporary safety zone's short duration of two days, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

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

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add a new § 165.T11–037 to read as follows:

§ 165.T11–037 Safety Zone: Colorado River, Between Davis Dam and Laughlin Bridge.

(a) *Location.* The following area is a safety zone: from that portion of the Colorado River, starting at Davis Dam, mile marker 276, to the Laughlin Bridge, mile marker 274.1.

(b) *Effective period.* This safety zone will be in effect from 7:30 a.m. (p.d.t.) on May 31, 2003 until 5:30 p.m. (p.d.t.) on June 1, 2003.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego, or his designated representative. The designated Patrol Commander for this event will be Chief Petty Officer Rich Dann. The Patrol Commander may be contacted via VHF–FM channel 16.

Dated: May 13 2003.

Robert E. McFarland,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, San Diego.

[FR Doc. 03–13188 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–001]

RIN 1625–AA00 (Formerly RIN 2115–AA97)

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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

DATES: This rule is effective from June 27, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD13–03–001) and are available for inspection or copying at USCG MSO/Group Portland 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Tad Drozdowski, Operations Department, at (503) 240–9370.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 14, 2003, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone Regulation; Fort Vancouver Fireworks Display, Columbia River, Washington in the **Federal Register** (68 FR 7471). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow a safe fireworks display. This event may result in a number of vessels congregating near the fireworks launching barge. The safety zone is needed to protect watercraft and their occupants from safety hazards associated with the fireworks display.

Discussion of Comments and Changes

No comments were received from the public regarding this proposed rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass less than one mile of the Columbia River for a period of only one and a half hours at night when vessel traffic is low.

Small Entities

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

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit a portion of the Columbia River from 9:30 p.m. to 11 p.m. every July 4. This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only one and a half hours in the evening when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Request for comments and assistance was published in the notice of proposed rulemaking for this rule.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Section 165.1314 is added to read as follows:

§ 165.1314 Safety Zone; Fort Vancouver Fireworks Display, Columbia River, Vancouver, Washington.

(a) *Location.* The following area is a safety zone: All waters of the Columbia River at Vancouver, Washington bounded by a line commencing at the northern base of the Interstate 5 highway bridge at latitude 45°37″16.5′ N, longitude 122°40″22.5′' W; thence south along the Interstate 5 highway bridge to Hayden Island, Oregon at latitude 45°36″51.5′ N, longitude 122°40″39′ W; thence east along Hayden Island to latitude 45°36″36′ N, longitude 122°39″48′ W (not to include Hayden Bay); thence north across the river thru the preferred channel buoy, RG Fl(2+1)R 6s, to the Washington shoreline at latitude 45°37″1.5′ N, longitude 122°39″29′ W; thence west along the

Washington shoreline to the point of origin.

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

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

(d) *Enforcement period.* This section will be enforced every July 4, from 9:30 p.m. (P.D.T.) to 11 p.m. (P.D.T.).

Dated: May 13, 2003.

Paul D. Jewell,

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

[FR Doc. 03–13236 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7502–4]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On April 14, 2003, the EPA published a direct final rule to amend the standards of performance for stationary gas turbines, along with a parallel proposal to be used as a basis for final action in the event that we received any adverse comments on the direct final rule amendments. Because we received adverse comments and a request for a public hearing, we are withdrawing the direct final rule. We will address all comments in a subsequent final rule based on the parallel proposal published on April 14, 2003.

DATES: As of May 28, 2003, EPA withdraws all changes to 40 CFR 60.17, 60.331, 60.332, 60.333, 60.334, and 60.335, published at 68 FR 17990 on April 14, 2003.

ADDRESSES: Docket number OAR–2002–0053, containing supporting information used in the development of the withdrawal is available for public viewing at the Air Docket in the EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460. 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 Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The 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. 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 in this document.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 14, 2003, we published a direct final rule (68 FR 17990) and a parallel proposal (68 FR 18003) amending the standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). The amendments codified several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments also reflected changes in emission control technologies and turbine design since the original promulgation of the rule on September 10, 1979.

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. The direct final rule stated that the deadline for submitting public comments was May 14, 2003, and that the effective date of the provisions would be May 29, 2003. The proposal also stated that if a public hearing was requested by April 24, 2003, the hearing would be held on May 14, 2003, at the New EPA Facility Complex in Research Triangle Park, North Carolina, at 10 a.m., and that the comment period would be extended until 30 days after the date of the public hearing.

In a proposed rule published elsewhere in this issue, EPA gives notice that since a public hearing was requested, the comment period has been extended until June 13, 2003, which clearly falls after what would have been the effective date of the direct final rule. We have decided to withdraw the entire direct final rule to avoid allowing the direct final rule to become effective before all public comments have been received. The EPA will promulgate a final rule in the near future that considers all of the comments received and any material testimony presented at the public hearing.

Accordingly, the entire direct final rule is withdrawn as of May 28, 2003. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 15, 2003.

Robert Brenner,

Acting Assistant Administrator.

[FR Doc. 03–12862 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7490–6]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981: State of New Hampshire Department of Environmental Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve New Hampshire Department of Environmental Services' (NHDES) request for partial rule substitution for inactive waste disposal sites pursuant to section 112(l) of the Clean Air Act (CAA).

DATES: This action will be effective July 28, 2003, unless EPA receives relevant adverse comments by June 27, 2003. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of July 28, 2003.

ADDRESSES: Written comments should be mailed concurrently to the addresses below: Steven Rapp, Chief, Air Permits, Toxics, and Indoor Programs Unit (CAP), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114 and Philip J. O'Brien, Ph.D., Director, Waste Management Division, New Hampshire Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Copies of the requests for approval are available for public inspection at EPA's Region I Office, Air Permits, Toxics, and Indoor Programs Unit, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ida McDonnell, Air Permits, Toxics, and Indoor Programs Unit, U.S. EPA Region I, One Congress St., Suite 1100 (CAP), Boston, MA 02114, (617) 918–1653, *mcdonnell.ida@epa.gov.*

SUPPLEMENTARY INFORMATION:

This **SUPPLEMENTARY INFORMATION** is organized as follows:

I. Background and Purpose
II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?
III. Why is NH DES Seeking Partial Rule Substitution?
IV. When Did the Authority To Implement and Enforce Section 112 Standards Become Effective in New Hampshire?
V. Opportunities for Public Comments
VI. Summary of EPA's Action
VII. Statutory and Executive Order Reviews

I. Background and Purpose

The Environmental Protection Agency (EPA) first promulgated standards to regulate asbestos emissions on April 6, 1973 (*see* 38 FR 8826), and added requirements for the control of asbestos emissions at inactive waste disposal sites on October 14, 1975 (*see* 40 FR 48299). These standards have since been amended several times and re-codified in 40 CFR part 61, subpart M, ''National Emission Standard for Asbestos'' (Asbestos NESHAP). On June 28, 2002, NH DES submitted a partial rule substitution request to implement and enforce its regulation entitled ''Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981'' in lieu of some sections of the Asbestos NESHAP rule as they apply to certain inactive waste disposal sites. NH DES's request for approval was submitted pursuant to the provisions of 40 CFR part 63, subpart E and was found to be complete on July 30, 2002.

II. What Requirements Must a State Rule Meet To Substitute for a Section 112 Rule?

Under CAA section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules, emissions standards, or requirements, when the State or local rules are determined to be no less stringent than the corresponding Federal rules or requirements. The Federal regulations governing EPA's approval of State and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 58 FR 62262, November 26, 1993, as amended at 65 FR 55810, September 14, 2000). Under these regulations, a State air pollution control agency has the option to request EPA's approval to substitute a State rule for the applicable section 112 Federal rule (National Emission Standard for Hazardous Air Pollutants (NESHAP)). Upon approval, the State agency is given the authority to implement and enforce its rule in place of the NESHAP.

Section 112(l)(5) of the Act requires that a State's NESHAP program contain adequate authorities to assure compliance with each applicable Federal requirement, adequate resources for implementation, and an expeditious compliance schedule. These are also requirements for an adequate operating permits program under 40 CFR part 70. On September 24, 2001, EPA promulgated full approval of the State's operating permits program as administered by NH DES (*see* 66 FR 48806). In addition, on May 16, 2001, EPA provided ''up-front'' approval of NH DES's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for subpart S, ''National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry'' (Pulp and Paper MACT I), and subpart MM, ''National Emission Standards for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills'' (Pulp and Paper MACT II) (*see* 66 FR 27032). Under 40 CFR 63.91(d)(2), once a State has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals. NH DES has affirmed that it still meets the up-front approval criteria.

Additionally, the ''rule substitution'' option requires EPA to ''make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements'' of 40 CFR 63.93 (*see* 58 FR 62274). A rule will be approved if EPA finds: (1) The State or local rules are 'no less stringent'' than the corresponding Federal regulations, (2) the State or local government has adequate authorities to implement and enforce the rules, and (3) the schedule for implementation and compliance is ''no less stringent'' than the deadlines established in the otherwise applicable Federal rule. *See* 40 CFR 63.93(b). After reviewing NH DES's partial rule substitution request and equivalency demonstration for the Asbestos NESHAP as it applies to certain inactive waste disposal sites, EPA has determined this request meets all the requirements necessary for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93.

III. Why Is NH DES Seeking Partial Rule Substitution?

In New Hampshire, virtually all known inactive waste disposal sites not operated after July 9, 1981, are concentrated in two neighboring communities, Nashua and Hudson. Due to dumping practices by a former asbestos manufacturing plant, over 250 sites are known to exist in these two areas on properties that are actively in use for residential, commercial, industrial, recreational and public purposes. The asbestos manufacturing plant operated in Nashua, and until the late 1970's disposed of its asbestos containing waste by delivering it to the property owners for use as fill (*i.e.,* in low-lying areas). The material exists in and around schoolyards, roadways, parking lots, and shopping centers as well as within wooded areas, along riverbanks, and within conservation areas.

The requirements of 40 CFR 61.151, the portion of the Asbestos NESHAP that applies to inactive waste disposal sites, were established with traditional industrial/commercial dumpsites in mind, rather than dumpsites spread throughout a developed and active community setting. Consequently, certain aspects of § 61.151 are not well suited for inactive waste disposal sites not operated after July 9, 1981 in New Hampshire.

For example, § 61.151 of the Asbestos NESHAP requires unfenced/non-posted sites to be covered with a minimum of six inches of soil if vegetated or a minimum of 24 inches of soil if not vegetated. If the site is not fenced and posted, other viable capping materials can be used but only with EPA approval pursuant to 40 CFR 61.151(c). This means that neither asphalt nor concrete can be used as a surface treatment without EPA approval. In these communities, asbestos waste is currently buried beneath parking lots, driveways, and sidewalks. NHDES is substituting performance based specifications for the ''one-size-fits-all'' cover specifications in 40 CFR 61.151.

As another example, 40 CFR 61.151(d) requires the owner/operator of an inactive waste disposal site to supply notice at least 45 days in advance of excavating or disturbing any asbestos-containing waste at the site. Due to the built-up nature of these inactive waste disposal sites, the need to disturb asbestos on short notice is a common occurrence and needs to be addressed. For instance, asbestos waste often must be disturbed to replace broken water lines as well as to repair or replace cover materials exposed due to storm water runoff. NHDES's proposed substitute rules reduce the length of the notice period but also require all persons who disturb asbestos waste to be qualified and to employ specific safe work practices and engineering controls.

In addition, the general provisions of 40 CFR part 61, subpart A generally apply to new stationary sources that are not yet constructed or to existing stationary sources that are actively operating. Inactive waste disposal sites are already constructed and are no longer operating or allowed to emit pollutants. Therefore, NHDES is proposing to substitute general requirements that are more relevant to inactive waste disposal sites. For example, the alternative rules address site monitoring, maintenance, and reporting requirements in a manner appropriate to closed nonoperating sources that by their nature cannot be constructed or modified to increase their emissions.

NH DES is seeking partial rule substitution because its alternative rules apply only to a subset of the inactive waste disposal sites subject to 40 CFR 61.151, namely those inactive waste disposal sites not operating after July 9, 1981.

IV. When Did the Authority To Implement and Enforce Section 112 Standards Become Effective in New Hampshire?

On October 2, 1996, EPA approved New Hampshire's program under section 112(l)(5) and 40 CFR 63.91 for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This delegation mechanism only applied to part 70 sources (*see* 61 FR 51370). On May 9, 2002, the NH DES submitted a request to EPA to receive straight delegation of authority to implement and enforce NESHAPs and New Source Performance Standards (NSPSs) for both major and area sources under a new delegation mechanism. NH DES sought to take delegation of these standards by incorporating the standards into NH DES's regulations. On September 19, 2002, EPA approved this delegation mechanism (see 67 FR 59001). Among other standards, NH DES incorporated by reference the Asbestos NESHAP, with the exception of 40 CFR 61.151, standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations.

NH DES did not request straight delegation of § 61.151 because it had submitted a partial rule substitution pursuant to 40 CFR 63.93 for a portion of that rule. NH DES's request for rule substitution applies only to those inactive waste disposal sites not operating after July 9, 1981 which are subject to 40 CFR 61.151 (*i.e.,* sites operated by certain asbestos mills, manufacturers, and fabricating facilities). NH DES's request seeks no change in delegation relative to inactive asbestos waste disposal sites operating after July 9, 1981 (*i.e.,* NH DES will continue to regulate such facilities according to § 61.151 standards).

V. Opportunities for Public Comments

EPA views the approval of NH DES's request to use its regulation for inactive waste disposal sites as a partial rule substitute for applicable requirements in the Asbestos NESHAP as a noncontroversial action since the State program is in operation and is no less stringent than the Asbestos NESHAP. EPA anticipates no adverse comments. Therefore, EPA is publishing this direct final rule without prior proposal. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should relevant adverse comments be filed. This action will be effective July 28, 2003, without further notice, unless EPA receives relevant adverse comments by June 27, 2003.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective July 28, 2003, and no further action will be taken on the proposed rule.

VI. Summary of EPA's Action

After reviewing the request for approval of the NH DES's Administrative Rules for Management and Control of Asbestos Disposal Sites not operated after July 9, 1981, EPA has determined that this request meets all of the requirements necessary to qualify for partial rule substitution approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. EPA has determined that NH DES's asbestos rule is equivalent to or not less stringent than the Federal Asbestos NESHAP. Therefore, EPA hereby approves NH DES's rule to be used in place of the Federal Asbestos NESHAP, as it applies to those inactive waste disposal sites not operating after July 9, 1981, that are subject to 40 CFR 61.151. As of the effective date of this action, NH DES's asbestos rule is enforceable by the EPA and citizens under the CAA. Although NH DES has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.'' This rule is not subject to Executive Order 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.93 do not create any new requirements, but simply allows the State to implement and enforce equivalent requirements in place of the Federal requirements that EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action allows New Hampshire to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows New Hampshire to implement equivalent alternative requirements to replace a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This Federal action allows the State of New Hampshire to implement an equivalent regulation to replace pre-existing requirements under Federal law and does not have tribal implications. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

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

K. Petitions for Judicial Review

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 July 28, 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

40 CFR Part 61

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

40 CFR Part 63

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

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: April 15, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

■ 40 CFR parts 61 and 63 are amended as follows:

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 61.04 is amended by adding paragraphs (c)(1) to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

(1) Inactive waste disposal sites not operated after July 9, 1981 within the State of New Hampshire must comply with the New Hampshire Regulations Applicable To Hazardous Air Pollutants, March 2003. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Air and Radiation Docket and Information Center, U.S. EPA, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. You may examine this material at the above EPA office or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

* * * * *

PART 63—[AMENDED]

■ 3. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

■ 4. Section 63.14 is amended by adding paragraph (d)(5) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(d) * * *

(5) New Hampshire Regulations Applicable to Hazardous Air Pollutants, March, 2003. Incorporation by Reference approved for § 63.99(a)(29)(iii) of subpart E of this part.

* * * * *

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 5. Section 63.99 is amended by adding paragraphs (a)(29)(iii) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(29) *New Hampshire.*

(i) * * *

(ii) * * *

(iii) Affected inactive waste disposal sites not operated after July 9, 1981 must comply with the New Hampshire Regulations Applicable to Hazardous Air Pollutants, March, 2003, (incorporated by reference as specified in § 63.14) as described as follows:

(A) The material incorporated in the New Hampshire Regulations Applicable to Hazardous Air Pollutants, March, 2003, (incorporated by reference as specified in § 63.14) pertains to inactive waste disposal sites not operated after July 9, 1981 in the State of New Hampshire's jurisdiction, and has been approved under the procedures in 40 CFR 63.93 to be implemented and enforced in place of the Federal NESHAPs for Inactive Waste Disposal Sites (40 CFR 61.151).

* * * * *

[FR Doc. 03–13174 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7436]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the

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

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director for the Emergency Preparedness and Response Directorate reconsider the changes. The modified elevations may be changed during the 90-day period.

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

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2831.

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

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

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

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

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

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

The changes in are in accordance with 44 CFR 65.4.

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

Regulatory Flexibility Act. The Mitigation Division Director for the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S, C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Cochise	City of Sierra Vista. (01–09–019P)	Dec. 26, 2002, Jan. 2, 2003, *Sierra Vista Herald*.	The Honorable Thomas J. Hessler, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, Arizona 85635.	Jul. 31, 2001	040017
Cochise	City of Sierra Vista. (00–09–1071P)	Dec. 26, 2002, Jan. 2, 2003, *Sierra Vista Herald*.	The Honorable Thomas J. Hessler, Mayor, City of Sierra Vista, 1011 North Coronado Drive, Sierra Vista, Arizona 85635.	Apr. 24, 2001	040017
Cochise	Unincorporated Areas (00–09–1071P)	Jan. 17, 2001, Jan. 24, 2001, *Arizona Range News*.	The Honorable Mike Palmer, Chairman, Cochise County Board of Supervisors, 1415 West Melody Lane, Bisbee, Arizona 85603.	Apr. 24, 2001	040012
Cochise	City of Willcox (02–09–726P)	Feb. 19, 2003, Feb. 26, 2003, *Arizona Range News*.	The Honorable Marlin Easthouse, Mayor, City of Willcox, 101 South Railroad Avenue, Willcox, Arizona 85643.	Jan. 27, 2003	040018
Coconino	Unincorporated Areas (02–09–1336P)	Feb. 13, 2003, Feb. 20, 2003, *Arizona Daily Sun*.	The Honorable Deb Hill, Chairperson, Coconino County Board of Supervisors, 219 East Cherry Avenue, Flagstaff, Arizona 86001.	Jan. 30, 2003	040019

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	City of Avondale (03–09–0278P)	Feb. 20, 2003, Feb. 27, 2003, *Arizona Republic*.	The Honorable Ronald J. Drake, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.	Feb. 12, 2003	040038
Maricopa	City of El Mirage (01–09–017P)	Feb. 6, 2003, Feb. 13, 2003, *Arizona Republic*.	The Honorable Robert Robles, Mayor, City of El Mirage, P.O. Box 26, El Mirage, Arizona 85335.	May 15, 2003	040041
Maricopa	City of Glendale (01–09–017P)	Feb. 6, 2003, Feb. 13, 2003, *Arizona Republic*.	The Honorable Elaine M. Scruggs, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301.	May 15, 2003	040045
Maricopa	City of Mesa (02–09–950P)	Jan. 9, 2003, Jan. 16, 2003, *Arizona Business Gazette*.	The Honorable Keno Hawker, Mayor, City of Mesa, P.O. Box 1466, Mesa, Arizona 85211–1466.	Apr. 17, 2003	040048
Maricopa	City of Peoria (01–09–017P)	Feb. 6, 2003, Feb. 13, 2003, *Arizona Republic*.	The Honorable John C. Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	May 15, 2003	040050
Maricopa	City of Phoenix (02–09–943P)	Apr. 10, 2003, Apr. 17, 2003, *Arizona Business Gazette*.	The Honorable Skip Rimzsa, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	Jul. 17, 2003	040051
Maricopa	City of Tolleson (02–09–943P)	Apr. 10, 2003, Apr. 17, 2003, *Arizona Business Gazette*.	The Honorable Adolfo F. Gamez, Mayor, City of Tolleson, 9555 West Van Buren Street, Tolleson, Arizona 85353.	Jul. 17, 2003	040055
Maricopa	Unincorporated Areas (01–09–017P)	Feb. 6, 2003, Feb. 13, 2003, *Arizona Republic*.	The Honorable Don Stapley, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	May 15, 2003	040037
Pima	City of Tucson (02–09–1252P)	Feb. 27, 2003, Mar. 6, 2003, *Daily Territorial*.	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	Feb. 12, 2003	040076
California:					
Kern	City of Arvin (02–09–866P)	Apr. 17, 2003, Apr. 24, 2003, *Bakersfield Californian*.	The Honorable Juan Olivares, Mayor, City of Arvin, 200 Campus Drive, Arvin, California 93203.	Jul. 17, 2003	060076
Kern	City of Bakersfield (02–09–866P)	Apr. 17, 2003, Apr. 24, 2003, *Bakersfield Californian*.	The Honorable Harvey L. Hall, Mayor, City of Bakersfield, City Hall, 1501 Truxtun Avenue, Bakersfield, California 93301.	Jul. 17, 2003	060077
Kern	Unincorporated Areas (02–09–866P)	Apr. 17, 2003, Apr. 24, 2003, *Bakersfield Californian*.	The Honorable Pete H. Parra, Chair, Kern County Board of Supervisors, 1115 Truxton Avenue, Fifth Floor, Bakersfield, California 93301–4617.	Jul. 17, 2003	060075
Los Angeles ..	City of Los Angeles. (03–09–0035P)	Feb. 13, 2003, Feb. 20, 2003, *Los Angeles Times*.	The Honorable James Hahn, Mayor, City of Los Angeles, City Hall, 200 North Spring Street, Room 303, Los Angeles, California 90012.	May 15, 2003	060137
Orange	City of Buena Park. (02–01323P)	Mar. 12, 2003, Mar. 19, 2003, *Buena Park Independent*.	The Honorable Steve Berry, Mayor, City of Buena Park, 6650 Beach Boulevard, Buena Park, California 90622–5009.	Jun. 18, 2003	060215
Orange	City of Orange ..... (02–09–910P)	Feb. 13, 2003, Feb. 20, 2003, *Orange County Register*.	The Honorable Mark A. Murphy, Mayor, City of Orange, 300 East Chapman Avenue, Orange, Calfornia 92866.	May 22, 2003	060228
Placer	City of Roseville (02–09–1258P)	Feb. 19, 2003, Feb. 26, 2003 *Roseville Press-Tribune*.	The Honorable Rocky Rockholm, Mayor, City of Roseville, 311 Vernon Street, Roseville, California 95678.	May 28, 2003	060243
Riverside	City of Riverside (01–09–652P)	Mar. 20, 2003, Mar. 27, 2003, *Press Enterprise*.	The Honorable Ronald O. Loveridge, Mayor, City of Riverside, 3900 Main Street, Riverside, California 92522.	Jun. 26, 2003	060260
San Diego	City of Escondido (02–09–714P)	Jan. 16, 2003, Jan. 23, 2003, *North County Times*.	The Honorable Lori Holt Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	Apr. 24, 2003	060290

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
San Diego	City of Poway ..... (03–09–0026P)	Feb. 20, 2003, Feb. 27, 2003, *Poway News Chieftain*.	The Honorable Mickey Cafagna, Mayor, City of Poway, P.O. Box 789, Poway, California 92074–0789.	May 29, 2003	060702
San Diego	City of San Diego (02–09–1505P)	Jan. 23, 2003, Jan. 30, 2003, *San Diego Union Tribune*.	The Honorable Richard M. Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	May 1, 2003	060295
San Diego	Unincorporated Areas. (02–09–714P)	Jan. 16, 2003, Jan. 23, 2003, *North County Times*.	The Honorable Ron Roberts, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	Apr. 24, 2003	060284
San Diego	Unincorporated Areas (03–09–0198P)	Apr. 17, 2003, Apr. 24, 2003, *San Diego Union-Tribune*.	The Honorable Greg Cox, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, Room 335, San Diego, California 92101.	Jul. 24, 2003	060284
Santa Barbara.	Unincorporated Areas (03–09–0009P)	Apr. 17, 2003, Apr. 24, 2003, *Santa Barbara News-Press*.	The Honorable Naomi Schwartz, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, California 93101.	Mar. 18, 2003	060331
Shasta	City of Anderson (03–09–0704X)	Mar. 18, 2003, Mar. 25, 2003, *The Valley Post*.	The Honorable Norma R. Comnick, Mayor, City of Anderson, City Hall, 1887 Howard Street, Anderson, California 96007.	Jun. 25, 2003	060359
Ventura	Unincorporated Areas. (02–09–1500P)	Jan. 23, 2003, Jan. 30, 2003, *Ventura County Star*.	The Honorable William Davis, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063.	Dec. 19, 2002	060421
Ventura	Unincorporated Areas (03–09–0007P)	Mar. 27, 2003, Apr. 3, 2003, *Ventura County Star*.	The Honorable Judy Mikels, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Mar. 5, 2003	060413
Ventura	Unincorporated Areas (03–09–0007P)	Mar. 27, 2003, Apr. 3, 2003, *Ventura County Star*.	The Honorable Judy Mikels, Chair, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	Mar. 5, 2003	060413
Yolo	City of Woodland (02–09–1469P)	Apr. 2, 2003, Apr. 9, 2003, *Davis Enterprise*.	The Honorable David Flory, Mayor, City of Woodland, City Hall, 300 First Street, Woodland, California 95695.	Jul. 9, 2003	060426
Yolo	Unincorporated Areas (02–09–1469P)	Apr. 2, 2003, Apr. 9, 2003, *Davis Enterprise*.	The Honorable Lynnel Pollock, Chair, Yolo County Board of Supervisors, 625 Court Street, Room 204, Woodland, California 95695.	Jul. 9, 2003	060423
Colorado:					
Adams	City of Westminster (02–08–211P)	Feb. 20, 2003, Feb. 27, 2003, *Westminster Window*.	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	May 29, 2003	080008
Adams	City of Westminster (03–08–0145P)	Apr. 3, 2003, Apr. 10, 2003, *Westminster Window*.	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	Jul. 10, 2003	080008
Adams	Unincorporated Areas (02–08–211P)	Feb. 20, 2003, Feb. 27, 2003, *Westminster Window*.	The Honorable Ted Strickland, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	May 29, 2003	080001
Douglas	Town of Parker (02–08–491P)	Mar. 19, 2003, Mar. 26, 2003, *Douglas County News-Press*.	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138–7334.	Jun. 25, 2003	080310
Douglas	Unincorporated Areas (01–08–358P)	Jan. 16, 2003, Jan. 23, 2003, *Denver Post*.	The Honorable Melanie Worley, Chair, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	Apr. 24, 2003	080049

State and county	Location and Case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Douglas	Unincorporated Areas (02–08–491P)	Mar. 19, 2003, Mar. 26, 2003, *Douglas County News-Press*.	The Honorable Melanie Worley, Chair, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.	Jun. 25, 2003	080049
El Paso	City of Colorado Springs (02–08–490P)	Mar. 26, 2003, Apr. 2, 2003, *The Gazette*.	The Honorable Mary Lou Makepeace, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.	Jul. 2, 2003	080060
Fremont	Unincorporated Areas (02–08–269P)	Dec. 11, 2002, Dec. 18, 2002, *Canon City Daily Record*.	The Honorable Joe Rall, Chair, Fremont County Board of Commissioners, 615 Macon Avenue, Canon City, Colorado 81212.	Mar. 19, 2003	080067
Jefferson	City of Lakewood (03–08–0090P)	Feb. 27, 2003, Mar. 6, 2003, *Lakewood Sentinel*.	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, Colorado 80226–3127.	Jun. 5, 2003	085075
Larimer	City of Fort Collins. (02–08–499P)	Feb. 13, 2003, Feb. 20, 2003, *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–00580.	May 22, 2003	080102
Hawaii:					
Hawaii	Hawaii County (02–09–1456P)	Jan. 16, 2003, Jan. 23, 2003, *Hawaii Tribune Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Apr. 24, 2003	155166
Maui	Maui County (03–09–0144P)	Jan. 30, 2003, Feb. 6, 2003, *Maui News*.	The Honorable James H. Apana, Mayor, County of Maui, 200 South High Street, Wailuku, Hawaii 96793.	May 8, 2003	150003
Idaho:					
Ada	Unincorporated Areas (03–10–0228P)	Mar. 13, 2003, Mar. 20, 2003, *Idaho Statesman*.	The Honorable Rogers Simmons, Chair, Ada County Board of Commissioners, 200 West Front Street, Boise, Idaho 83702.	Feb. 20, 2003	160002
Blaine	Unincorporated Areas (02–10–700P)	Feb. 12, 2003, Feb. 19, 2003, *Wood River Journal*.	The Honorable Mary Ann Mix, Chair, Blaine County Board of Commissioners, 206 First Avenue South, Suite 300, Hailey, Idaho 83333.	May 21, 2003	165167
Bonner	City of Clark Fork (02–10–714X)	Jan. 3, 2003, Jan. 10, 2003, *Bonner County Daily Bee*.	The Honorable Tom Shields, Mayor, City of Clark Fork, P.O. Box 10, Clark Fork, Idaho 83811.	Dec. 18, 2002	160132
Bonner	Unincorporated Areas (02–10–714X)	Jan. 3, 2003, Jan. 10, 2003, *Bonner County Daily Bee*.	The Honorable Jerry Clemons, Chair, Bonner County Board of Commissioners, 215 South First Avenue, Sandpoint, Idaho 83864.	Dec. 18, 2002	160206
Canyon	City of Middleton (02–10–391P)	Mar. 27, 2003, Apr. 3, 2003, *Idaho Press Tribune*.	The Honorable Frank McKeever, Mayor, City of Middleton, City Hall, P.O. Box 176, Middleton, Idaho 83644.	Jul. 3, 2003	160037
Canyon	Unincorporated Areas (02–10–391P)	Mar. 27, 2003, Apr. 3, 2003, *Idaho Press Tribune*.	The Honorable Todd Lakey, Chair, Canyon County Board of Commissioners, 1115 Albany Street, Caldwell, Idaho 83605–3522.	Jul. 3, 2003	160208
Missouri: Clay	City of Smithville (03–07–0112P)	Jan. 8, 2003, Jan. 15, 2003, *Smithville Herald*.	The Honorable Ron Van Winkle, Mayor, City of Smithville, 107 West Main Street, Smithville, Missouri 64089.	Apr. 23, 2003	295271
Texas: Denton	City of Lewisville (00–06–841P)	Feb. 21, 2003, Feb. 26, 2003, *Denton County Morning News*.	The Honorable Gene Carey, Mayor, City of Lewisville, P.O. Box 299002, Lewisville, Texas 75029–9002.	Aug. 2, 2001	480195
Washington: King	Unincorporated Areas (02–10–452P)	Feb. 13, 2003, Feb. 20, 2003, *Seattle Times*.	The Honorable Ron Sims, King County Executive, King County Courthouse, 516 Third Avenue, Suite 400, Seattle, Washington 98104.	May 22, 2003	530071

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

Dated: May 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–13206 Filed 5–27–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 00–256 and 96–45; FCC 03–106]

Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission addresses a Petition for Reconsideration of the *MAG Order* filed by the National Exchange Carrier Association (NECA), the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United States Telecom Association (collectively, the Joint Petitioners). In response to the concerns raised by the Joint Petitioners, the Commission grants their request to amend of our rules to move the deadline for filing actual common line cost and revenue data from July 31st to December 31st of each year. The Commission also amends its rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30th of each year. Additionally, the Commission adopts several minor amendments to its rules in response to issues raised by the Joint Petitioners and on our own motion.

DATES: Effective June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Theodore Burmeister, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Order on Reconsideration in CC Docket Nos. 00–256 and 96–45 released on May 8, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Commission addresses a Petition for Reconsideration of the *MAG Order,* 66 FR 59719, November 30, 2001, filed by the National Exchange Carrier Association (NECA), the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United States Telecom Association (collectively, the Joint Petitioners). The Joint Petitioners raise issues concerning the filing requirements for Interstate Common Line Support (ICLS), the new universal service support mechanism established in the *MAG Order.* In response to the concerns raised by the Joint Petitioners, the Commission grants their request to amend § 54.903(a)(4) of our rules to move the deadline for filing actual common line cost and revenue data from July 31st to December 31st of each year. The Commission also amends § 54.903(a)(3) of our rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30th of each year. As discussed, these changes will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. Additionally, the Commission adopts several minor amendments to §§ 54.307, 54.902, and 54.903 of our rules in response to issues raised by the Joint Petitioners and on our own motion.

II. Discussion

2. *Filing of Actual Cost and Revenue Data.* On reconsideration, the Commission grants the Joint Petitioners' request to change the filing date for actual cost and revenue data for the prior calendar year from July 31st to December 31st. The Commission finds that changing the filing date for actual cost and revenue data to December 31st will better serve the Commission's goals of minimizing administrative burdens on carriers and promoting accurate and efficient distribution of ICLS. A December 31st filing date will reduce administrative costs. The Joint Petitioners contend that, based on NECA's experience with the common line pooling process, many small carriers would have difficulty completing accurate cost studies by July 31st, whereas carriers have historically complied with a December 31st deadline. Moving the filing deadline to December 31st will reduce burdens on carriers and minimize the potential need for late filings and corrections. The resulting delay in the initiation of adjustments to ICLS as part of the ICLS true-up process will be mitigated by the measures the Commission adopts below to improve the accuracy of ICLS payments. In particular, permitting carriers to revise their projected data for the current and upcoming ICLS funding years on June 30th will mitigate the lag between projected and actual data filings and give carriers more meaningful opportunities to revise projections to adjust ICLS where necessary. Moving the deadline for filing actual cost and revenue data to December 31st also will not result in any delay in the completion of the ICLS true-up process. Under the current rules, ICLS true-up payments are spread over the calendar year following the filing of actual data. The Commission concludes that ICLS true-up payments instead can be distributed over the final two quarters of the calendar year without affecting fund stability.

3. *Voluntary Updates of Projected Cost and Revenue Data.* The Commission also concludes that certain modifications to § 54.903(a)(3), governing the filing of projected cost and revenue data, are warranted. Under the rules adopted in the *MAG Order,* carriers that wish to receive ICLS must, on March 31st, file projected data for the upcoming July 1st to June 30th funding year and may correct that data until April 10th. The Commission concludes that permitting carriers at their discretion to correct their projected data for the upcoming funding year until June 30th would better promote the accurate and efficient distribution of ICLS without increasing administrative burdens. Additionally, the Commission provides a voluntary opportunity for rate-of-return carriers to update on June 30th their projected data for the ICLS funding year ending on that date will promote the accurate and efficient distribution of ICLS.

4. The Commission will amend § 54.903(a)(3) of our rules for voluntarily updating the March 31st filing to replace the existing April 10th deadline with a June 30th deadline. The Commission agrees with NECA that this deadline extension will provide a more meaningful opportunity for carriers to revise their projections and, therefore, will increase the accuracy of ICLS for the coming funding year. Two major factors potentially affecting projections will be resolved by the June 30th prior to the start of each funding year. First, the Commission normally approves or modifies the common line average schedule settlements formula proposed by NECA by June 15th of each funding year. Because this formula functions in

the same manner as the common line revenue requirement for average schedule carriers, the specific resolution of this formula could have a significant effect on the amount of prospective ICLS received by average schedule carriers. Second, NECA, as tariff agent on behalf of pooling carriers, continues to update projected cost and revenue data until its June 15th deadline for filing a common line tariff with the Commission. The new deadline the Commission adopts here will enable carriers to incorporate these updates into their ICLS filings, will permit calculation of more accurate ICLS amounts for the coming funding year, and will reduce the size of the true-ups required when actual cost and revenue data is available.

5. The Commission also concludes that permitting carriers, at their option, to update on June 30th their projected data for the past funding year will promote the Commission's goals of minimizing administrative burdens while promoting accuracy of ICLS payments. This update will provide carriers an additional opportunity, in advance of the true-up process, to recognize changed circumstances that may have affected their projections. This will have the effect of minimizing the size of the final true-up adjustments that will occur after actual cost and revenue data is filed. The Administrator shall reflect both the corrections to projections for the upcoming funding year and updates to projections for the past funding year through adjustments to ICLS payments made during the first two quarters of the following calendar year.

6. In light of the modifications the Commission adopts here, we eliminate the optional quarterly update of actual data adopted in the *MAG Order.* The quarterly update of actual data was intended to permit carriers to accelerate the true-up process by recognizing actual costs and revenues earlier than would otherwise be possible. However, based on further consideration, the Commission finds that the ability to update actual data on a quarterly basis will not be useful for most carriers. In addition, the quarterly update of actual data creates potential administrative costs that the measures the Commission adopts herein make unnecessary.

7. The Commission denies the Petition for Reconsideration's request to move the deadline for carriers to file projected data with USAC from March 31st to July 15th. At the time the Petition was filed, the Joint Petitioners contended that these changes were necessary because data used to develop projections were not available on March 31st. The Petition for Reconsideration further suggested that carriers instead be allowed to rely on NECA to submit aggregate projections for the common line pool on March 31st. NECA later indicated, however, that it had made changes to its own procedures that would ensure that carriers could make projections by March 31st, rendering unnecessary the request for the Commission to change the March 31st filing date. In addition, consistent with USAC's administrative obligations and the necessity of calculating per-line support amounts, ICLS payments for the coming funding year must be based on individual carrier data, not aggregate data. For these reasons, the Commission denies the Joint Petitioners' request. The Commission notes that, under the rules adopted in the *MAG Order,* a rate-of-return carrier may elect to rely on NECA, as its agent, to submit ICLS data to USAC on its behalf.

8. *Collection of Projected and Actual Revenue Data.* As requested by the Joint Petitioners, the Commission also amends our rules to clarify that carriers must file common line revenue data to permit calculation of ICLS. The Joint Petitioners correctly note that § 54.903(a)(3) and (a)(4) of the Commission's rules do not explicitly state that carriers must file revenue data in addition to cost data, even though revenue data is clearly necessary to calculate ICLS. The *MAG Order* unambiguously granted USAC authority to collect any data necessary to administer the ICLS mechanism, including revenue data, and the Commission does nothing here to change that. The Commission revises the rules only to more clearly state certain types of data that will be required. Accordingly, the Commission amends § 54.903(a)(3) and (a)(4) to clarify that the types of data that carriers must file thereunder include common line revenue data.

9. *Apportionment of NECA Costs.* The Commission denies the Joint Petitioners' request to amend § 69.603 to specify how NECA, as common line pool administrator, should apportion its administrative expenses among pooling carriers for the purposes of calculating individual study area common line revenue requirements. In the *MAG Order,* the Commission amended its rules to ensure that NECA's administrative costs are appropriately allocated after the implementation of the *MAG Order's* reforms. The Joint Petitioners request that the Commission further amend § 69.603(h)(2) of its rules to specify how NECA should apportion its Category I.B. costs—those costs assigned to the common line pool—among members of the common line pool. No comments were received on this issue, and, subsequently, NECA filed projected cost and revenue data with USAC which apportioned NECA Category I.B. expenses among its members. The Commission finds that NECA has appropriate discretion under the Commission's existing rules to determine how to apportion expenses among members of the common line pool in an equitable manner, and we see no need to amend our rules to prescribe a specific apportionment method at this time.

10. *Miscellaneous issues.* On our own motion, the Commission further amends our rules to correct three errors. First, the Commission amends § 54.902 to correct erroneous cross-references. Second, in order to conform our rules to the Commission's intent in the MAG Order, we amend § 54.307(a)(2) to include a reference to ICLS. Third, the Commission amends § 54.903(b)(3) to clarify that the reconciliation performed by USAC as part of its true-up process applies to the support amounts received by carriers, not their common line revenue requirements.

III. Procedural Matters

A. Supplemental Final Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *MAG Notice*. Additionally, a Final Regulatory Flexibility Analysis (FRFA) was included in the *MAG Order*. In compliance with the RFA, this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFA included in the *MAG Order* to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA.

1. Need for, and Objective of, the Third Order on Reconsideration

12. This *Third Order on Reconsideration* addresses a Petition for Reconsideration filed jointly by the National Exchange Carrier Association, the National Rural Telecom Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the United State Telecom Association (collectively, the Joint Petitioners). Section 254 of the Communications Act of 1934, as amended by the 1996 Act, requires the Commission to promulgate rules to preserve and advance universal service support. Pursuant to that mandate, the Commission, in the *MAG*

Order, adopted reforms to the interstate access rate structure and universal service support mechanisms for rate-of-return carriers. In making these reforms, the Commission created the ICLS mechanism to provide explicit universal service support and adopted rules governing its administration. The Commission now concludes that certain changes to the rules governing ICLS's administration will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. In response to the concerns raised by the Joint Petitioners, the Commission grants their request to amend § 54.903(a)(4) of our rules to move the deadline for filing actual common line cost and revenue data from July 31st to December 31st of each year. The Commission also amends § 54.903(a)(3) of our rules to permit rate-of-return carriers to file updates of projected common line cost and revenue data on June 30th of each year. As discussed, these changes will promote more accurate and efficient distribution of ICLS while minimizing administrative burdens on rate-of-return carriers. Additionally, the Commission adopts several minor amendments to §§ 54.307, 54.902, and 54.903 of our rules in response to issues raised by the Joint Petitioners and on our own motion.

2. Summary of Significant Issues Raised by Public Comments

13. In response to the Joint Petitioners' Petition for Reconsideration, the Commission received one comment. However, after careful consideration, the Commission concludes that this comment does not raise significant small business-related issues.

3. Description and Estimate of the Number of Small Entities to Which This Order on Reconsideration Will Apply

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

15. In the previous FRFA at paragraphs 289–300 of the *MAG Order,* the Commission described and estimated the number of small entities that would be affected by the new universal service rules. These included local exchange carriers, interexchange carriers, competitive service providers, and providers of wireless telephony, rural radiotelephone service, fixed microwave services, and 39 GHz service. The rule amendment adopted herein may apply to the same entities affected by the rules adopted in that order. The Commission therefore incorporates by reference paragraphs 289–300 of the *MAG Order.*

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. This *Third Order on Reconsideration* makes several changes to the reporting requirements for rate-of-return carriers receiving ICLS, but creates few additional burdens. First, this *Third Order on Reconsideration* changes the existing annual filing date for actual common line cost and revenue data from July 31st to December 31st, but adds no new requirements with respect to that filing. Second, this Third Order on Reconsideration changes the existing deadline for filing voluntary corrections to projected common line cost and revenue data from April 10th to June 30th, but adds no new requirements with respect to that filing. The Commission also creates an opportunity for each carrier to voluntarily file an annual update to its projected data, but do not require a carrier to perform the update. In connection with these changes, the Commission also eliminates an existing opportunity for voluntary update of actual common line cost and revenue data on a quarterly basis. Third, the Commission amends our rules to clarify the data required for certain existing filing requirements, but do not require the reporting of any additional data beyond that already filed by carriers. These amendments apply equally to all entities affected, and therefore impose no different burdens on smaller entities.

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

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

18. The Commission notes that we do not find that this *Third Order on Reconsideration* creates a significant economic impact on small entities. The Commission could therefore meet our obligations under the RFA by certifying that there is no significant economic impact on small entities, rather than including this SFRFA. The Commission nonetheless includes this Supplemental FRFA to demonstrate that we have considered the impact of our action on small entities in adopting this *Third Order on Reconsideration.*

19. As noted, the amendment to our rules adopted in this *Third Order on Reconsideration* does not have a significant impact on small entities. Our actions are intended primarily to reduce administrative burdens on small carriers associated with the ICLS mechanism, while also promoting the accurate and efficient distribution of ICLS. Our actions respond to concerns raised by representatives of small carriers. The Commission does consider alternatives to the actions adopted herein but concluded that these alternatives would not reduce administrative burdens or increase the accuracy of ICLS as effectively as the measures we adopt. These alternatives include retaining the filing requirements currently codified in the Commission's rules, extending the current March 31st date for filing projected cost and revenue data to July 15th, and permitting carriers to update their projected data on a quarterly basis.

6. Report to Congress

20. The Commission will send a copy of this *Third Order on Reconsideration,* including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Third Order on Reconsideration,* including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Third Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Paperwork Reduction Act

21. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA)

and found to impose new or modified reporting or recordkeeping requirements or burdens to the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

IV. Ordering Clauses

22. *It is ordered* that, pursuant to the authority contained in sections 1–4, 10, 201–202, and 254 of the Communications Act of 1934 as amended, and §§ 1.3 and 1.103 of the Commission's rules, this *Third Order on Reconsideration* is adopted.

23. *It is further ordered* that part 54 of the Commission's rules, is amended as set forth, effective June 27, 2003. The collections of information are contingent upon approval by the Office of Management and Budget as necessary.

24. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Third Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reason discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(I), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.307(a)(2) by revising the second sentence to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) * * *

(2) * * * A competitive eligible telecommunications carrier that uses loops purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support, LTS, and Interstate Common Line Support mechanisms, if any. * * *

* * * * *

■ 3. Amend § 54.902 by revising the first sentence of paragraph (a)(1), by revising paragraphs (a)(2), and (a)(3), by revising the first sentence of paragraph (b)(1), by revising paragraphs (b)(2), and (b)(3), (c)(2), and paragraph (c)(3) to read as follows:

§ 54.902 Calculation of Interstate Common Line Support for transferred exchanges.

(a) * * *

(1) Each carrier may report its updated line counts to reflect the transfer in the next quarterly line count filing pursuant to § 54.903(a)(1) that applies to the period in which the transfer occurred. * * *

(2) Each carriers' projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) Each carriers' actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3).

(b) * * *

(1) The acquiring carrier may report its updated line counts for the study area into which the acquired lines are incorporated in the next quarterly line count filing pursuant to § 54.903(a)(1) that applies to the period in which the transfer occurred. * * *

(2) The acquiring carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) The acquiring carrier's actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3).

(c) * * *

(2) The acquiring carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) The acquiring carrier's actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction Interstate Common Line Support shall be subject to true up by the Administrator pursuant to § 54.903(b)(3)

* * * * *.

■ 4. Amend § 54.903 by revising paragraphs (a)(3), (a)(4), and (b)(3) to read as follows:

§ 54.903 Obligations of rate-of-return carriers and the Administrator.

(a) * * *

(3) Each rate-of-return carrier shall submit to the Administrator annually on March 31st projected data necessary to calculate the carrier's prospective Interstate Common Line Support, including common line cost and revenue data, for each of its study areas in the upcoming funding year. The funding year shall be July 1st of the current year through June 30th of the next year. Each rate-of-return carrier will be permitted to submit a correction to the projected data filed on March 31st until June 30th for the upcoming funding year. On June 30th each rate-of-return carrier will be permitted to submit to the Administrator an update to the projected data for the funding year ending on that date.

(4) Each rate-of-return carrier shall submit to the Administrator on December 31st of each year the data necessary to calculate a carrier's Interstate Common Line Support, including common line cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line Interstate Common Line Support amounts in the final two quarters of the following calendar year to the extent of any differences between the carrier's ICLS received based on projected common line cost and revenue data and the ICLS for which the carrier is ultimately eligible based on its actual common line cost and revenue data during the relevant period.

(b) * * *

(3) Perform periodic reconciliation of the Interstate Common Line Support provided to each carrier based on projected data filed pursuant to paragraph (a)(3) of this section and the Interstate Common Line Support for which each carrier is eligible based on actual data filed pursuant to paragraph (a)(4) of this section.

* * * * *

[FR Doc. 03–13232 Filed 5–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15245]

RIN 2105–AD26

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: The Department of Transportation (DOT) is amending a provision of its drug and alcohol testing procedures to change the instructions to medical review officers (MROs) with respect to reporting specimens as dilute or substituted. The change is based on the Department's experience since the adoption of its current rule and new scientific information on the subject.

DATES: This rule is effective May 28, 2003. Comments on the interim final rule should be submitted by August 26, 2003. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Anyone wishing to file a comment should refer to the OST docket number (OST–2003–15245). You may submit your comments and related material by only one of the following methods: You may mail your comments to the Docket Management System, U.S. Department of Transportation, room PL–401, 400 7th Street, SW., Washington, DC 20590–0001; or you may submit your comments electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* For instructions on how to submit comments electronically, visit the Docket Management System Web site and click on the ''Help'' menu.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401 on the plaza level of the Nassif Building at the same address during regular business hours. You may also obtain access to this docket on the Internet at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into the docket for this rulemaking by the name of the person submitting the comment (or signing it, in the case of a comment submitted on behalf of a business, association, or other organization). You may review DOT's complete Privacy Act statement in the **Federal Register** published April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington, DC, 20590, 202–366–9310 (voice), 202–366–9313 (fax), or *bob.ashby@ost.dot.gov* (e-mail) or Ken Edgell, Acting Director, Office of Drug and Alcohol Policy and Compliance (ODAPC), 400 7th Street, SW., Room 10403, Washington, DC 20590, 202–366–3784 (voice), 202–366–3897 (fax), or *kenneth.edgell@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: In its current drug and alcohol testing procedures (49 CFR part 40), the Department sets forth criteria for determining when a specimen should be considered substituted (see § 40.93(b)). This provision states that:

> As a laboratory, you must consider the primary specimen to be substituted if the creatinine concentration is less than or equal to 5 mg/dL and the specific gravity is less than or equal to 1.001 or greater than or equal to 1.020.

These criteria, which are taken directly from Department of Health and Human Services (HHS) program documents, are important because, if an employee's specimen meets them, the employee will be regarded as having refused the drug test, typically with consequences equivalent to those for a positive test.

Substitution testing and criteria were controversial subjects during the rulemaking that created the current part 40. In the preamble to the final rule, the Department extensively discussed these issues (see 65 FR 79478–79481; December 19, 2000). The Department concluded, based on studies by HHS and the Department of Transportation, that the creatinine criterion of less than or equal to 5 mg/dL was appropriate. We concluded that it was very unlikely that employees could produce urine meeting that standard through physiological means.

Nevertheless, the current rule provides procedures through which a medical review officer (MRO) verifies tests that a laboratory reports as substituted, including a means through which an employee can demonstrate that there is a legitimate medical explanation for the laboratory result (§ 40.145). If the MRO, after evaluating the employee and receiving the recommendation of a referral physician and the results of a demonstration that the individual can produce a low-creatinine specimen by natural means, ultimately finds that there is a legitimate medical explanation, the MRO will cancel the test result.

More recently, however, information has evolved suggesting that the Department's treatment of substitution matters should be reconsidered. The Department has become aware of a small number of cases in which individuals appear to have had legitimate medical explanations for producing specimens with a creatinine level of less than or equal to 5 mg/dL. These explanations have involved showings by a few individuals that they can produce low-creatinine specimens in demonstrations for a referral physician. Also, there is an increasing consensus among scientific and medical experts in relevant fields that the 5 mg/dL standard may not be appropriate. That is, there is probably a very small, but not insignificant, number of individuals who may, under normal circumstances, produce urine with creatinine concentrations below that level.

This information was discussed at a conference sponsored by the Federal Aviation Administration in Tampa, Florida, on February 4–6, 2003. The conference brought together toxicologists, nephrologists and other physicians, MROs, technical experts in various fields, and DOT and HHS officials. Attendees at the conference generally agreed that it would be appropriate to lower the creatinine criterion. The purpose of doing so would be to largely eliminate the possibility that individuals who could naturally produce urine creatinine concentrations below that current standard would be identified as having substituted a specimen. As directed by the Senate Appropriations subcommittee with jurisdiction over the FAA, which expressed concern about the possibility of some employees inadvertently failing to meet current validity standards, the Department will shortly submit to that subcommittee a final report incorporating the material discussed at the conference. When the Department submits this report, we will also post it in the docket for this rulemaking.

The Department is continuing to work with HHS, laboratories, and other interested persons on issues related to substitution. This process may take considerable time. Meanwhile, the Department believes that it is sensible to take an interim step to minimize the possibility of individuals who can naturally produce urine with creatinine concentrations of less than or equal to 5 mg/dL being identified as having substituted their specimens.

Consequently, in this interim final rule, we are taking the following steps.

1. We are directing laboratories to report to MROs, on Copy 1 of the Custody and Control Form (CCF) (also in the optional laboratory report), the creatinine and specific gravity quantifications for all DOT specimens that meet the regulatory substitution criteria. In these situations, laboratories will be required to include a notation on Copy 1 saying, for example, ''Creatinine, 4.5 mg/dL; Specific Gravity, 1.001.'' Note, however, that we are not changing existing substitution criteria (see § 40.93).

2. In making this report, laboratories would report quantitative values for creatinine only when the creatinine concentration in a specimen was above a laboratory's minimum detection limit. Anything below this limit would be reported as ''creatinine not detected.'' If MROs inquire what a particular laboratory's limit of detection is for a particular specimen, the laboratory should provide this information. It is our understanding that all HHS-certified laboratories have a limit of detection for creatinine of 1 mg/dL or less

3. When an MRO gets a report from the laboratory that the creatinine level in a specimen is less than 2 mg/dL or is ''creatinine not detected,'' the MRO will report the specimen to the employer as ''substituted.'' When the MRO gets a report from the laboratory that the creatinine level in a specimen is greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, the MRO will report the specimen to the employer as ''dilute,'' just as if the creatinine concentration were greater than or equal to 5 but less than 20 mg/dL (and also negative or positive, as provided in § 40.155).

4. When the MRO gets a report from the laboratory that the creatinine level in a specimen is 2 mg/dL or above but less than or equal to 5 mg/dL, the MRO—in addition to reporting the specimen to the employer as dilute—must take an additional step. This step is to direct the employer to require the employee to undergo an immediate recollection under direct observation. The employer must then ensure that this recollection takes place.

The rationale for changing the reporting procedure for specimens in the 2–5 mg/dL creatinine concentration range is to provide the maximum margin of safety to ensure that people who may naturally produce low creatinine levels—most cases that have been brought to the Department's attention have been in the 4.1–4.9 mg/dL range—will not be reported to employers as having substituted their specimens. The Department is aware that this procedural change may for a time slightly increase the risk of individuals attempting to substitute their specimens to evade detection of drug use. We believe that this risk is outweighed by the benefit of avoiding unfairly identifying persons as having substituted specimens. Because specimens in the specified range may create greater concern than less dilute specimens that a substitution may have been attempted, we believe that heightened scrutiny of these specimens is warranted. We believe that the requirement for recollection under direct observation is justified as a safeguard against tampering with specimens.

[Here, and in other places in the rule, where we express a quantitative value as a whole number (*e.g.*, 2 or 5), we mean exactly that number (*e.g.*, 2.0 or 5.0).]

This series of steps will not cause laboratories to change existing criteria or procedures, limiting burdens on them to the ministerial step of adding a brief notation of existing data on an existing form. Based on laboratories' experience, laboratories are likely to have to follow these procedures in only about 2000 out of the several million DOT specimens tested each year.

The Department wishes to provide guidance to program participants concerning some questions we anticipate may arise in the implementation of these amendments to part 40 and related provisions. First, there may be some substituted specimens in process on the date this amendment becomes effective. If a laboratory has tested a specimen, found that it meets the substitution criteria of § 40.93, but has not yet reported the substituted result to the MRO on the effective date of this amendment, the laboratory should report it as substituted with the quantitative creatinine and specific gravity values, as this amendment provides.

If an MRO has received a substituted result before the effective date of the amendment and has not yet reported the result to the employer on the effective date of the amendment, the MRO should request the quantitations from the laboratory before reporting the result to the employer. The MRO would then report the result to the employer as substituted or dilute, as this amendment provides.

If the employer received a substituted result from the MRO before the effective date of this amendment, the employer would continue to treat the result as substituted, as provided in part 40 prior to these amendments. The employer in this case is not required to go back to the MRO or laboratory and obtain the quantitations for creatinine and specific gravity.

There could be situations in which a laboratory finds enough drug or metabolite in a specimen to report it as positive and at the same time determines that the specimen is substituted or, more likely, adulterated. Suppose, in such a situation, testing of the split does not confirm the substitution or adulteration finding. Program participants would still treat the test as a positive test for the drug.

Also, in order to reconfirm a substitution finding, it is not necessary for the laboratory testing the split to come to precisely the same quantitative result as the primary laboratory. Suppose the primary laboratory's quantitation for creatinine is 1.2 mg/dL. The second laboratory's quantitation is 1.8 mg/dL. Both results are less than 2 mg/dL. In this situation, we regard the initial result as having been reconfirmed. On the other hand, suppose the quantitation of creatinine by the first laboratory for the primary specimen is 1.9 mg/dL, and the quantitation of creatinine by the second laboratory for the split specimen is 2.3 mg/dL. In this case, the MRO would report the result of the split specimen as ''dilute'' (see numbered paragraph 3 above) with instructions to the employer to conduct an immediate recollection under direct observation.

We emphasize that, in the case where creatinine is reported as ''creatinine not detected'' (see amended § 40.97(e)(2)), the proper action for the MRO is to report the specimen to the employer as substituted. While the procedures of § 40.145 apply to such a case, § 40.151(i) tells MROs not to accept as a legitimate medical explanation for a substituted specimen an assertion that an employee can produce urine with no detectable creatinine.

Regulatory Analyses and Notices

This rule is not a significant rule under Executive Order 12866 or the Department of Transportation's Regulatory Policies and Procedures. Costs to laboratories and MROs will be minimal, since the rule merely makes a minor change in the way existing results are reported in a very small percentage of cases. There will be no significant burdens or economic effects on any of the participants in the drug testing process. Consequently, the Department certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities.

Under the criteria of section 553 of the Administrative Procedure Act, the Department has determined that prior notice and public comment on this rule are impractical, unnecessary, or contrary to the public interest. This is because, given the information now available to the Department, we have concluded that it is necessary to make an interim change immediately to avoid the possibility that individuals will be incorrectly reported as having substituted a specimen. For the same reason, the Department finds good cause to make this rule effective immediately.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 16th day of May, 2003, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

■ For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR Part 40 as follows:

PART 40—[AMENDED]

■ 1. The authority citation for Part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

■ 2. Amend § 40.67 by revising paragraph (a) to read as follows:

§ 40.67 When and how is a directly observed collection conducted?

(a) As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result;

(2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or

(3) The laboratory reported to the MRO that the specimen was substituted with a creatinine concentration greater than or equal to 2 mg/dL and less than or equal to 5 mg/dL and the MRO reported the specimen to you as negative and dilute (see §§ 40.145(a)(1) and 40.197).

* * * * *

■ 3. Amend § 40.97 by revising paragraph (a) (7) and paragraph (e) to read as follows:

§ 40.97 What do laboratories report and how do they report it?

* * * * *

(a) * * *

(7) Substituted, with quantitative values for creatinine and specific gravity, and remarks; or

* * * * *

(e)(1) You must provide quantitative values for confirmed positive drug and adulterated test results to the MRO when the MRO requests you to do so in writing. The MRO's request may be either a general request covering all such results you send to the MRO or a specific case-by-case request.

(2) You must also provide to the MRO quantitative values for creatinine and specific gravity for all substituted test results when the result is above your detection limit. If the result is not above your detection limit, you must report ''creatinine not detected'' to the MRO. You must make these reports for in all cases of substituted tests, without a request from the MRO.

* * * * *

■ 4. Amend § 40.131(a) by adding, in the first sentence, after the word ''substituted'' and before the comma, the words ''with a creatinine concentration of less than 2 mg/dL.''

■ 5. Amend § 40.145 by revising paragraphs (a) and (e)(2) to read as follows:

§ 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

(a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive test for a drug or drug metabolite, unless the creatinine concentration for a substituted specimen was reported by the laboratory to be equal to or more than 2 mg/dL.

(1) If the laboratory has reported the creatinine concentration for a substituted specimen as equal to or more than 2 mg/dL, you must report the specimen to the DER as being dilute, as provided in § 40.155 of this part. Notwithstanding any other provision of this part, you must also instruct the DER that a second collection under direct observation must take place immediately.

(2) If the laboratory has reported the creatinine concentration for a substituted specimen as less than 2 mg/dL or ''creatinine not detected,'' you must follow the procedures set forth in paragraphs (b) through (h) of this section.

* * * * *

(e) * * *

(2) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine, through physiological means, meeting criteria for creatinine of less than 2 mg/dL and for specific gravity of less than or equal to 1.001 or greater than or equal to 1.020.

* * * * *

■ 6. Amend § 40.155 (a) by adding, after the words ''reports that a specimen is dilute,'' the words ''or reports that a specimen is substituted with a creatinine quantitation of greater than or equal to 2 mg/dL.''

■ 7. Amend § 40.187(a) by adding a new paragraph (a)(3), to read as follows:

§ 40.187 What does the MRO do with split specimen laboratory results?

(a) * * *

(3) In the case of a reconfirmed substituted result, in which the creatinine concentration for the primary specimen was less than 2 mg/dL and the creatinine concentration of the split specimen is between 2 and 5 mg/DL, inclusive, report the result to the employer as ''dilute'' and instruct the employer to conduct an immediate recollection under direct observation.

* * * * *

■ 8. Revise § 40.191 (a)(6) to read as follows:

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) * * *

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, § 40.197(b));

* * * * *

■ 9. Revise § 40.197 to read as follows:

§ 40.197 What happens when an employer receives a report of a dilute specimen?

(a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.

(b) As an employer, if the MRO informs you that a negative test was dilute, take the following action:

(1) If the MRO directs you to conduct a recollection under direct observation (*i.e.*, because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (*see*

§ 40.145(a)(1)), you must do so immediately.

(2) Otherwise (*i.e.*, if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.

(i) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).

(ii) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (*e.g.*, conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.

(c) The following provisions apply to all tests you direct an employee to take under paragraph (b) of this section:

(1) You must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;

(2) You must treat the result of the test you directed the employee to take under paragraph (b) of this section—and not a prior test—as the test result of record, on which you rely for purposes of this part;

(3) If the result of the test you directed the employee to take under paragraph (b) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.

(4) If the employee declines to take a test you directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

[FR Doc. 03–13242 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. RSPA–02–12064 (HM–232)]

RIN 2137–AD67

Hazardous Materials Security Plans; Information Collection Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule announces Office of Management and Budget (OMB) approval of information collection request (ICR) OMB No. 2137–0612, ''Hazardous Materials Security Plans''. This information collection has been approved by OMB until April 30, 2006. This final rule also makes appropriate revisions to regulations concerning the Paperwork Reduction Act to incorporate this new information collection approval under OMB Control No. 2137–0612.

DATES: The effective date of this final rule is June 20, 2003. This ICR expires on April 30, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 25, 2003, the Research and Special Programs Administration (RSPA, we) published a final rule to enhance the security of hazardous materials transported in commerce (68 FR 14510). In this final rule, shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all shippers and carriers of hazardous materials must assure that their employee training includes a security component. The effective date of this final rule is March 25, 2003.

On April 30, 2003, OMB approved information collection for the development of and maintenance of security plans, OMB No. 2137–0612, ''Hazardous Materials Security Plans'', until April 30, 2006. Because OMB approved the information collection after publication of the March 25, 2003 final rule, we are announcing the OMB approval and incorporating this new information collection approval into § 171.6, ''Control numbers under the Paperwork Reduction Act.'', under OMB Control No 2137–0612.

OMB regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval of the following ICR and § 171.6(b)(2) is revised by incorporating the following information collection:

OMB Control Number: 2137–0612.

Title: Hazardous Materials Security Plans.

This information collection approval expires on April 30, 2006. This information collection request was approved by OMB on April 30, 2003.

II. Summary of Regulatory Changes

Section 171.6

We are revising the table in paragraph (b)(2) to incorporate a new information collection, OMB No. 2137–0612, ''Hazardous Materials Security Plans,'' and the affected sections, which include a new part 172, subpart I—Security Plans and §§ 172.800, 172.802, and 172.804.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law.

RSPA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not have tribal implications and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule. This final rule announces the approval of information collection OMB No. 2137–0612, ''Hazardous Materials Security Plans,'' and incorporates this new OMB Control Number, Title, and Affected Sections into the Section 171.6 (b)(2) table in the HMR.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports , Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.6, the table in paragraph (b)(2) is revised to add a new entry ''OMB No. 2137–0612'' in numeric order, to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

Current OMB Control No.	Title	Title 49 CFR part or section where identified and described
* * *	* *	* *
2137–0612	Hazardous Materials Security Plans	Part 172, Subpart I, §§ 172.800, 172.802, 172.804.

Issued in Washington, DC, on May 9, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03–13238 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 052103B]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery category in Zone 1.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 22, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the

Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 red king crab bycatch allowance specified for Zone 1 of the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 16,664 animals (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery in Zone 1 of the BSAI has been reached. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery in Zone 1 of the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

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

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

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

Dated: May 21, 2003.

Bruce C. Morehead.

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

[FR Doc. 03–13271 Filed 5–22–03; 2:53 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030128021–3124–02; I.D. 121602A]

RIN: 0648–AQ45

Fisheries of the Exclusive Economic Zone Off Alaska; Opening Waters to Pacific Cod Pot Fishing off Cape Barnabas and Caton Island

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to allow use of pot gear in waters around Cape Barnabas and Caton Island located in the Gulf of Alaska (GOA) for directed fishing for Pacific cod. Waters within 3 nautical miles (nm) of these sites currently are closed to Pacific cod fishing by vessels using pot gear and named on a Federal fisheries permit. This action is necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot gear fishing sector. This final rule is intended to meet the objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and to further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective June 27, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action and the Final Regulatory Flexibility Analysis (FRFA) may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or by calling (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, (907) 586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

The background regarding this action, including the Steller sea lion protection measures, the Council action, U. S. District Court orders, and the State of Alaska fishery restrictions, is detailed in the preamble to the proposed rule (68 FR 7750, February 18, 2003). This final rule removes restrictions on using pot gear for directed fishing for Pacific cod by vessels named on a Federal groundfish fishing permit in waters within 3 nm of Cape Barnabas and Caton Island. Accordingly, Table 5 to part 679 is revised by removing the 3 nm restriction in column 9 for Caton Island and Cape Barnabas.

No comments were received on the proposed rule.

Changes in the Final Rule From the Proposed Rule

This final rule revises Table 5 to part 679 from the proposed rule. Since the proposed rule was published on February 18, 2003, (68 FR 7750), NMFS published a correction to the Steller sea lion protection measures (SSL correction) at 68 FR 24615, May 08, 2003. The corrections to Table 5 in the SSL correction were not included in the proposed rule for this action. To ensure the corrections to Table 5 from the SSL correction remain in the Code of Federal Regulations, Table 5 in this final rule is revised from the proposed rule to include those revisions that were published in the SSL correction. For details on these revisions, see the preamble to the SSL correction (68 FR 24615).

Classification

The Administrator, Alaska Region, NMFS has determined that removing restrictions on directed fishing for Pacific cod using pot gear within 3 nm of Caton Island and Cape Barnabas is necessary for the conservation and management of the Pacific cod pot gear fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Species listed under the Endangered Species Act (ESA) are present in the action area. This action is not expected to result in increases of Pacific cod harvest beyond those experienced with the opening of the State parallel fishery in these areas. With no additional removals of Pacific cod expected, informal ESA consultation completed on December 11, 2001, concluded that this action is not likely to adversely affect listed species or critical habitat.

NMFS has prepared a FRFA for this action pursuant to Section 604(a) of the Regulatory Flexibility Act. The need for and objectives of this action have been

discussed earlier in detail in the preamble to the proposed rule (68 FR 7750, February 18, 2003).

NMFS prepared an IRFA that describes the impact this action may have on small entities. This action is necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot gear fishing sector. This action is expected to affect six regulated small entities by removing a fishing restriction. These entities are the pot vessels fishing for Pacific cod in the waters within 3 nm of the two haulouts. This action does not impose new reporting, recordkeeping or other compliance requirements on regulated small entities. No Federal rules exist that duplicate, overlap or conflict with the proposed rule. This action does not have any adverse impacts on regulated small entities. No significant alternatives to the proposed rule exist that would have lower economic impacts on these entities.

Two alternatives were considered for the Caton Island and Cape Barnabas pot fishing vessels: (1) No exemption for these vessels (status quo) and (2) exempt pot fishing vessels from SSL closures from 0 to 3 nm around Caton Island and Cape Barnabas. Alternative 1 is the baseline alternative, and federally permitted vessels using pot gear for Pacific cod directed fishing would continue to be prohibited from fishing within 3 nm of the Caton Island and Cape Barnabas haulouts. Also, the status quo would not provide consistency between Federal and State regulations governing fishing restrictions within Steller sea lion protection areas. The preferred alternative would allow federally-permitted vessels used to participate in the GOA Pacific cod pot fishery to fish within 3 nm of the haulouts at Caton Island and Cape Barnabas. This would reduce the Pacific cod revenues placed ''at risk'' by the restrictions of the status quo alternative by up to $63,000. The areas in question are small parts of larger fishing areas, and fishermen may currently be making up a large part of the harvest foreclosed by the restrictions by fishing elsewhere. This alternative is not believed to create jeopardy for the Steller sea lions or adversely modify its critical habitat. This alternative would not trigger Executive Order 12866 significance criteria since the maximum revenue impact is likely to be $63,000 at the outside.

NMFS Alaska Fisheries Science Center (AFSC) data show that, in 2000, 252 pot catcher vessels and four pot catcher/processors fished for groundfish in the GOA. The numbers fishing near the waters that are opened under this action are smaller. An examination of the numbers of vessels fishing for Pacific cod with pot gear in state waters within the South Peninsula management area (the location of the Caton Island haulout) found 31 in 1999 and 51 in 2000. An examination of the numbers fishing in the Kodiak management area (the location of the Cape Barnabas haulout) found 41 in 1999 and 44 in 2000. An estimated six vessels actually fished within the Caton Island and Cape Barnabas haulouts in each of those years. Information on gross revenues from the AFSC indicates that all vessels fishing for Pacific cod with pots in the GOA are classified as small entities according to Small Business Administration criteria.

At its October 2001 meeting, the Council recommended SSL protection measures for 2002 and beyond. These measures were developed by a Council-appointed committee. In developing its recommendations, the SSL Committee first assessed the needs of Steller sea lions to avoid jeopardy or destruction or adverse modification of their critical habitat based on the best scientific information available. The SSL Committee then crafted groundfish fisheries management measures that first provided protection for Steller sea lions. If some flexibility existed, the measures were crafted to minimize adverse economic impacts to affected fishermen and fishing communities, as long as protection for Steller sea lions was maintained, as required by the ESA.

These recommendations included a revised harvest control rule for pollock, Pacific cod, and Atka mackerel; closed areas and seasons based on the location, fishery, and gear type; critical habitat harvest limits for the pollock and Atka mackerel fisheries in certain areas of critical habitat; and requirements to allow for monitoring of pollock, Pacific cod, and Atka mackerel directed fishing. The recommendations of the SSL Committee were further modified by the Council.

In November 2001, the Alaska Board of Fisheries (BOF) reviewed the Council's recommendation for Steller sea lion protection measures. These measures generally consist of fishery or gear specific directed fishing closures within 3, 10, or 20 nautical miles (nm) of Steller sea lion rookeries or haulouts. NMFS and the Council expected that the BOF would mirror these regulations in State waters during the parallel fisheries for pollock, Atka mackerel, and Pacific cod. This is necessary to implement the protection measures that included fishery prohibitions that extended into State waters.

The BOF responded by authorizing the Commissioner of the Alaska Department of Fish and Game, through emergency order, to open and close seasons and areas as necessary to mirror federal regulations for the purpose of protecting Steller sea lions. However, the BOF did provide two exemptions for vessels fishing for Pacific cod with pot gear around the Caton Island and Cape Barnabas haulouts.

The two exceptions in the parallel fishery would allow directed fishing for Pacific cod with pot gear between 0–3 nm of the Caton Island and Cape Barnabas haulouts. The proposed action recommended by the Council, and assessed in the 2001 Biological Opinion (BiOp), closed 0–3 nm to all gear types except vessels using jig gear. Thus, the BOF action authorizes pot gear fishing within 0–3 nm of two haulouts that was not considered or assessed in the 2001 BiOp.

The rationale stated by the BOF for this discrepancy was that few animals have been seen at these two sites over the last decade; these sites are haulouts instead of rookeries; and that other sites in the region would remain closed to pot gear fishing inside 3 nm of haulouts. Hook-and-line gear was not included in the exemption because this gear type is not authorized in the State-managed Pacific cod fishery.

Because the BOF action did not contain these Caton Island and Cape Barnabas closures, the SSL protection measures under state regulations were not consistent with Federal rules because they allowed vessels without a federal fishing permit to fish in those areas under Alaska State law. This resulted in conflicting Federal and State regulations, as well as being different from the action that was consulted on under the ESA. In November, 2001, NMFS informally consulted on these changes and determined that they were not of sufficient extent to re-initiate formal consultation under the ESA. NMFS informed the Council at its February 2002 meeting that no new scientific analyses were necessary in order to consider the BOF action on GOA haulouts, therefore, the Council requested that an analysis be developed immediately for an action to remove fishing restrictions around these sites.

A copy of the FRFA is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons discussed in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(F); and Sec. 209, Pub. L. 106–554.

■ 2. Table 5 to part 679 is revised to read as follows:

Table 5 to 50 CFR Part 679 Steller Sea Lion Protection Areas Pacific Cod Fisheries Restrictions

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
St. Lawrence I./S Punuk I.	BS	63 04.00 N	168 51.00 W			20	20	20
St. Lawrence I./SW Cape	BS	63 18.00 N	171 26.00 W			20	20	20
Hall I.	BS	60 37.00 N	173 00.00 W			20	20	20
St. Paul I./Sea Lion Rock	BS	57 06.00 N	170 17.50 W			3	3	3
St. Paul I./NE Pt.	BS	57 15.00 N	170 06.50 W			3	3	3
Walrus I. (Pribilofs)	BS	57 11.00 N	169 56.00 W			10	3	3
St George I./Dalnoi Pt.	BS	56 36.00 N	169 46.00 W			3	3	3
St. George I./S. Rookery	BS	56 33.50 N	169 40.00 W			3	3	3
Cape Newenham	BS	58 39.00 N	162 10.50 W			20	20	20
Round (Walrus Islands)	BS	58 36.00 N	159 58.00 W			20	20	20
Attu I./Cape Wrangell[11]	AI	52 54.60 N	172 27.90 E	52 55.40 N	172 27.20 E	20, 10	3	3
Agattu I./Gillon Pt.[11]	AI	52 24.13 N	173 21.31 E			20, 10	3	3
Attu I./Chirikof Pt.[11]	AI	52 49.75 N	173 26.00 E			20, 3		
Agattu I./Cape Sabak[11]	AI	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	20, 10	3	3
Alaid I.[11]	AI	52 46.50 N	173 51.50 E	52 45.00 N	173 56.50 E	20, 3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Shemya I.[11]	AI	52 44.00 N	174 08.70 E			20, 3		
Buldir I.[11]	AI	52 20.25 N	175 54.03 E	52 20.38 N	175 53.85 E	20, 10	10	10
Kiska I./Cape St. Stephen[11]	AI	51 52.50 N	177 12.70 E	51 53.50 N	177 12.00 E	20, 10	3	3
Kiska I. Sobaka & Vega[11]	AI	51 49.50 N	177 19.00 E	51 48.50 N	177 20.50 E	20, 3		
Kiska I./Lief Cove[11]	AI	51 57.16 N	177 20.41 E	51 57.24 N	177 20.53 E	20, 10	3	3
Kiska I./Sirius Pt.[11]	AI	52 08.50 N	177 36.50 E			20, 3		
Tanadak I. (Kiska)[11]	AI	51 56.80 N	177 46.80 E			20, 3		
Segula I.[11]	AI	51 59.90 N	178 05.80 E	52 03.06 N	178 08.80 E	20, 3		
Ayugadak Point[11]	AI	51 45.36 N	178 24.30 E			20, 10	3	3
Rat I./Krysi Pt.[11]	AI	51 49.98 N	178 12.35 E			20, 3		
Little Sitkin I.[11]	AI	51 59.30 N	178 29.80 E			20, 3		
Amchitka I./Column[11]	AI	51 32.32 N	178 49.28 E			20, 10	3	3
Amchitka I./East Cape[11]	AI	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	20,10	3	3
Amchitka I./Cape Ivakin[11]	AI	51 24.46 N	179 24.21 E			20, 3		
Semisopochnoi/Petrel Pt.[11]	AI	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	20, 10	3	3
Semisopochnoi I./Pochnoi Pt.[11]	AI	51 57.30 N	179 46.00 E			20, 10	3	3
Amatignak I./Nitrof Pt.[11]	AI	51 13.00 N	179 07.80 W			20, 3		
Unalga & Dinkum Rocks[11]	AI	51 33.67 N	179 04.25 W	51 35.09 N	179 03.66 W	20, 3		
Ulak I./Hasgox Pt.[11]	AI	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	20, 10	3	3
Kavalga I.[11]	AI	51 34.50 N	178 51.73 W	51 34.50 N	178 49.50 W	20, 3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Tag I.[11]	AI	51 33.50 N	178 34.50 W			20, 10	3	3
Ugidak I.[11]	AI	51 34.95 N	178 30.45 W			20, 3		
Gramp Rock[11]	AI	51 28.87 N	178 20.58 W			20, 10	3	3
Tanaga I./Bumpy Pt.[11]	AI	51 55.00 N	177 58.50 W	51 55.00 N	177 57.10 W	20,3		
Bobrof I.	AI	51 54.00 N	177 27.00 W			3		
Kanaga I./Ship Rock	AI	51 46.70 N	177 20.72 W			3		
Kanaga I./North Cape	AI	51 56.50 N	177 09.00 W			3		
Adak I.	AI	51 35.50 N	176 57.10 W	51 37.40 N	176 59.60 W	10	3	3
Little Tanaga Strait	AI	51 49.09 N	176 13.90 W			3		
Great Sitkin I.	AI	52 06.00 N	176 10.50 W	52 06.60 N	176 07.00 W	3		
Anagaksik I.	AI	51 50.86 N	175 53.00 W			3		
Kasatochi I.	AI	52 11.11 N	175 31.00 W			10	3	3
Atka I./N. Cape	AI	52 24.20 N	174 17.80 W			3		
Amlia I./Sviech. Harbor[4]	AI	52 01.80 N	173 23.90 W			3		
Sagigik I.[4]	AI	52 00.50 N	173 09.30 W			3		
Amlia I./East[4]	AI	52 05.70 N	172 59.00 W	52 05.75 N	172 57.50 W	3	20	20
Tanadak I. (Amlia)[4]	AI	52 04.20 N	172 57.60 W			3	20	20
Agligadak I.[4]	AI	52 06.09 N	172 54.23 W			20	20	20
Seguam I./Saddleridge Pt.[4]	AI	52 21.05 N	172 34.40 W	52 21.02 N	172 33.60 W	10	20	20
Seguam I./Finch Pt.	AI	52 23.40 N	172 27.70 W	52 23.25 N	172 24.30 W	3	20	20
Seguam I./South Side	AI	52 21.60 N	172 19.30 W	52 15.55 N	172 31.22 W	3	20	20
Amukta I. & Rocks	AI	52 27.25 N	171 17.90 W			3	20	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Chagulak I.	AI	52 34.00 N	171 10.50 W			3	20	20
Yunaska I.	AI	52 41.40 N	170 36.35 W			10	20	20
Uliaga[5, 14]	BS	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W	10	20	20
Chuginadak[14]	GOA	52 46.70 N	169 41.90 W			20	20,10	20
Kagamil[5, 14]	BS	53 02.10 N	169 41.00 W			10	20	20
Samalga	GOA	52 46.00 N	169 15.00 W			20	10	20
Adugak I.[5]	BS	52 54.70 N	169 10.50 W			10	BA	BA
Umnak I./Cape Aslik[5]	BS	53 25.00 N	168 24.50 W			BA	BA	BA
Ogchul I.	GOA	52 59.71 N	168 24.24 W			20	10	20
Bogoslof I./Fire I.[5]	BS	53 55.69 N	168 02.05 W			BA	BA	BA
Polivnoi Rock[9]	GOA	53 15.96 N	167 57.99 W			20	10	20
Emerald I.[13, 9]	GOA	53 17.50 N	167 51.50 W			20	10	20
Unalaska/Cape Izigan[9]	GOA	53 13.64 N	167 39.37 W			20	10	20
Unalaska/Bishop Pt.[6, 13]	BS	53 58.40 N	166 57.50 W			10	10	3
Akutan I./Reef-lava[6]	BS	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	10	10	3
Unalaska I./Cape Sedanka[9]	GOA	53 50.50 N	166 05.00 W			20	10	20
Old Man Rocks[9]	GOA	53 52.20 N	166 04.90 W			20	10	20
Akutan I./Cape Morgan[9]	GOA	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	10	20
Akun I./Billings Head	BS	54 17.62 N	165 32.06 W	54 17.57 N	165 31.71 W	10	3	3
Rootok[9]	GOA	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W	20	10	20
Tanginak I.[9]	GOA	54 12.00 N	165 19.40 W			20	10	20
Tigalda/Rocks NE[9]	GOA	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	10	20

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Unimak/Cape Sarichef	BS	54 34.30 N	164 56.80 W			10	3	3
Aiktak[9]	GOA	54 10.99 N	164 51.15 W			20	10	20
Ugamak I.[9]	GOA	54 13.50 N	164 47.50 W	54 12.80 N	164 47.50 W	20	10	20
Round (GOA)[9]	GOA	54 12.05 N	164 46.60 W			20	10	20
Sea Lion Rock (Amak)	BS	55 27.82 N	163 12.10 W			10	7	7
Amak I. And rocks	BS	55 24.20 N	163 09.60 W	55 26.15 N	163 08.50 W	10	3	3
Bird I.	GOA	54 40.00 N	163 17.2 W			10		
Caton I.	GOA	54 22.70 N	162 21.30 W			3	3	
South Rocks	GOA	54 18.14 N	162 41.3 W			10		
Clubbing Rocks (S)	GOA	54 41.98 N	162 26.7 W			10	3	3
Clubbing Rocks (N)	GOA	54 42.75 N	162 26.7 W			10	3	3
Pinnacle Rock	GOA	54 46.06 N	161 45.85 W			3	3	3
Sushilnoi Rocks	GOA	54 49.30 N	161 42.73 W			10		
Olga Rocks	GOA	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10		
Jude I.	GOA	55 15.75 N	161 06.27 W			20		
Sea Lion Rocks (Shumagins)	GOA	55 04.70 N	160 31.04 W			3	3	3
Nagai I./Mountain Pt.	GOA	54 54.20 N	160 15.40 W	54.56.00 N	160.15.00 W	3	3	3
The Whaleback	GOA	55 16.82 N	160 05.04 W			3	3	3
Chernabura I.	GOA	54 45.18 N	159 32.99 W	54 45.87 N	159 35.74 W	20	3	3
Castle Rock	GOA	55 16.47 N	159 29.77 W			3	3	3
Atkins I.	GOA	55 03.20 N	159 17.40 W			20	3	3
Spitz I.	GOA	55 46.60 N	158 53.90 W			3	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Mitrofania	GOA	55 50.20 N	158 41.90 W			3	3	3
Kak	GOA	56 17.30 N	157 50.10 W			20	20	20
Lighthouse Rocks	GOA	55 46.79 N	157 24.89 W			20	20	20
Sutwik I.	GOA	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W	20	20	20
Chowiet I.	GOA	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	20	20	20
Nagai Rocks	GOA	55 49.80 N	155 47.50 W			20	20	20
Chirikof I.	GOA	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	20	20	20
Puale Bay	GOA	57 40.60 N	155 23.10 W			10		
Kodiak/Cape Ikolik	GOA	57 17.20 N	154 47.50 W			3	3	3
Takli I.	GOA	58 01.75 N	154 31.25 W			10		
Cape Kuliak	GOA	58 08.00 N	154 12.50 W			10		
Cape Gull	GOA	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W	10		
Kodiak/Cape Ugat	GOA	57 52.41 N	153 50.97 W			10		
Sitkinak/Cape Sitkinak	GOA	56 34.30 N	153 50.96 W			10		
Shakun Rock	GOA	58 32.80 N	153 41.50 W			10		
Twoheaded I.	GOA	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10		
Cape Douglas (Shaw I.)	GOA	59 00.00 N	153 22.50 W			10		
Kodiak/Cape Barnabas	GOA	57 10.20 N	152 53.05 W			3	3	
Kodiak/Gull Point[7]	GOA	57 21.45 N	152 36.30 W			10, 3		
Latax Rocks	GOA	58 40.10 N	152 31.30 W			10		
Ushagat I./SW	GOA	58 54.75	152 22.20 W			10		
Ugak I.[7]	GOA	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W	10, 3		

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Sea Otter I.	GOA	58 31.15 N	152 13.30 W			10		
Long I.	GOA	57 46.82 N	152 12.90 W			10		
Sud I.	GOA	58 54.00 N	152 12.50 W			10		
Kodiak/Cape Chiniak	GOA	57 37.90 N	152 08.25 W			10		
Sugarloaf I.	GOA	58 53.25 N	152 02.40 W			20	10	10
Sea Lion Rocks (Marmot)	GOA	58 20.53 N	151 48.83 W			10		
Marmot I.[8]	GOA	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	15, 20	10	10
Nagahut Rocks	GOA	59 06.00 N	151 46.30 W			10		
Perl	GOA	59 05.75 N	151 39.75 W			10		
Gore Point	GOA	59 12.00 N	150 58.00 W			10		
Outer (Pye) I.	GOA	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	20	10	10
Steep Point	GOA	59 29.05 N	150 15.40 W			10		
Seal Rocks (Kenai)	GOA	59 31.20 N	149 37.50 W			10		
Chiswell Islands	GOA	59 36.00 N	149 34.00 W			10		
Rugged Island	GOA	59 50.00 N	149 23.10 W			10		
Point Elrington[10, 12]	GOA	59 56.00 N	148 15.20 W			20		
Perry I.[10]	GOA	60 44.00 N	147 54.60 W					
The Needle[10]	GOA	60 06.64 N	147 36.17 W					
Point Eleanor[10]	GOA	60 35.00 N	147 34.00 W					
Wooded I. (Fish I.)	GOA	59 52.90 N	147 20.65 W			20	3	3
Glacier Island[10]	GOA	60 51.30 N	147 14.50 W					
Seal Rocks (Cordova)[12]	GOA	60 09.78 N	146 50.30 W			20	3	3

Column Number 1	2	3	4	5	6	7	8	9
Site Name	Area or Subarea	Boundaries from		Boundaries to[1]		Pacific Cod No-fishing Zones for Trawl Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Hook-and-Line Gear[2,3] (nm)	Pacific Cod No-fishing Zone for Pot Gear[2,3] (nm)
		Latitude	Longitude	Latitude	Longitude			
Cape Hinchinbrook[12]	GOA	60 14.00 N	146 38.50 W			20		
Middleton I.	GOA	59 28.30 N	146 18.80 W			10		
Hook Point[12]	GOA	60 20.00 N	146 15.60 W			20		
Cape St. Elias	GOA	59 47.50 N	144 36.20 W			20		

BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska

[1]Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

[2] Closures as stated in 50 CFR 679.22(a)(7)(v), (a)(8)(iv) and (b)(2)(iii).

[3] No-fishing zones are the waters between 0 nm and the nm specified in columns 7, 8, and 9 around each site and within the Bogoslof area (BA) and the Seguam Foraging Area (SFA).

[4] Some or all of the restricted area is located in the SFA which is closed to all gears types. The SFA is established as all waters within the area between 52° N lat. and 53° N lat. and between 173°30' W long. and 172°30' W long. Amlia I./East, and Tanadak I. (Amlia) haulouts 20 nm hook-and-line and pot closures apply only to waters located east of 173° W longitude.

[5]This site lies within the BA which is closed to all gear types. The BA consists of all waters of area 518 as described in Figure 1 of this part south of a straight line

connecting 55°00'N/170°00'W, and 55°00' N/168°11'4.75" W.

[6]Hook-and-line no-fishing zones apply only to vessels greater than or equal to 60 feet LOA in waters east of 167° W long. For Bishop Point the 10 nm closure west of 167° W. long. applies to all hook and line and jig vessels.

[7]The trawl closure between 0 nm to 10 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 3 nm is effective from September 1 through November 1.

[8] The trawl closure between 0 nm to 15 nm is effective from January 20 through June 10. Trawl closure between 0 nm to 20 nm is effective from September 1 through November 1.

[9]Restriction area includes only waters of the Gulf of Alaska Area.

[10]Contact the Alaska Department of Fish and Game for fishery restrictions at these sites.

[11]Directed fishing for Pacific cod using trawl gear is prohibited in the harvest limit area (HLA) as defined at § 679.2 until the HLA Atka mackerel directed fishery in the A or B seasons is completed. The 20 nm closure around Gramp Rock and Tanaga I./Bumpy Pt. applies only to waters west of 178°W long. and only during the HLA directed fishery. After closure of the Atka mackerel HLA directed fishery, directed fishing for Pacific cod using trawl gear is prohibited in the HLA between 0 nm to 10 nm of rookeries and between 0 nm to 3 nm of haulouts. Directed fishing for Pacific cod using trawl gear is prohibited between 0-3 nm of Tanaga I./Bumpy Pt.

[12] The 20 nm closure around this site is effective only in waters outside of the State of Alaska waters of Prince William Sound.

[13] See 50 CFR 679.22(a)(7)(i)(C) for exemptions for catcher vessels less than 60 feet (18.3 m) LOA using jig or hook-and-line gear between Bishop Point and Emerald Island closure areas.

[14]Trawl closure around this site is limited to waters east of 170°0'00" W long. Closure to hook-and-line fishing around Chuginadak is 20 nm for waters west of 170°W long. and 10 nm for waters east of 170°W long.

[FR Doc. 03–13275 Filed 5–27–03; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 102
Wednesday, May 28, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH21

General License for Import of Major Nuclear Reactor Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to issue a general license for the import of major components of utilization facilities for end-use at NRC-licensed reactors. The amendment is necessary to facilitate imports of major components of domestic nuclear reactors in furtherance of protection of public health and safety and will also reduce unnecessary regulatory burdens related to the maintenance of NRC-licensed reactors. In the Rules and Regulations section of this **Federal Register**, the NRC is publishing a direct final rule on this subject, because the Agency views this action as noncontroversial and anticipates that it will not receive significant adverse comments. A detailed rationale for the rulemaking is set forth in the direct final rule notice. If the NRC does not receive any significant adverse comments on this rule, then the rule will become final on August 11, 2003, without further proceedings. If the NRC receives significant material and adverse comments, the direct final rule will be withdrawn and the NRC will address all public comments received in a later final rule based on this proposed rule. The NRC will not begin a second comment period.

DATES: The comment period for this proposed rule ends on June 27, 2003. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number [RIN 3150–AH21] in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 p.m. on Federal workdays.

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Grace H. Kim, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3605, e-mail *GHK@nrc.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title, which is found in the Rules and Regulations section of this **Federal Register**.

Dated at Rockville, Maryland, this 9th day of May, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director For Operations.

[FR Doc. 03–13217 Filed 5–27–03; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to grant a waiver of the nonmanufacturer rule for overhead fiber optic groundwire and ancillary hardware components.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire and Ancillary Hardware Components. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before May 30, 2003.

ADDRESSES: Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FUTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small

Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA's 8(a) Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months.

The SBA defines ''class of products'' based on a six digit North American Industry Classification System (NAICS) and the four digit Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire, NAICS 335921 and Ancillary Hardware Components, NAICS 334417. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–13212 Filed 5–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–68–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models Tay 650–15 and 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) models Tay 650–15 and 651–54 turbofan engines with certain part numbers of fan blades and fan discs. That AD currently requires initial and repetitive visual and ultrasonic inspections of fan blades for cracks, and, if necessary, replacement with serviceable parts. In addition, that AD requires recording instances when engines are operated in a stabilized manner in newly prohibited ranges. This proposal would also require recording instances when engines are operated inadvertently in reverse thrust in prohibited ranges, and would require before further flight initial and repetitive ultrasonic inspections of fan blades for cracks and if necessary, dispositioning of fan blades and fan discs, if certain reverse thrust events occurred. This proposal is prompted by updated prohibited ranges of engine operation and the introduction of an N1 Alert System in Fokker Model F.28 Mark 0100 airplanes with Tay 650–15 engines installed. The actions specified by the proposed AD are intended to prevent fan blade failures, which can result in an uncontained engine failure, engine fire, and damage to the airplane.

DATES: Comments must be received by July 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–68–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.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, Technical Publications Department, PO Box 31, Derby, England DE248BJ; telephone 44 1332 242424, fax 44 1332 249936. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA, 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98-ANE–68-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–68–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On October 31, 2001, the FAA issued airworthiness directive (AD) 2001–22–18, Amendment 39–12497 (66 FR 56755, November 13, 2001), to require initial and repetitive visual and ultrasonic inspections of fan blades for cracks, and, if necessary, replacement with serviceable parts. In addition, that AD requires recording instances when Tay 650–15 engines are operated in a stabilized manner at any intermediate position between idle reverse and emergency maximum reverse thrust except during powerback operations. That AD also requires recording instances when Tay 651–54 engines are operated in a stabilized manner at any intermediate position between idle and maximum reverse thrust. The Luftfahrt-

Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on RRD models Tay 650–15 and 651–54 turbofan engines. The LBA advises that they have received reports of two separate Tay 650–15 low pressure (LP) compressor fan blade failures since 1997. The most recent failure occurred on September 15, 2001 and resulted in the release of the LP compressor assembly, penetration of the fuselage, and a fatality. Investigations indicate that fatigue cracks initiated in the fan blade root section due to fan flutter is caused by the engine operating in a stabilized manner between idle reverse thrust and emergency maximum reverse thrust for Tay 650–15 engines or between idle reverse thrust and maximum reverse thrust for Tay 651–54 engines. The airplane flight manuals have already been revised to prohibit operating in a stabilized manner within these ranges. However, inadvertent stabilized operations in the prohibited ranges could result in fan blade failure. This condition, if not corrected, could result in fan blade failure, which can result in an uncontained engine failure, engine fire, and damage to the airplane.

Since AD 2001–22–18 was issued, RRD has updated the prohibited ranges of engine operation regarding this condition for the models Tay 650–15 and 651–54 turbofan engines, by defining the conditions as to when inspections and dispositioning of fan blades and fan discs are required, based on whether or not an airplane-installed N1 alert system is used.

Manufacturer's Service Information

RRD has issued Service Bulletin (SB) Tay–72–1447, Revision 4, dated May 8, 2002, that describes procedures for recording engine operation within updated prohibited engine operating ranges, and specifies conditions for performing initial and repetitive ultrasonic inspections of fan blades. That SB also recognizes the introduction of Fokker SB F100–31–060, which installs an N1 Alert System in Fokker Model F.28 Mark 0100 airplanes. This N1 Alert System is designed to set a maintenance message that instructs inspection action if the engine is operated in prohibited operating ranges. The LBA classified this service bulletin as mandatory and issued AD No. 2002–090, dated May 8, 2002, in order to assure the airworthiness of these RRD Tay 650–15 and 651–54 turbofan engines in Germany.

Bilateral Agreement Information

These engine models are manufactured in the U.K. and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. However, the primary type certificates have been transferred from Rolls-Royce plc in the U.K. to Rolls-Royce Deutschland Ltd & Co KG in Germany. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other RRD Tay 650–15 and 651–54 turbofan engines of the same type design that are used on airplanes registered in the United States, the proposed AD would require recording instances when engines are operated inadvertently in reverse thrust in prohibited ranges. The proposed AD would also require ultrasonic inspections of roots of Tay 650–15 fan blades, part numbers (P/Ns) JR31911, JR31912, JR33865, JR33866, JR35120, or JR35121, installed in fan discs P/N JR31198A, and of Tay 651–54 fan blades P/Ns JR31911, JR31912, JR33865, or JR33866, installed in fan discs P/N JR34563A, and if necessary, dispositioning of fan blades and fan discs, before further flight if certain reverse thrust events occur. The actions would be required to be done in accordance with the service bulletin described previously.

Economic Analysis

There are approximately 713 RRD Tay 650–15 and 651–54 engines of the affected design in the worldwide fleet. The FAA estimates that 451 engines installed on airplanes of U.S. registry would be affected by this proposed AD. Based on the current utilization and shop visit rates for the affected engine models, the FAA estimates that the number of shop visits and inspections for the U.S. fleet would be approximately 140 per year. It would take approximately 5 work hours per engine to do the actions at a labor rate of $60 per work hour. Assuming that five percent of these inspections result in a rejected fan blade set at a cost of approximately $100,000 per set, the annual cost of this proposed AD on U.S. operators is estimated to be $742,000. The current inspection failure rate is below one percent and this cost estimate is believed to be conservatively high.

Regulatory Analysis

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12497, (66 FR 56755), and by adding a new airworthiness directive:

Rolls-Royce plc: Docket No. 98–ANE–68–AD. Supersedes AD 2001–22–18, Amendment 39–12497.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) models Tay 650–15 turbofan engines with fan blades, part numbers (P/Ns) JR31911,

JR31912, JR33865, JR33866, JR35120, or JR35121, installed in fan discs P/N JR31198A, and Tay 651–54 turbofan engines with fan blades P/Ns JR31911, JR31912, JR33865, or JR33866, installed in fan discs P/N JR34563A. These engines are installed on, but not limited to Fokker Model F.28 Mark 0100 and Boeing 727–100 series airplanes modified in accordance with Supplemental Type Certificate (STC) SA8472SW (727–QF).

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

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fan blade failures, which can result in an uncontained engine failure, engine fire, and damage to the airplane, do the following:

Record Operation in Prohibited Operating Ranges

(a) If an engine is operated inadvertently in reverse thrust within the prohibited ranges described in RRD Service Bulletin (SB) No. Tay 72–1447, Revision 4, dated May 8, 2002, paragraph 1.C., as applicable by engine model, then before further flight make an entry in the engine records that reflects that operation. If known, include the stabilized N1 speed in the engine records.

Inspections

(b) Perform initial and repetitive ultrasonic inspections (UI) of fan blades each time an engine is operated inadvertently in reverse thrust within the prohibited ranges described in RRD SB No. Tay 72–1447, Revision 4, dated May 8, 2002, paragraph 1.C., as specified in the following Table 1:

TABLE 1.—INITIAL AND REPETITIVE INSPECTION CRITERIA

Airplane and engine model	N1 Alert system status (installed per Fokker SB F100–31–060)	Was this a powerback event?	If inadvertent reverse thrust event was:	Then before next flight:
(1) Fokker 0100; Tay 650–15.	(i) Installed and operative.	(A) No	Between 57% and 75% N1 speed for 7.5 seconds or more.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.A. of RR SB No. Tay 72–1447, Revision 4, dated May 8, 2002.
		(B) Yes	Between 57% and 75% N1 speed for 7.5 seconds or more.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.B. of RR SB No. Tay 72–1447, Revision 4, dated May 8, 2002.
	(ii) Not installed, or installed but not operative.	(A) No	N1 above idle for any reason.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.A. of RR SB No. Tay 72–1447, Revision 4, dated May 8, 2002, unless it can be proven by flight data recorder information that engine operation between 57% and 75% N1 speed lasted less than 7.5 seconds.
		(B) Yes	Between 57% and 75% N1 speed.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.B. of RR SB No. Tay 72–1447, Revision 4, dated May 8, 2002, unless it can be proven by flight data recorder information that engine operation between 57% and 75% N1 speed lasted less than 7.5 seconds.
(2) Boeing 727–QF; Tay 651–54.	Not applicable	Not applicable	Between 57% and 75% N1 speed for 7.5 seconds or more, or if the parameters cannot be confirmed.	Perform UI and if necessary, disposition parts in accordance with paragraphs 3. and 3.A. of RR SB No. Tay 72–1447, Revision 4, dated May 8, 2002.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt airworthiness directive No. 2002–090, dated May 8, 2002.

Issued in Burlington, Massachusetts, on May 20, 2003.

Francis A. Favara,

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

[FR Doc. 03–13221 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

[Docket No. 93P–0174]

Requirements for Liquid Medicated Animal Feed and Free-Choice Medicated Animal Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to change the regulations for liquid medicated feed and free-choice medicated feed. By changing the regulations for liquid medicated feed, FDA wants to clarify: What data are required to demonstrate chemical and physical stability of a drug in liquid feed; how such data may be submitted for use in the new animal drug approval process; and which liquid medicated feeds may be manufactured in a feed manufacturing facility that has not obtained a medicated feed mill license from FDA. By changing the regulations for free-choice medicated feed, FDA wants to ensure that they are consistent with the requirements for liquid medicated feed, and that provisions for free-choice medicated feed and liquid medicated feed comply with the terms of the Animal Drug Availability Act (ADAA) of 1996.

DATES: We invite you to comment on this proposed rule. We will consider all comments that we receive by August 26, 2003. Send comments on the information collection provisions by July 28, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974. Comments must be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Dragan Momcilovic, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0169, e-mail: dmomcilo@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Section I of the preamble addresses the proposed changes in the regulation for liquid medicated feeds. Section II addresses the proposed changes for free-choice medicated feeds.

I. Liquid Medicated Feed

A. Current Regulations

According to the new animal drugs for use in animal feeds regulations under part 558 (21 CFR part 558), provided specifically in § 558.3(b) are three types of medicated products for use in feed; a Type A medicated article and two types of medicated feed, Type B and Type C. A Type A medicated article is a new animal drug that is used for the manufacture of another Type A medicated article or a Type B or Type C medicated feed. Under the current rule, the use of a drug in the manufacture of a liquid Type B medicated feed requires that the feed mill obtain an approved new animal drug application (NADA) (§ 558.5(a)) and an approved medicated feed mill license (§ 558.5(b)). A Type B medicated feed is used solely for the manufacture of other medicated feeds, Type B or Type C (§ 558.3(b)(3)). A Type C medicated feed can be either fed as the complete feed, ''top dressed'' (added on top of usual ration), offered ''free-choice'' in conjunction with other animal feed, or further diluted to produce another Type C medicated feed (§ 558.3(b)(4)).

B. Chronology of the American Feed Industry Association (AFIA) Citizen Petitions on Liquid Feed Regulations, FDA Responses, and ADAA

On April 30, 1993, the AFIA filed a citizen petition (docket number 93P–0174/CP1), requesting that FDA:

1. Amend § 558.5 to clarify the information and data needed to demonstrate chemical and positional (physical) stability in liquid medicated feeds, and

2. Describe the circumstances under which a medicated feed application (MFA) (Form FDA 1900) will or will not be required.

In our November 10, 1993, tentative response to AFIA, we stated that we agreed ''in principle'' to modify § 558.5 to include appropriate directions on submission of chemical and positional (physical) stability data. We stated, however, that we disagreed with the request to eliminate the requirement for an approved MFA for the manufacture of Type B or Type C liquid medicated feeds from a Type A medicated article, Category I drug. Finally, we stated that we were preparing to propose a change to § 558.5 and would provide a final response to the citizen petition once the notice of proposed rulemaking was published in the **Federal Register**.

AFIA modified the requested actions in letters of March 3, 1994, and January 6, 1995, to ask that no MFA be required where a specific formula or the specifications for the finished liquid Type B product is published in a regulation for a Category I drug.

On April 19, 1995, we sent a second tentative response to AFIA that modified some of what was explained in our letter of November 10, 1993. We stated, in the April 19, 1995, letter that we agreed ''in principle that an MFA (Form FDA–1900) should not be required if a specific formula or the specifications for the finished liquid Type B product is published in the regulations and the drug is a Category I product.'' We explained that our position is based on the text of 21 CFR 558.5(a), ''which addresses the concern for drug stability in liquid feeds, except where specific approval has been granted for such use'' and that ''We interpret this exception to be the basis for not requiring MFA approval for these Category I Type B liquid feeds 21 CFR 558.5(b).'' We continued to believe, however, that the manufacture of a liquid Type B medicated feed from an approved Category I drug will require an approved MFA if a formula or the specifications for the liquid Type B product were not published in the regulation. Also stated in the letter, we considered that since ''the formula or specifications are not published and are privileged information, the MFA is needed to ensure that only the manufacturer is authorized to utilize the intended formula or specifications.'' We also noted that an approved MFA was required to manufacture all Category II Type B liquid feeds.

In a letter of May 19, 1995, AFIA requested that we convert the process for development of an amendment to § 558.5 into a negotiated rulemaking. However, in a letter of June 15, 1995, AFIA asked that its request for negotiated rulemaking be held ''in abeyance.'' The letter stated that AFIA anticipated that its concerns would be addressed in the proposed rule and that ''If further rulemaking is necessary, then we believe negotiated rulemaking would be in order.''

On October 9, 1996, the ADAA became a law. The ADAA provided for

a system of medicated feed mill licensing that replaces the provisions for the MFA. Therefore, the requirements specified in the current regulation for liquid medicated feeds, including those in part 558 that provide for the use of specific animal drugs in liquid medicated feeds, must be amended to be consistent with the ADAA provisions for feed mill licensing.

On December 6, 1996, in response to the passage of the ADAA, AFIA filed another amendment to its citizen petition from April 30, 1993. The amended petition revised AFIA's suggested regulation for liquid medicated feeds so that the terms of the regulation are consistent with the provisions for feed mill licensing. Both petitions, the amended and the original, suggested revised language for § 558.5 that would clarify the procedures and requirements for demonstrating chemical and positional (physical) stability for liquid Type B medicated feeds. The suggested language on chemical and positional (physical) stability specifies that the submitted data should describe the relevant ranges of conditions under which the drug would be chemically stable and the conditions under which the drug would be positionally (physically) stable if labeling requiring agitation is not proposed.

The suggested language also stated that the stability data might be submitted by either the sponsor of the new animal drug in an NADA or abbreviated NADA (ANADA) or by a feed manufacturer in a master file (MF), which could be referenced in the NADA or the ANADA. The suggested language also provided that FDA would notify the feed manufacturer by letter that the liquid feed addressed in the MF could be manufactured.

As we have preliminarily stated in correspondence with AFIA, we agree with its request for modification of § 558.5 and inclusion of appropriate directions on chemical and positional (physical) stability. We agree that the clarification of these requirements will enhance the approval process for liquid feeds. We also agree to permit submission of stability data through an MF that can be referenced by a subsequent applicant. This is consistent with the current free-choice medicated feed rule in § 510.455 (21 CFR 510.455).

Where feed manufacturers would like to use Type A medicated articles in the manufacture of liquid medicated feeds with formulas or specifications differing from those in approvals codified in the CFR, there must be a separate NADA approved under part 514 (21 CFR part 514) for such use containing the safety and effectiveness data required by § 514.1, and the stability data required by §§ 514.1 and 558.5. In such circumstances, under this proposed rule, the drug sponsor could submit an NADA containing the safety and effectiveness data required by § 514.1, the feed manufacturer (or any other third party) could submit the stability data for the liquid feed in an MF, and the sponsor could reference the MF in its NADA rather than including its own stability data. On request of the owner of the formula (i.e. ingredient list, product composition) and/or specifications (i.e. other product specific parameters, such as pH data, viscosity, etc.), the formula and/or specifications for the liquid medicated feed will be included in the published approval. We otherwise will not publish the formula and/or specifications because they generally are trade secret information entitled to protection under section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 331(j)). Where we do not publish the formula and/or specifications, we will include a statement that the liquid medicated feed has been approved under procedures outlined in proposed § 558.5(f)(2). Because the formula and/or specifications are generally protected information, we expect that such liquid medicated feeds will be manufactured only by the NADA holder, the MF holder, or someone authorized by them. We intend to provide the NADA holder and the MF holder with a certified letter citing the approved formula and/or specifications of the liquid feed where that information is not published. The letter will demonstrate to FDA inspectors that the liquid medicated feed is manufactured using an approved formula and/or specifications.

Since the term ''positional stability,'' as suggested in the citizen petition, is not appropriate in relation to the state of matter, which is either chemical or physical, we are using the term ''physical stability'' instead of ''positional stability.'' Also, our chemists will determine during the NADA approval process what specifications are required for approval a particular liquid medicated feed.

Finally, we agree with AFIA's request to eliminate the requirement for an approved medicated feed mill license for the manufacture of some liquid medicated feeds that contain a Category I drug. Under this proposed rule an approved feed mill license is required for the manufacture of a liquid medicated feed that contains either any Category II drug or a Category I drug that is manufactured with a formula and/or specifications that are not published (i.e., proprietary).

Where the formula and/or specifications are published, FDA has an assurance that all medicated feed mills have access to the information necessary to manufacture the approved liquid medicated feed. Where the formula and/or specifications are proprietary, medicated feed mills might attempt to manufacture the liquid medicated feed knowing only that the drug is approved for use in liquid feed, but not knowing the formula and/or specifications. Manufacture of a liquid medicated feed without such crucial information could endanger animal health and public health due to unsafe drug residues. Section 510(h) of the act (21 U.S.C. 360(h)) requires that FDA inspect licensed medicated feed mills at least once every 2 years. During such inspections, we can ensure that medicated feed mills manufacturing liquid medicated feeds with proprietary formulas and/or specifications have the approved formula and/or specifications. For this reason, we tentatively conclude that it is necessary for FDA to maintain greater regulatory oversight over facilities manufacturing liquid medicated feeds with proprietary formulas and/or specifications, and we are proposing that they must have an approved medicated feed mill license. The proposed rule also requires that facilities manufacturing liquid medicated feeds containing Category II drugs have an approved feed mill license because of the potential for unsafe residues associated with Category II drugs (§ 558.3(b)(1)(ii)).

We are proposing to exempt from the feed mill license requirement facilities manufacturing liquid feeds containing a Category I drug with a published formula and/or specifications. Given the reduced risk of unsafe residues from a Category I drug and the assurance that medicated feed mills have the information necessary to manufacture the liquid medicated feed where the formula and/or specifications are published, we believe this exemption is consistent with public health, as required by section 512(m)(6) of the act (21 U.S.C. 360b(m)(6)).

C. Description of the Proposed § 558.5

The proposed rule: (1) Replaces the references to ''medicated feed application'' in the current rule with the term ''medicated feed mill license''; (2) defines the types of liquid medicated feed covered by this regulation; (3) clarifies the types of approvals required for liquid medicated feed; (4) explains that an approval is required for a drug intended for use in a liquid feed and

clarifies the procedures and requirements for demonstrating chemical and physical stability of a drug in liquid feed; (5) permits submission of the stability data through a MF for reference by a subsequent applicant; (6) explains what information will be included in the published approval of a drug for use in liquid feed; (7) identifies the conditions under which an approved medicated feed mill license will be required for the manufacture of a liquid medicated feed; and (8) describes the labeling provisions for several drugs approved for use in water but not in liquid feed.

D. Discussion of Proposed § 558.5

Proposed § 558.5(a) and (b) describe the types of liquid medicated feed covered by the proposed rule.

Proposed § 558.5(c) states that an approved NADA, a supplemental NADA, or an abbreviated NADA is required for new animal drugs intended for use in liquid feed.

An approved, supplemental, or abbreviated NADA for new animal drugs intended for use in liquid feed is required for the same reasons we described when § 558.5 was proposed in 1973. First, some reports had demonstrated the instability of certain drugs (bacitracin, oxytetracyclin, and chlortetracycline) in liquid feed (37 FR 27634, December 19, 1972). Second, liquid animal feed differs substantially from dry feeds or dry feed supplements in that small variations in some of the components of liquid feed have a marked effect on the stability of added drugs that may compromise the safety and efficacy of such drugs (38 FR 21178, August 6, 1973). We concluded that the manufacture of liquid feed is inherently more difficult to control than the manufacture of dry feed; and therefore, it should be more closely regulated (38 FR 21178).

Proposed § 558.5(d) clarifies approval requirements for new animal drugs intended for use in liquid feed including the specific stability data necessary for liquid medicated feed to meet the requirements of § 514.1(b)(5)(x). Chemical stability data must be submitted for all drugs intended for use in liquid medicated feed. Because of the potential for the uneven distribution of an animal drug in a liquid feed, the physical stability for liquid medicated feeds must also be demonstrated for an appropriate period of time under field conditions. If not demonstrated, labeling must include instructions for agitation or recirculation before use of the liquid medicated feed.

Proposed § 558.5(e) specifies that the stability data may be submitted either directly as part of the NADA by the sponsor or to an MF that a sponsor may then reference in its NADA with written consent of the MF holder.

Proposed § 558.5(f) explains that the formulas and/or specifications for the liquid medicated feed will be codified in the CFR if requested by the sponsor or MF holder. Otherwise, the approval codified in the CFR will not include the formula and/or specifications, but instead will state that the approval has been granted for a proprietary formula and/or specifications.

Proposed § 558.5(g) states that an approved medicated feed mill license is required for the manufacture of a liquid feed that contains any Category II drug, or a Category I drug that is manufactured with a proprietary formula and/or specifications.

Proposed § 558.5(h) spells out labeling requirements for certain drugs that are intended for use in animal feed and/or drinking water. As previously noted, we are concerned about these drugs because of their demonstrated instability in liquid feed. The purpose of this paragraph is to prevent use of such drugs in liquid medicated feeds.

Proposed § 558.5(i) explains conditions and procedures for obtaining a waiver from labeling provisions outlined in § 558.5(h). We are considering removing this waiver option because since its inception in 1973 it has never been utilized. We are seeking comments on this issue.

Proposed § 558.5(j) includes additional information on the labeling provisions of § 558.5(h).

II. Free-Choice Medicated Feed

A. Current Regulation in § 510.455

The current regulation explains that free-choice medicated feed products such as medicated blocks (agglomerated feed compressed or rendered into a solid mass cohesive enough to hold its form), mineral mixes, and liquid feed tank supplements containing one or more animal drugs, are placed in feeding or grazing areas for consumption and are not intended to be consumed fully at a single feeding or to constitute the entire diet of the animal. This regulation reflects our concerns about the safety and effectiveness of animal drugs when administered free-choice by stating that an approved NADA is required for a drug intended for use in free-choice medicated feed, and that a medicated feed mill license is required for feed mills that manufacture free-choice medicated feeds.

Finally, as with all drugs intended for use in animal feeds, all applicants have to demonstrate that such drugs are stable and safe and effective when offered free-choice (§ 514.1(b)(5)(x) and (b)(8)).

B. The Advance Notice of Proposed Rulemaking (ANPR) and AFIA Response

On November 21, 1996 (61 FR 59209), we issued an ANPR seeking comments concerning various issues for the development of regulations implementing the provisions of the ADAA. In a comment in response to the ANPR, dated December 6, 1996, the AFIA suggested a revised version of § 510.455 that would adopt the terms of feed mill licensing in accordance with the ADAA and allow a feed manufacturer to submit an NADA for the approval of a Type A medicated article for use in the subsequent manufacture of a free-choice medicated feed. In this response, as well as in its other response from April 30, 1993, the AFIA suggested language for § 558.5 that would clarify that liquid medicated feeds intended for use free-choice are also subject to the requirements of § 510.455.

We agree that the terms of feed mill licensing in accordance with the ADAA must be adopted in the provisions for free-choice feed. As we already stated for liquid feeds, where feed manufacturers would like to use Type A medicated articles in the manufacture of free-choice medicated feeds with formulas and/or specifications differing from those in approvals already codified in the CFR, there must be a separate NADA approved for such use containing the safety and consumption/effectiveness data required by § 514.1, and the stability data required by §§ 514.1 and 558.5. In such circumstances, under this proposed rule the drug sponsor could submit an NADA containing the safety and consumption/effectiveness data required by § 514.1, the feed manufacturer (or any other third party) could submit the stability data for the free-choice feed in an MF, and the sponsor could reference the MF in its NADA rather than including its own stability data. Under the proposed rule, on request of the owner of the formula and/or specifications for the free-choice feed, this information will be included in the published approval. Otherwise, we will not publish the formula and/or specifications because it is generally trade secret information entitled to protection under section 301(j) of the act. Where we do not publish the formula and/or specifications, we will include a statement that the free-choice

medicated feed has been approved under procedures outlined in § 510.455(e)(2). Because the formula and/or specifications are generally protected information we expect that these free-choice medicated feeds will be manufactured only by the NADA holder, the MF holder, or someone authorized by them.

We intend to provide the NADA holder and the MF holder with a certified letter citing the approved formula and/or specifications of the free-choice feed where that information is not published. The letter will demonstrate to FDA inspectors that the free-choice feed is manufactured using an approved formula and/or specifications.

C. Description of Proposed § 510.455

This proposal for free-choice medicated feed, in most respects, mirrors the liquid medicated feed proposal. Thus, the required chemical and physical stability data and consumption/effectiveness data may be submitted by the sponsor in the NADA, or to an MF that a sponsor may subsequently reference in its NADA with written consent of the MF holder. Likewise, the method of submission of stability data for the drug approval process, and the determination of whether product formulas are included in the approval codified in the CFR are similar to those discussed for liquid medicated feeds. It also incorporates the provisions of feed mill licensing in accordance with the ADAA.

The proposed rule: (1) Modifies the current rule by providing a definition of free-choice medicated feed; (2) explains that one of three types of NADAs is required for a drug intended for use in a free-choice feed; (3) specifies the data required for such applications and the procedures for their submission; (4) explains how such data must be submitted; (5) states what information will be included in the published approval of a new animal drug intended for use in free-choice feed; and (6) explains the situations that will require a medicated feed mill license for the manufacture of a free-choice medicated feed.

D. Discussion of Proposed § 510.455

Section 510.455(a) remains largely unchanged because the definitions appear adequate; however, the first statement is modified to define free-choice medicated feed. Proposed § 510.455(b) explains that new animal drugs intended for use in free-choice feed must be approved as an NADA, a supplemental NADA, or an abbreviated NADA.

Proposed § 510.455(c) explains that any new animal drug intended for use in free-choice feed must be approved under section 512 of the act (21 U.S.C. 360b) and that data showing that the target animal consumes the new animal drug in an amount that is safe and effective (consumption/effectiveness data) and chemical and physical stability data are required for approval of such drugs.

Proposed § 510.455(d) clarifies that the consumption/effectiveness and physical stability data must be submitted directly in the NADA and/or to an MF that a sponsor may then reference in an NADA with written consent of the MF holder. Therefore, the information in an MF can serve as a substitute for, or as an addition to, data submitted by the applicant.

Proposed § 558.455(e) explains that the formula and/or specifications for the free-choice medicated feed would be codified in the CFR on request of the NADA or MF holder. Otherwise, the approval codified in the CFR will not include the formula and/or specifications, but instead state that the approval has been granted for a proprietary formula and/or specifications.

Proposed § 558.455(f) clarifies that an approved feed mill license is required for the manufacture of free-choice medicated feeds that contain a Category II drug and those that contain a Category I drug with a proprietary formula and/or specifications.

As with liquid feeds, where the formula and/or specifications are published, FDA has an assurance that all medicated feed mills have access to the information necessary to manufacture an approved free-choice medicated feed. Where the formula and/or specifications are proprietary, medicated feed mills might attempt to manufacture the free-choice medicated feed knowing only that the drug is approved for use in free-choice feed, but not knowing the formula and/or specifications. Manufacture of a free-choice medicated feed without such crucial information could endanger animal health and public health due to unsafe drug residues. Section 510(h) of the act requires that FDA inspect licensed medicated feed mills at least once every 2 years. During such inspections, we can insure that medicated feed mills manufacturing free-choice medicated feeds with proprietary formulas and/or specifications have the approved formula. For this reason, we tentatively conclude that it is necessary for FDA to maintain greater regulatory oversight of facilities manufacturing free-choice medicated feeds with proprietary formulas and/or specifications, and we are proposing that they must have an approved medicated feed mill license. The proposed rule also requires that facilities manufacturing free-choice medicated feeds containing Category II drugs have an approved feed mill license because of the potential for unsafe residues associated with Category II drugs (§ 558.3(b)(1)(ii)).

We are proposing to exempt from the feed mill license requirement facilities manufacturing free-choice feeds containing a Category I drug with a published formula and/or specifications. Given the reduced risk of unsafe residues from a Category I drug and the assurance that medicated feed mills have the information necessary to manufacture the free-choice medicated feed where the formula and/or specifications are published, we believe this exemption is consistent with public health, as required under section 512(m)(6) of the act.

III. Environmental Impact

We have carefully considered the potential environmental impacts of this rule and determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The proposed action merely clarifies existing regulations concerning liquid medicated feeds and free-choice medicated feeds.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). We believe that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866. We have also determined that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Under the Regulatory Flexibility Act, if a regulation has a significant impact on a substantial

number of small entities, the agency must analyze regulatory options that would minimize the impact on small entities. FDA certifies in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) that this proposed rule would not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis is not required.

Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any regulation that may result in an expenditure by State, local and tribal governments in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is approximately $110 million.

The proposed rule is intended to clarify, simplify, and elaborate on the current regulations concerning liquid medicated feeds and free-choice medicated feeds. This rule, which offers more precise and detailed language than do the current regulations, responds to requests submitted in citizen petitions and comments by an industry association. It would also make changes to the current regulatory language for free-choice medicated feeds in order to be consistent with the ADAA provision that replaced the medicated feed application system with the medicated feed mill licensing system.

A. Liquid Medicated Feeds

The proposal for liquid medicated feeds would clarify the types of liquid medicated feeds for which a separate new animal drug approval is necessary and for which a feed mill license is necessary. In particular, it elaborates more fully on the procedures and requirements for demonstrating the chemical and physical stability of a drug in liquid feeds, as well as how the data from such a demonstration can be submitted to the agency.

The proposed rule references requirements under § 514.1 that are currently required for the approval of all new animal drugs. As these requirements do not represent a new burden, there is no cost associated with this aspect of the proposed rule. Likewise, the proposed rule adds to the current labeling provisions for certain drugs that are approved for use in animal feed or drinking water but not approved for use in certain liquid feeds. The proposed rule describes the waiver process for the exclusion of certain products from these labeling requirements. Because this waiver process already exists under the current rule, it would not impose any additional cost to industry.

B. Free-Choice Medicated Feed

The proposed revisions to § 510.455 concern free-choice medicated feed and very closely follow the liquid medicated feed proposal. Proposed § 510.455 would clarify and elaborate on the NADA requirements for drugs intended for use in free-choice medicated feeds. In addition, it would replace the language that provided for the medicated feed application with language for the medicated feed mill system that was created by the ADAA. Since the estimated costs and benefits of the feed mill system were prepared for the proposed and final regulations implementing that system, these costs and benefits would not be considered to be effects of this proposed rule. In total, the proposed rule would not be expected to impose any new compliance burdens on the industry and are not associated with any costs.

It is possible that the proposed rule would, in fact, result in some cost savings due to the proposed provision that would eliminate the requirement for a medicated feed mill license for the manufacture of some liquid and free-choice medicated feeds that contain a Category I drug. In recent years, we have received an average of 128 medicated feed mill license applications annually. Since the applications do not explicitly specify the types of medicated feed that would be manufactured, we are not able to estimate the size of the decrease in applications that would be expected as a result of the proposed rule. However, we would expect there to be some decrease in applications as some feed mills would be exempted from this requirement in the future. We believe this could lead to a modest cost savings for these feed mills. Further, the increased clarity and simplification of §§ 510.455 and 558.5 would be expected to result in additional cost savings to industry in the preparation of new animal drug applications to the agency. We cannot precisely quantify such savings, but believe the impact to be modest.

V. Federalism

We have analyzed this proposed rule in accordance with the principles in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we have tentatively concluded that the proposed rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement has not been prepared.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each 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.

Title: Waivers from Labeling Requirements for New Animal Drugs Intended for Use in Liquid Medicated Animal Feed

Description: Proposed § 558.5 specifies procedures for obtaining a waiver from labeling requirements for certain drugs intended for use in animal feed or drinking water but not approved for use in liquid medicated feed. The request for waiver must include: (1) A copy of the product label; (2) a description of the formulation; and (3) information to establish that the physical, chemical, or other properties of the product are such that diversion to use in liquid medicated feeds is unlikely. This information would be collected if the manufacturer or sponsor chose not to include the required warning "FOR USE IN ____ ONLY, NOT

FOR USE IN LIQUID MEDICATED FEEDS'' on its product label. The sponsor or manufacturers would then need to satisfy the requirements of the waiver section of the regulation. All other data collections are covered under OMB control number 0910–0032.

Description of Respondents: Medicated feed manufacturing facilities and sponsors of new animal drugs used in the manufacture of medicated feed.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Responses	Total Annual Responses	Hours per Response	Total Hours
558.5(i)	1	1	1	5	5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this reporting requirement was derived from data by FDA's Division of Animal Feeds in the Center for Veterinary Medicine. Only one respondent was used in these figures because although this particular waiver has been part of the regulations since 1973, it has never been utilized. We estimated it would take 5 hours to compile the required information because of the time necessary to explain why the drug would not be diverted to use in liquid feed.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to the Office of Information and Regulatory Affairs, OMB.

OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

VII. Conforming Changes

FDA is proposing conforming changes in its regulations in §§ 558.95, 558.305, 558.311, 558.342, 558.355, and 558.625 to remove reference to the term ''medicated feed application.'' These conforming changes will ensure the accuracy and consistency of the regulations.

List of Subjects

21 CFR Part 510

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

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, it is proposed that 21 CFR parts 510 and 558 be amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

2. Section 510.455 is revised to read as follows:

§ 510.455 Requirements for free-choice medicated feeds.

(a) *What is free-choice medicated feed*? For the purpose of this part, free-choice medicated feed is medicated feed that is placed in feeding or grazing areas and is not intended to be consumed fully at a single feeding or to constitute the entire diet of the animal. Free-choice feeds include, but are not limited to, medicated blocks (agglomerated feed compressed or rendered into a solid mass and cohesive enough to hold its form), mineral mixes, and liquid feed tank supplements (''lick tank'' supplements) containing one or more animal drugs. The manufacture of medicated free-choice feeds is subject to the current good manufacturing practice regulations in part 225 of this chapter for medicated feeds.

(b) *What types of approvals are required for new animal drugs intended for use in free-choice feed*? New animal drugs intended for use in free-choice feed must be approved for such use under section 512 of the Federal Food, Drug, and Cosmetic Act (the act), as:

(1) An original new animal drug application (NADA);

(2) A supplemental NADA; or

(3) An abbreviated NADA.

(c) *What are approval requirements for new animal drugs intended for use in free-choice feed*? (1) An approval under section 512 of the act is required for any new animal drug intended for use in a free-choice feed.

(2) An approved NADA for a Type A medicated article intended for use in free-choice feed must contain the following information:

(i) Data, or reference to data in a master file (MF), showing that the target animal consumes the new animal drug in the Type C free-choice feed in an amount that is safe and effective (consumption/effectiveness data); and

(ii) Data, or reference to data in an MF, showing the relevant ranges of conditions under which the drug will be chemically and physically stable in the Type C free-choice feed under field conditions.

(d) *How are consumption/effectiveness and/or stability data to be submitted*? The data must be submitted:

(1) Directly in the NADA, by a sponsor; and/or

(2) To an MF that a sponsor may then reference in its NADA with written consent of the MF holder.

(e) *What will be stated in the published approval for a new animal drug intended for use in free-choice feed*? The approval of a new animal drug intended for use in free-choice feed, as published in this subchapter, will include:

(1) The formula and/or specifications of the free-choice medicated feed, where the owner of this information requests such publication; or

(2) A statement that the approval has been granted for a proprietary formula and/or specifications.

(f) *When is a medicated feed mill license required for the manufacture of a free-choice medicated feed*? An approved medicated feed mill license is required for the manufacture of:

(1) All free-choice medicated feeds that contain a Category II drug; and

(2) Free-choice medicated feeds that contain a Category I drug and use a proprietary formula and/or specifications.

PART 558–NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.5 is revised to read as follows:

§ 558.5 Requirements for liquid medicated feed.

(a) *What types of liquid medicated feeds are covered by this section*? This section covers the following types of liquid medicated feed:

(1) Type B feed that is intended for further manufacture of other medicated feeds (§ 558.3(b)(3) of this chapter); or

(2) Type C feed that is intended for:

(i) Further manufacture of another Type C feed; or

(ii) Top-dressing (adding on top of the usual ration) (§ 558.3(b)(4) of this chapter).

(b) *How is liquid free-choice medicated feed regulated*? Liquid free-choice medicated feed is covered by this section and by § 510.455 of this chapter.

(c) *What types of approvals are required for new animal drugs intended for use in liquid feed*? New animal drugs intended for use in liquid feed must be approved for such use under section 512 of the act, as:

(1) An original NADA;

(2) A supplemental NADA; or

(3) An abbreviated NADA.

(d) *What are the approval requirements for new animal drugs intended for use in liquid feed*? (1) An approval under section 512 of the act is required for any new animal drug intended for use in a liquid feed; and

(2) An approved NADA for a drug intended for use in liquid feed must contain the following information:

(i) Data, or a reference to data in an MF, that shows the relevant ranges of conditions under which the drug will be chemically stable in liquid feed under actual field use conditions; and

(ii) Data, or a reference to data in an MF, that shows that the drug is physically stable in liquid feed under field conditions; or

(iii) Feed labeling with recirculation or agitation directions as follows:

(A) For liquid feeds stored in recirculating tank systems: Recirculate immediately prior to use for not less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used.

(B) For liquid feeds stored in mechanical, air, or other agitation-type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily as described even when not used.

(e) *How are chemical and physical stability data to be submitted*? The data must be submitted:

(1) Directly in the NADA;

(2) By a sponsor; or

(3) To a master file (MF) that a sponsor may then reference in its NADA with written consent of the MF holder.

(f) *What will be stated in the published approval for a new animal drug intended for use in liquid feed*? The approval of a new animal drug intended for use in liquid feed as published in this subchapter will include:

(1) The formula and/or specifications of the liquid medicated feed, where the owner of this information requests such publication; and/or

(2) A statement that the approval has been granted for a proprietary formula and/or specifications.

(g) *When is a medicated feed mill license required for the manufacture of a liquid medicated feed*? An approved medicated feed mill license is required for the manufacture of:

(1) All liquid medicated feeds that contain a Category II drug; and

(2) Liquid medicated feeds that contain a Category I drug and use a proprietary formula and/or specifications.

(h) *What measures are in place to prevent certain drugs, approved for use in animal feed or drinking water but not in liquid medicated feed, from being diverted to use in liquid feeds*? Any product containing any form of bacitracin, oxytetracycline, or chlortetracycline, intended for oral administration via animal feed and/or drinking water, and not approved for use in a liquid medicated feed must include in its labeling the following statement: ''FOR USE IN ____ ONLY. NOT FOR USE IN LIQUID MEDICATED FEEDS.'' The blank may be filled in with the words: ''DRY FEEDS'', ''DRINKING WATER'', or ''DRY FEEDS AND DRINKING WATER''.

(i) *Can the labeling provisions of paragraph (h) of this section be waived, and how can I apply for waiver*? (1) The labeling provisions of paragraph (h) may be waived if there is evidence to indicate that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed.

(2) To obtain a waiver, you must submit a letter requesting a waiver to the Food and Drug Administration, Center for Veterinary Medicine, 7500 Standish Place, Office of New Animal Drug Evaluation (HFV–100), Rockville, MD 20855.

(3) The letter must include a copy of the product label; a description of the formulation; and information to establish that the physical, chemical, or other properties of the new animal drug are such that diversion to use in liquid medicated feed is unlikely.

(j) *What else do I need to know about the labeling provisions of paragraph (h)*? The labeling provisions of paragraph (h) may be implemented without prior approval as provided for in § 514.8(d) and (e) of this chapter.

§ 558.95 [Amended]

5. Section 558.95 *Bambermycins* is amended in paragraph (d)(4)(iii)(*d*) by removing the last sentence.

§ 558.305 [Amended]

6. Section 558.305 *Laidlomycin* is amended in paragraphs (c)(1)(i) and (c)(1)(ii) by removing ''Type B'' whenever it appears.

§ 558.311 [Amended]

7. Section 558.311 *Lasalocid* is amended:

a. In paragraphs (d)(1)(i), (d)(1)(ii), (d)(2), (d)(3), (d)(3)(iii), and (d)(4) by removing ''Type B'' wherever it appears;

b. In paragraph (d)(2) by removing the last sentence;

c. In paragraphs (d)(2), (d)(3), and (d)(3)(iii) by removing ''positionally'' and by adding in its place ''physically'';

d. In paragraph (d)(3)(ii) by removing ''positional'' and by adding in its place ''physical'';

e. In paragraph (d)(3)(iii) by removing the second complete sentence ''Approval of the supplement will not be published in the **Federal Register** because such approval will not affect or alter conditions or use of the product in the new animal drug application or the regulation.''; and in the third complete sentence by removing ''will, however, provide'' and by adding in its place ''will provide'';

f. In paragraph (d)(3)(iii) by removing the phrase ''submit, and for the agency to approve, a medicated feed application under section 512(m) of the act for liquid Type B feed'' and by adding in its place the phrase ''manufacture under a medicated feed mill license the liquid medicated feed described in the master file'';

g. In paragraph (e)(2)(iv) by removing the phrase ''; each use of this Type C free-choice feed must be the subject of an approved FD–1900 as provided in § 510.455 of this chapter.''; and

h. In paragraph (e)(3)(iv) by removing the last sentence.

§ 558.342 [Amended]

8. Section 558.342 *Melengestrol* is amended in paragraphs (d)(1)(i) and (d)(1)(ii) by removing the phrase ''Type B or C''; and in paragraph (d)(2) by removing ''positionally'' and by adding in its place ''physically''.

9. Section 558.355 is amended:

a. In paragraph (f)(3)(i)(*b*)(*1*) by adding the phrase ''as defined in paragraph (d)(12) of this section'' at the end of the fourth sentence; and by removing the rest of the paragraph after the fourth sentence;

b. In paragraph (f)(6)(i)(*b*)(*1*) by adding the phrase ''as defined in paragraph (d)(12) of this section'' at the end of the fifth sentence; and by removing the rest of the paragraph after the fifth sentence;

c. In paragraphs (f)(3)(i)(*b*)(*2*), (f)(3)(i)(*b*)(*2*)(*iii*), (f)(6)(i)(*b*)(*2*), and (f)(6)(i)(*b*)(*2*)(*iii*) by removing ''Type B'' wherever it appears;

d. In paragraphs (f)(3)(i)(*b*)(*2*), (f)(3)(i)(*b*)(*2*)(*ii*), (f)(6)(i)(*b*)(*2*), and (f)(6)(i)(*b*)(*2*)(*ii*) by removing ''positionally'' and ''positional'' wherever they appear and by adding in their respective places ''physically'' and ''physical'';

e. In paragraphs (f)(3)(i)(*b*)(*2*) and (f)(6)(i)(*b*)(*2*) in the first sentence after the word ''directions'' by adding the phrase ''defined in paragraph (d)(12) of this section'';

f. In paragraphs (f)(3)(i)(*b*)(*2*)(*iii*) and (f)(6)(i)(*b*)(*2*)(*iii*) by removing the second complete sentence ''Approval of the supplement will not be published in the **Federal Register** because such approval will not affect or alter conditions or use of the product in the new animal drug application or the regulation.''; and in the third complete sentence by removing the phrase ''will, however, provide'' and by adding in its place ''will provide'';

g. In paragraphs (f)(3)(i)(*b*)(*2*)(*iii*) and (f)(6)(i)(*b*)(*2*)(*iii*) by removing the phrase ''submit, and for the agency to approve, a medicated feed application under section 512(m) of the act for the liquid Type B feed'' and by adding in its place the phrase ''manufacture the liquid medicated feed under a medicated feed mill license described in the master file'';

h. In paragraph (f)(3)(i)(*b*)(*2*)(*iii*) in the last sentence by removing ''(f)(3)(i)(*b*)(*1*)'' and by adding in its place ''(d)(12)'';

i. In paragraph (f)(3)(ix)(*b*) in the seventh sentence by removing the phrase '': Recirculate or agitate immediately prior to use for not less than 10 minutes, moving at least 1 percent of the tanks contents per minute from the bottom of the tank to the top'' and by adding in its place ''as defined in paragraph (d)(12) of this section''; and by removing the eighth and tenth sentences;

j. In paragraph (f)(6)(i)(*b*)(*2*) and in (f)(6)(i)(*b*)(*2*)(*iii*) in the last sentence by removing ''(f)(6)(i)(*b*)(*1*)'' and by adding in its place ''(d)(12)''; and

k. By adding paragraph (d)(12) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(12) Mixing directions for liquid feeds requiring recirculation or agitation:

(i) For liquid feeds stored in recirculating tank systems: Recirculate immediately prior to use for not less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used.

(ii) For liquid feeds stored in mechanical, air, or other agitation-type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily as described even when not used.

* * * * *

§ 558.625 [Amended]

10. Section 558.625 *Tylosin* is amended in paragraphs (c)(1)(i) and (c)(1)(ii) by removing ''Type B'' and by removing the phrase ''no fewer than 10 minutes'' and adding in its place the phrase ''not less than 10 minutes''.

Dated: May 12, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–12974 Filed 5–27–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7504–8]

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On April 14, 2003, the EPA published a direct final rule to amend the standards of performance for stationary gas turbines, along with a parallel proposal to be used as a basis for final action in the event that we received any adverse comments on the direct final rule amendments. Since a public hearing was requested and held on May 14, 2003, we are announcing a 30-day extension of the public comment period.

DATES: Submit comments on or before June 13, 2003.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: EPA Docket Center (6102T), Attention Docket Number OAR–2002–0053, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket, Attention Docket Number OAR–2002–0053, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** issued on April 14, 2003, when EPA published a direct final rule (68 FR 17990) and a parallel proposal (68 FR 18003) amending the standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). The amendments codified several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments also reflected changes in emission control technologies and turbine design since the original promulgation of the rule on September 10, 1979. b

We stated in the preamble to the direct final rule and parallel proposal that if we received significant material adverse comment on one or more distinct provisions of the direct final rule, we would publish a timely withdrawal of those distinct provisions in the **Federal Register**. The direct final rule stated that the deadline for submitting public comments was May 14, 2003, and that the effective date of the provisions would be May 29, 2003. The proposal also stated that if a public hearing was requested by April 24, 2003, the hearing would be held on May 14, 2003, at the New EPA Facility Complex in Research Triangle Park, North Carolina, at 10 a.m., and that the comment period would be extended until 30 days after the date of the public hearing. The EPA is hereby extending the comment period, which was set to end on May 14, 2003, to June 13, 2003.

To submit comments, or access the official public docket, please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of the April 14, 2003 (68 FR 17990)

Federal Register document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 22, 2003.

Robert Brenner,

Acting Assistant Administrator for Office of Air and Radiation.

[FR Doc. 03–13416 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–7490–5]

Approval of the Clean Air Act, Section 112(l), Authority for Hazardous Air Pollutants: Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981: State of New Hampshire Department of Environmental Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve New Hampshire Department of Environmental Services' (NHDES) request to implement and enforce its regulation entitled ''Management and Control of Asbestos Disposal Sites Not Operated After July 9, 1981'' in lieu of the National Emission Standard for Asbestos (Asbestos NESHAP) as it applies to certain inactive waste disposal sites. Approval of this request would make NHDES' rules Federally enforceable and would apply only to those inactive waste disposal sites not operating after July 9, 1981, which are subject to the Asbestos NESHAP (*i.e.,* sites operated by certain asbestos mills, manufacturers, and fabricating facilities). NHDES' request seeks no change in delegation relative to inactive asbestos waste disposal sites operating after July 9, 1981 (*i.e.,* NHDES will continue to regulate such facilities according to the Asbestos NESHAP).

In the final rules section of this **Federal Register**, EPA is approving NHDES' request as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, EPA will take action on this proposed rule. If the EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period in this action.

DATES: Written comments must be received on or before June 27, 2003.

ADDRESSES: Written comments should be mailed concurrently to the addresses below: Steven Rapp, Chief, Air Permits, Toxics, and Indoor Programs Unit (CAP), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114 and Philip J. O'Brien, PhD, Director, Waste Management Division, New Hampshire Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095. Copies of the requests for approval are available for public inspection at EPA's Region I Office, Air Permits, Toxics, and Indoor Programs Unit, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ida McDonnell, Air Permits, Toxics, and Indoor Programs Unit, U.S. EPA Region I, One Congress St., Suite 1100 (CAP), Boston, MA 02114, (617) 918–1653.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, *see* the direct final rule which is located in the rules section of this **Federal Register**.

Dated: April 15, 2003.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 03–13175 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 030509119–3119–01; I.D. 032603D]

RIN 0648–AQ99

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Dungeness Crab and Pink Shrimp

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

ACTION: Notice of proposed fishing capacity reduction program; request for public comments.

SUMMARY: NMFS issues this notice about a voluntary fishing capacity reduction program in the Pacific Coast groundfish fishery. After a successful referendum, harvesters that are accepted to participate would be paid to surrender their fishing permits and restrict their vessels. A loan, which would be repaid by fishermen remaining in the fishery, will finance the majority of the program's cost. The program will invite bids from permit owners of groundfish trawl permits (except those harvesting whiting and processing it at sea) that are willing to surrender their fishing privileges, score the bids in a reverse auction against the value of bidders' harvests, and then conduct a referendum regarding repayment of the loan. If the referendum is successful, accepted bidders must relinquish their California, Oregon, and Washington fishing licenses for Dungeness crab and pink shrimp; accepted bidders must also surrender their Federal groundfish permit, as well as all other Federal fishing licenses associated with the fishing vessel named in their bids. The fishing vessels involved will never again be eligible to fish. If the referendum is not successful, bidders are excused from all such obligations. The groundfish program aims to increase the remaining harvesters' productivity, help financially stabilize the fishery, and help conserve and manage its fish. This

notice also contains the groundfish program's pro forma invitation to bid and bidding document.

DATES: NMFS must receive comments by June 27, 2003.

ADDRESSES: Mail or fax written comments about the proposed groundfish program to Michael L. Grable. In addition to public comments about the program's substance, NMFS also seeks public comment about any ambiguity or unnecessary complexity in this notice. Copies of a draft environmental assessment and regulatory impact review are available from NMFS upon request. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The primary fax number is (301) 713–1306. The secondary fax number is (301) 713–1939. NMFS will not accept e-mail or Internet comments. If a comment involves any aspect of this notice's collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. General

Enacted on February 20, 2003, Section 212 of Division B, Title II, of Public Law 108–7 (section 212) authorizes a fishing capacity reduction program (program) for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, are endorsed for trawl gear operation (reduction fishery). The program's objective is to reduce the number of vessels and permits endorsed for the operation of groundfish trawl gear. Vessels that catch and process whiting at sea are ineligible to participate. The program also involves corollary fishing capacity reduction in the California, Oregon, and Washington fisheries for Dungeness crab and pink shrimp (fee-share fisheries). Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) (Title XI) authorize loans for financing the cost of fishing capacity reduction programs (reduction loans). The program has two appropriations. A $10 million appropriation, found at section 501(b) of Division N, Title V, of Public Law 108–7, directly funds part of the program's cost. The second, a $0.5 million appropriation, included in Public Law 107–206, funds the Federal Credit Reform Act cost of authorizing a $36 million reduction loan.

Although largely consistent with the framework regulations for fishing capacity reduction (promulgated pursuant to section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1861a(b)–(e) (found at 50 CFR 600.1000 *et seq.*), section 212 supersedes some of the provisions of both the framework regulations and the Magnuson-Stevens Act.

When fishing capacity reduction is undertaken pursuant to the Magnuson-Stevens Act provisions, NMFS implements each reduction program by adding an implementing section to the framework regulations. However section 212 renders some of the Magnuson-Stevens Act provisions and much of the framework regulations inapplicable. Among other things, the groundfish program applies to more than one fishery. Section 212 also requires NMFS to implement the groundfish program by publishing a notification and an invitation to bid in the **Federal Register** rather than by promulgating additional regulations. In addition, section 212 supersedes one provision of Title XI, by extending the reduction loan's term to 30 years.

II. Reduction Cost

The amount paid to harvesters in exchange for surrender of their fishery privileges (reduction cost) may equal, but may not exceed, $46 million. A $10 million appropriation will fund part of the reduction, and future harvesters will finance any remainder.

III. Program Summary

NMFS will mail to each ''permit owner'' (as 50 CFR 660.302 defines the term ''permit owner'') of a groundfish permit endorsed for trawl gear operation (other than those issued to whiting catcher-processors) an advance notice that NMFS will formally invite bids for capacity reduction by mailing them a bidding package. Such notice and the bidding package will be mailed to the permit owner at the owner's address of record.

The bidding package will contain, among other things, an invitation to bid and a bidding document. The invitation to bid will specify the terms and conditions under which bids are made and accepted. If the Secretary formally accepts a bid, the bidding document, in conjunction with the invitation to bid, will constitute a reduction contract between the bidder and the United States.

No bidder may bid before receiving the bidding package. Bidders must submit bids on provided forms and in strict conformance with the requirements of the invitation to bid. NMFS will reject any nonconforming bids.

The invitation to bid and bidding document will be similar to the pro forma invitation to bid and bidding document (see addenda to this notification). What follows is a general summary of the relevant provisions.

To submit a bid, bidders must mail or otherwise deliver their bids to NMFS at the address specified in the invitation to bid. Each bidder is responsible for ensuring that NMFS receives his or her bid before the specified bid receipt deadline. NMFS will reject any bid that arrives after the bid receipt deadline; such a bid will be deemed unresponsive to the invitation to bid. All terms and conditions of the invitation to bid or the bidding document are final at the time NMFS mails the bidding package. Thereafter, NMFS will not alter or negotiate any term or condition.

Each bid must specify:

(a) The exact bid amount,

(b) The reduction vessel the bidder proposes to remove from fishing (reduction vessel),

(c) The groundfish reduction permit,

(d) Any other Federal permits registered to or used on the reduction vessel,

(e) All California, Oregon, or Washington issued permits for Dungeness crab or pink shrimp registered to or used on the reduction vessel (fee-share reduction permits), and

(f) Any catch history used as the basis of permit issuance that was accrued on the reduction vessel.

The bidder must both own the reduction vessel and be the permit owner, as well as be the registered holder of all other reduction permits. The groundfish reduction permit must be registered for use on the reduction vessel. However, the bidder need not include any non-Federal permit that neither is registered to nor used on the reduction vessel.

By completing and submitting a bidding document to NMFS, each bidder makes an irrevocable offer to the United States. No bidder, once having submitted a bid to NMFS, is entitled to withdraw or in any way amend the bid.

Each bidder must offer to relinquish all of his or her Federal permits and any state permits for pink shrimp or Dungeness crab. Additionally, each person submitting a bid must offer to relinquish the reduction vessel's legal

authority to participate in any fishery, by offering to permanently:

(a) Allow imposition of title restrictions that remove the reduction vessel's fisheries endorsement,

(b) Relinquish eligibility for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement of the reduction vessel under foreign registry or operation under the authority of a foreign country, and

(c) Relinquish any other present or future reduction vessel fishing privilege or fishery eligibility claim of any kind, including any based on the reduction vessel's catch.

If a reduction vessel is registered only under state jurisdiction (*i.e.*, it is not Federally documented) it must be scrapped.

After bidding, the bidder must continue to hold all reduction permits and own the reduction vessel until: NMFS notifies the bidder that NMFS rejects the bid, the bid expires without NMFS having accepted or rejected it, NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or NMFS tenders reduction payment to the bidder and the bidder relinquishes all reduction permits and the reduction vessel's fishing privileges.

NMFS will determine which bids it accepts by using a reverse auction. Upon receipt of each bid, NMFS will determine a bid score by dividing each bid amount by the average annual total ex-vessel dollar value of the Pacific groundfish, Dungeness crab, and pink shrimp landed by the bidder's reduction vessel. NMFS will average the three highest total annual revenues from groundfish, Dungeness crab, and pink shrimp during 1998, 1999, 2000, or 2001.

NMFS will accept the responsive bid with the lowest bid score and then successively accept each additional responsive bid with the next lowest bid score until either there are no more bids to accept or acceptance of the bid with the next lowest bid score would cause the reduction cost to exceed the maximum reduction cost. If any two or more bid scores are exactly the same, NMFS will first accept the bid it received first.

NMFS will mail each bidder either a bid acceptance notice or a bid rejection notice. NMFS'' acceptance of a bid offer will form a fully binding reduction contract between the bidder and the United States. Each party's obligation to perform in accordance with the terms and conditions of any reduction contract will, however, be subject to the results of the fee referendum.

After bids are formally accepted, NMFS will establish up to seven reduction loan sub-amounts, one for the reduction fishery and one for each of the fee share fisheries. A reduction sub-amount is a fishery's share of the reduction loan and is in proportion to the fishery's share of the total ex-vessel dollar value of the groundfish, Dungeness crab, and pink shrimp which all reduction vessels landed during the four-year period from 1998 through 2001. Post-reduction fees from each of these fisheries will repay its respective reduction loan sub-amount.

Specifically, NMFS will calculate each reduction loan sub-amount as follows. NMFS will separately add up the total ex-vessel values of landings, for the four-year period 1998 through 2001, for the reduction fishery (*i.e.*, groundfish trawl fishery) and the fee-share fisheries (the three Dungeness crab fisheries and the three pink shrimp fisheries). Then NMFS will divide each of the seven totals by the aggregate value of all of the landings from all seven fisheries to derive seven quotients. NMFS will then multiply the reduction loan amount by each of the quotients to determine the loan sub-amount that each of these fisheries must repay.

NMFS will conduct the referendum as soon as practicable after bid acceptance. The referendum's sole purpose will be to determine whether the voters who cast referendum ballots authorize the fee required to repay the reduction loan.

NMFS will mail referendum information, voting instructions, and a referendum ballot(s) to the permit owner of each groundfish permit in the reduction fishery and to the person who is the holder of record of each state-issued pink shrimp or Dungeness crab permit (collectively, eligible voters). NMFS will include information about the following bid acceptance results:

(a) The program's reduction cost,

(b) The seven reduction loan sub-amounts,

(c) The number of permits that will be relinquished,

(e) The number of reduction vessels, and

(f) The total ex-vessel dollar values of reduction vessel landings, in the reduction fishery and in each of the six fee-share fisheries, during each year from 1998 through 2001.

NMFS will mail eligible voters a separate referendum ballot for each groundfish permit they own and every pink shrimp or Dungeness crab permit they hold. In other words, eligible voters will have one ballot for every such permit they hold.

Immediately after the deadline for NMFS' receipt of ballots, NMFS will tally votes, fishery by fishery, and multiply each tally by the quotients used in calculating the reduction loan sub-amounts. The products of this multiplication will be the vote tallies for the respective fisheries weighted in proportion to each fishery's reduction loan sub-amount.

If the weighted total of approving votes is greater than the weighted total of disapproving votes, the referendum is successful. The referendum is unsuccessful if the weighted total of disapproving votes is the same as or exceeds the weighted total of approving votes. NMFS will mail each eligible voter a notice about the referendum's outcome.

If the referendum is unsuccessful, the fee will not be approved; and NMFS will mail a notice to each accepted bidder that neither the accepted bidder nor the United States has any further obligation under any reduction contract.

If the referendum is successful, NMFS will request, from each accepted bidder, specific and written payment instructions for disbursing the reduction payment. Upon a bidder's receipt of such a request for payment instructions, the bidder must stop fishing and must retrieve all fishing gear previously deployed from the reduction vessel. Bidders must relinquish their permits and return their groundfish permit and any other Federal permit associated with the reduction vessel to NMFS. The bidder must also certify that they have complied with the requirements of the reduction contract.

NMFS will:

(a) Revoke all groundfish permits and all other reduction permits,

(b) Notify California, Oregon, and Washington that accepted bidders have relinquished their fee-share reduction permits,

(c) Request the Secretary under whom the U.S. Coast Guard operates to revoke the fisheries endorsements of all Federally-documented reduction vessels, and

(d) Request the Secretary under whom the U.S. Maritime Administration operates to make all Federally-documented reduction vessels permanently ineligible for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement of a reduction vessel under foreign registry or operation under the authority of a foreign country.

These reduction vessel revocations and restrictions run with the vessels' titles and bind subsequent owners.

The bidder must immediately scrap the state-registered reduction vessel and allow NMFS to observe and certify the scrapping.

After receiving a bidder's payment instructions and certification of compliance, NMFS will disburse the reduction payment, unless NMFS has reason to believe that the bidder has not performed in accordance with his or her duties and obligations. NMFS will disburse reduction payments only to accepted bidders, unless they explicitly instruct NMFS to do otherwise. If a reduction vessel needs to be scrapped, NMFS will withhold funds sufficient to cover the cost of such scrapping until its completion.

IV. Program Process

The following table outlines, in chronological order, the program's process:

Step	Action
One	NMFS publishes this notice in the **Federal Register**, together with a pro forma invitation to bid and bidding document.
Two	NMFS receives and analyzes public comments.
Three	NMFS publishes a final notice in the **Federal Register**, together with the final draft of the invitation to bid and bidding document.
Four	NMFS mails each permit owner of a groundfish trawl permit (other than those issued to whiting catcher-processors) a notice that indicates that NMFS will subsequently mail him or her a bidding package.
Five	NMFS formally invites each qualified bidder to bid by mailing to him or her a bidding package that also informs him or her that a referendum will occur after NMFS has accepted bids.
Six	NMFS mails a notice to persons holding any fee-share fishery permit (other than those to whom NMFS sent the mailing in step five) indicating that NMFS has invited bids. The notice will also state that NMFS will, without further notice, mail him or her a referendum ballot(s) and voting instructions after NMFS has accepted bids.
Seven	Bidders submit bids.
Eight	NMFS receives bids until the bid receipt deadline.
Nine	NMFS scores, tallies, and accepts or rejects each bid and mails to each bidder an acceptance or rejection notice.
Ten	NMFS mails to each person eligible to vote in the referendum a ballot(s) and voting instructions.
Eleven	The referendum occurs.
Twelve	NMFS receives votes until the vote receipt deadline and afterwards tallies the votes.
Thirteen (A)	If the referendum fails: (a) NMFS mails to each eligible voter a notice that the referendum is unsuccessful, and (b) NMFS mails to each accepted bidder a notice that the reduction contracts are without force and/or effect.
Thirteen (B)	If the referendum is successful: (a) NMFS mails to each accepted bidder a notice that the referendum is successful and reminds him or her that he or she must perform the reduction contract duties and obligations, (b) NMFS mails to each person who voted a notice indicating that the referendum was successful, (c) NMFS publishes a reduction payment tender notification in the **Federal Register**, (d) NMFS tenders reduction payments to each accepted bidder by requesting the bidder's payment instructions, (e) Accepted bidders relinquish their reduction permits and reduction vessel fishing privileges, and (f) Accepted bidders certify their compliance with their contractual obligations.
Fourteen	NMFS disburses reduction payments upon its receipt of payment instructions and certification of compliance.
Fifteen	NMFS undertakes a separate rulemaking about fee payment and collection.
Sixteen	NMFS establishes fee amounts.
Seventeen	(a) NMFS mails fish sellers and fish buyers a reduction loan fee payment and collection notice, (b) Fish sellers begin paying the fees, and fish buyers begin collecting and disbursing the fees to NMFS, and (c) NMFS receives collected-fee disbursements from fish buyers.

V. Reduction Loan

The reduction loan's repayment maturity will be 30 years. Its principal amount will be the total of all reduction payments made under this program, less $10 million. NMFS will determine the reduction loan's interest rate in accordance with the framework regulations at 50 CFR 600.1012.

VI. Fee Payment and Collection

Section 212 provides that the United States may enter into agreements with California, Oregon, and Washington to collect the fees that repay the reduction loan. Unless and until NMFS arranges to do so, however, fish sellers will pay the fees and fish buyers will collect, deposit, disburse, record, and report on the fees in accordance with the applicable portions of the framework regulations.

NMFS will establish any fee rates necessary for fish sellers to repay the reduction loan sub-amount applicable to the reduction fishery and to each of the six fee-share fisheries. NMFS will undertake a separate rulemaking to do this. The fee rates may not exceed five percent of the delivery value of fee fish from each of these fisheries, but will be less if NMFS determines that smaller percentages are sufficient to amortize the respective reduction loan sub-amounts over the 30-year reduction loan's term.

VII. Sample Invitation To Bid and Bidding Document

The addenda to this notification are the pro forma invitation to bid and bidding document.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this action is consistent with Public Law 107–206, Public Law 108–7, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared a draft environmental assessment for this action. The assessment discusses the program's impact on the natural and human environment. NMFS will send the draft assessment to anyone who requests NMFS to do so (*see* **ADDRESSES**).

The Office of Management and Budget has determined that this notice is significant under Executive Order 12866. NMFS has prepared a Regulatory Impact Review (RIR) for this action (*see* **ADDRESSES**).

NMFS believes any Federalism implications arising from this notice are highly unlikely, however, consultations with the States of Washington, Oregon, and California are ongoing.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved these information collections under OMB control number 0648–0376. NMFS estimates that the public reporting burden for these requirements will average 4 hours for submitting a bid, 4 hours for voting in a referendum, and 1 hour for advice (if any) about a conflict on a vessel ownership or permit claim. Persons affected by this action would also be subject to other collection-of-information requirements referred to in this action and also approved under 0648–0376. These requirements and their associated response times are 10 minutes for completing and filing a fish ticket, 2 hours for submitting a monthly fish buyer report, 4 hours for submitting an annual fish buyer report, and 2 hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the requirements of the PRA unless that information collection displays a currently valid OMB control number.

NMFS has determined that this notice will not significantly affect the coastal zone of any state with an approved coastal zone management program. This determination has been submitted for review by the States of Washington, Oregon, and California.

In addition to public comment about the substance of this action, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the action's language.

Authority : Pub. L. 107–206, Pub. L. 108–7, 16 U.S.C. 1861a(b–e), and 50 CFR 600.1000 *et seq.*

Dated: May 21, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[These addenda will not be codified in the Code of Federal Regulations.]

BILLING CODE 3510–22–P

ADDENDUM 1-INVITATION TO BID: FISHING CAPACITY REDUCTION PROGRAM FOR THE PACIFIC COAST GROUNDFISH FISHERY

I. Invitation:

The United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (referred to herein as "NMFS"), does hereby extend an invitation to those holding limited entry fishing permits endorsed for the operation of trawl gear and issued under the Federal Pacific Coast Groundfish Fishery Management Plan, other than those issued for vessels harvesting and processing whiting in the catcher-processors sector (as defined under section 660.323(a)(4)(A) of title 50, Code of Federal Regulations), to submit bids for the West Coast Groundfish Fishing Capacity Reduction Program (Program), in response to this invitation.

After a successful industry referendum, and in exchange for the payments specified in their respective bids, those accepted for participation shall relinquish their abovementioned groundfish trawl permits, other than permits for whiting catcher-processors, (herein referenced as "groundfish reduction permit"); relinquish all permits for pink shrimp or Dungeness crab issued by the States of Washington, Oregon or California (herein referenced collectively as "fee-share reduction permits"); relinquish all other Federal fishery permits stemming from the use or ownership of the vessels named in their respective bids; scrap or allow the revocation of fishing endorsements and the restriction of title of the vessels named in their respective bids (herein referenced as "reduction vessel"); and surrender any other present or future rights, entitlements, privileges, fishing permits or harvest authorizations derived, in whole or in part, from the use or ownership of the vessel named in their respective bids or from any harvests made under any permit, license or other harvest authorization. Those participating shall do so voluntarily.

II. Eligible Parties:

NMFS invites, as qualified bidders, all those who possess groundfish reduction permits to submit bids for capacity reduction. All those submitting bids must be able to relinquish such groundfish reduction permits, fee-share reduction permits, other Federal permits, as well as relinquish or surrender any claim to any future harvest privileges stemming from such permits or from catch history. In addition bidders must be able to agree to title restrictions that permanently revoke their vessels' legal authority to fish. Although only qualified bidders may submit bids in response to this invitation, all persons holding permits for any reduction fishery or fee-share fishery may vote in the abovementioned referendum. Each such person will have one vote for every permit he or she holds.

III. Bid Submissions:

To submit a bid, you must complete the section of the "Fishing Capacity Reduction Bid and Terms of Agreement for Capacity Reduction" entitled "Fishing Capacity Bid Submission" (also referenced herein as "bidding document") by providing the requested information, entering the dollar amount of the desired reduction payment, and signing where indicated. Upon completion, send this bidding document to the address found below.

A bid may not be submitted on any form other than the bidding document that NMFS mailed to you.

Complete and submit the bidding document only if it is your intention to create an irrevocable offer to the United States to permanently relinquish your groundfish reduction permit, fee-share reduction permits, and other Federal permits associated with your reduction vessel, as well as allow either the scrapping (at your expense) or the revocation of your reduction vessel's legal authority to fish anywhere in the world.

NMFS will not accept bids that fail to reflect the terms and conditions set forth in this invitation to bid, although NMFS may, at its option, contact a bidder in an attempt to correct deficiencies. The submission of any bid containing false information may subject the bidder to substantial penalties as described in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801 et seq., and other applicable law.

IV. Required Bid Contents

Groundfish reduction permit. You must identify and offer your groundfish reduction permit. At the time of bidding, you must be the permit owner, as that term is defined in 50 C.F.R. 660.302, of such groundfish reduction permit.

Reduction Vessel. You must identify the vessel for whose operation your groundfish reduction permit is registered at the time you bid. You must be, at the time you bid, the owner of record of the reduction vessel.

If, at the time of reduction payment tender, your reduction vessel is not documented under Federal law, you must immediately scrap the reduction vessel at your own expense and afford NMFS full opportunity to observe and confirm such scrapping.

Reduction Vessel's Fishing Privileges. You must offer to relinquish the reduction vessel's legal authority to fish anywhere in the world by agreeing to restrictions that remove: (1) fisheries trade endorsement, pursuant to 46 U.S.C. §12108; (2) any qualification for any present or future U.S. Government approval for placing the vessel under foreign registry or operating under the authority of a foreign country, pursuant to section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)); and (3) any other privilege, right or entitlement that allows your reduction vessel to fish anywhere else in the world.

The abovementioned restrictions shall run with the reduction vessel's title, such that you or any future owners may never use the reduction vessel for fishing. After reduction payment

tender, the reduction vessel may only operate under United States flag. If your reduction vessel is ever re-flagged or ever again used for fishing after reduction payment tender, the reduction vessel is subject to being scrapped at your expense.

Fee-share Reduction Permit. Your bidding document must identify and include each fee-share reduction permit (if any) that the official permit records of California, Oregon, or Washington indicate that you hold on *[DATE OF FEDERAL REGISTER PUBLICATION OF INITIAL NOTICE TO BE LATER DETERMINED AND INSERTED HERE]* and which was registered to your bid's reduction vessel on such date or, if such permit was not then so registered, which you ever used for fishing on your reduction vessel.

Other reduction permit. Your bidding document must identify and include any and all other Federal permits (if any) that NMFS' permit records show you hold on *[DATE OF FEDERAL REGISTER PUBLICATION OF INITIAL NOTICE TO BE DETERMINED AND INSERTED HERE]* and which was registered to your reduction vessel on such date or, if such permit was not then so registered, which you ever used for fishing from your reduction vessel.

V. Bidding Document Completion

In the bidding document entitled, "Fishing Capacity Reduction Bid and Terms of Agreement for Capacity Reduction," you must:

(1) State your name, business address of record, telephone number, and (if available) electronic mail address;

(2) State your bid amount in U.S. dollars;

(3) Identify, by groundfish permit number, your bid's groundfish reduction permit and include an exact photocopy of this permit (which NMFS issued);

(4) If your bid's reduction vessel is Federally documented, identify it by vessel name and official number and include an exact photocopy of the vessel's official document (which the National Vessel Documentation Center issued);

(5) If your bid's reduction vessel is not Federally documented, identify it by vessel name and state registration or other identification number and include an exact photocopy of whatever official vessel registration, identification, or other documentation the controlling authority issued;

(6) Identify, by permit number, each of your fee-share reduction permits that the appropriate state fishery management authority issued, and include an exact photocopy of each of them;

(7) Identify, by permit number, each of your other Federal permits and include an exact photocopy of each of them (which NMFS issued);

(8) Identify any liens or security interests on any item specified in your bid;

(9) Make certain statements, declarations, and affirmations with respect to your reduction fishing interest and provide any other information that the bidding document may require;

(10) Sign the bidding document; and

(11) Acknowledge your signature of the bidding document before a notary public.

In the event that you are submitting a bid on behalf of another person or entity, include proof that you are authorized to bind such person or entity. For instance, if you are signing for a corporation, include a photocopy of your corporate by-laws, articles of incorporation, board resolution, or other document indicating that you are authorized to submit a bid and thereby bind the corporation. If necessary, please consult your legal advisor for assistance.

Your signature and submission of the bidding document constitutes an irrevocable offer, consistent with the bidding document's terms and conditions, to the United States.

VI. Bidding Procedures:

Bidding Package Mailing Date. On or before *[BIDDING PACKAGE MAILING DATE TO BE LATER DETERMINED AND INSERTED HERE],* NMFS will mail a bidding package to each groundfish reduction permit owner. The mailing will include, among other things, this document, a bidding document, and further instructions for completing your bid and submitting it to NMFS. You may not submit a bid until after you have received your bidding package.

Bidding Opening Date. The bidding opening date is *[BIDDING OPENING DATE TO BE LATER DETERMINED AND INSERTED HERE].* You should not submit your bid before this date.

Bidding Closing Date. The bidding closing date is *[BIDDING CLOSING DATE TO BE LATER DETERMINED AND INSERTED HERE].* You must mail or otherwise deliver your bid so that NMFS physically receives it on or before this date. NMFS will stamp your bid with the date and time NMFS first receives your bid. Your bid will be rejected if its stamped date and time is later than the bidding closing date.

Bid Expiration Date. The bid expiration date is *[BID EXPIRATION DATE TO BE LATER DETERMINED AND INSERTED HERE].* Your bid will expire on this date unless NMFS notifies you that NMFS has accepted your bid by mailing its written acceptance notice to you at your address of record.

Delivering Your Bid. You must mail or otherwise deliver your bid to NMFS. You may choose to use U.S. mail, deliver it by an express mail service, or deliver it in person. However, you solely bear any risk associated with your method of delivery. NMFS is not responsible for mail or deliveries that are lost or misdirected. NMFS will deem your bid to be "submitted" only when NMFS receives your bid.

All bids must be addressed and delivered to:

Michael L. Grable
Chief, Financial Services Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Room 13100
1315 East-West Highway
Silver Spring, MD 20910

Bid Scoring and Acceptance.

NMFS will determine the bid score of any bid by dividing each bid's dollar amount by the average of the three greatest annual revenues earned from groundfish, Dungeness crab, and pink shrimp (as measured as total ex-vessel dollar value of catch landed by the reduction vessel) during 1998, 1999, 2000, or 2001.

NMFS will determine which responsive bids it will formally accept by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed the maximum reduction cost. If any two or more bid scores are exactly the same, NMFS will first accept the bid that NMFS first received.

As soon as possible after the reverse auction, NMFS will mail each bidder, at their address of record, either a bid acceptance notice or a bid rejection notice.

NMFS's formal acceptance of your bid will create a binding contract between you and the United States (referred to herein as "reduction contract"). In case of a breach of a reduction contract provision, the reduction contract may be specifically enforced, as provided by applicable law.

If NMFS accepts your bid, NMFS will not transfer any groundfish reduction permit or other reduction permit in your bid to any other person unless, and until, the reduction contract is no longer in effect and such permits no longer need to be relinquished.

Bid Rejection. You must complete the bidding document in strict compliance with the requirements in this invitation to bid. NMFS will, regardless of bid scores, reject any bid that is unresponsive to, or does not fully accord with, this invitation to bid and other applicable law. NMFS will reject a bid that:

(1) Is incomplete or inaccurate;

(2) Is submitted on a document other than the bidding document;

(3) Specifies a qualified bidder that is not the permit owner of the required groundfish reduction permit;

(4) Specifies a qualified bidder that is not the holder of record of any required fee-share reduction permit(s) or other reduction permit(s);

(5) Specifies a qualified bidder that is not the owner of record of the required reduction vessel;

(6) Fails to include an element the groundfish program requires;

(7) Attempts to revise, alter, or negotiate any provision of the bidding document or of the bidding package;

(8) Is late; or

(9) Is otherwise not responsive to the bidding package and consistent with applicable law.

VII. Other Program Rules:

All bid scorings, rankings, rejections, and acceptances shall constitute final agency action at the time NMFS acts.

Once you deliver your bid to NMFS, your bid is irrevocable. You may not alter, rescind, or substitute any aspect of your bid and your bid will remain in effect until the bid expiration date.

If an industry referendum approves the industry fee system, the United States will tender reduction payment by requesting written payment instructions from you. The United States shall, thereafter, disburse reduction payments equal to the bid amounts specified in each bid once you have certified your compliance with your contractual duties and obligations.

You must hold, own, or retain all of your reduction fishing interest, as included or specified in your bid, and remain fully and legally entitled to offer the same until:

(1) The bid expires;

(2) NMFS notifies you that NMFS rejects the bid;

(3) NMFS notifies you that a reduction contract does not exist; or

(4) NMFS tenders reduction payment and you comply with your reduction contract obligations.

You are directed to review the documents included in the bidding package, including this Invitation to Bid and the bidding document entitled “Fishing Capacity Reduction Bid and

Terms of Agreement for Capacity Reduction", as well as the applicable law, for specific terms and conditions affecting this bid. Bidders are solely responsible for being aware of and understanding the full legal effects and implications of a bid submission. NMFS strongly suggests that you review these documents with your legal advisor.

Public reporting burden for this collection of information is estimated to average 4 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 Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

(OMB Control No. 0648-0376, expiring 07/31/2005)

ADDENDUM 2-FISHING CAPACITY REDUCTION BID and TERMS OF AGREEMENT FOR CAPACITY REDUCTION

I.

THIS AGREEMENT, entered into this ___ day of_____, by and between the Person(s) named in the portion of this document entitled "Fishing Capacity Reduction Bid Signature" as the Qualified Bidder (herein referenced as "Bidder") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Financial Services Division (referenced herein as the "Secretary").

WITNESSETH:

Whereas, the Secretary has sent an Invitation to Bid for the Fishing Capacity Reduction Program (Program) to those holding limited entry fishing permits issued under the Federal Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) endorsed for the operation of trawl gear (other than whiting catcher-processors);

Whereas, such Program is carried out pursuant to authority found in Division B, Title II, § 212 of Pub. Law 108-7; Division N, Title V, § 501(b) of Pub. Law 108-7; § 212 of Pub. Law 107-206; as well as authority found in 16 U.S.C. §1861a (b)-(e) and other applicable law;

Whereas, in accordance with such authority, a notification was published in the Federal Register announcing Program requirements;

Whereas, the Secretary has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to this Program, and such framework regulations are found at 50 CFR §600.1000 et seq.;

Whereas, the key terms, "Reduction Fishery" and "Fee-Share Fishery" are statutorily defined for this Program;

Whereas, such Program can only remove fishing capacity after an industry referendum approves an industry fee system;

Whereas, this Document will be submitted by the bidder in direct response to such aforementioned Invitation To Bid and is expressly subject to requirements in such Invitation To Bid and the requirements of the aforementioned regulations and other applicable law;

Whereas, the Groundfish Program's express objective is to permanently reduce harvesting capacity in the reduction fishery and the fee-share fisheries; and

Whereas, it is the expressed sense of Congress that the States of Washington, Oregon, and California should revoke and render void all state permits relinquished as a part of this program immediately after disbursement of reduction payment.

NOW, THEREFORE, for good and valuable consideration and the premises and covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. Incorporation of Invitation to Bid. The requirements of the Invitation to Bid are expressly incorporated herein by this reference.

3. Bidding Document. By completing the portion of this Document entitled the "Fishing Capacity Reduction Bid Submission" and submitting this Document to the Secretary in the manner the Invitation to Bid describes, the bidder hereby, irrevocably offers to relinquish its Federal fishing permit(s), as well as all of its Dungeness crab permit(s) and pink shrimp permit(s) issued by the States of Washington, Oregon, or California; offers to permanently remove its reduction vessel from fishing by either scrapping or allowing the placement of title restrictions; and offers to relinquish any other right, entitlement, fishery permit, fishery license, area and species endorsement, and any other fishery privilege or harvest authorization, if any, derived, in whole or in part, from either the use or ownership of its Reduction Vessel. (Such items offered shall be collectively referenced herein as "Reduction Fishing Interest".) If any deficiencies in a bid are discovered, prior to rejection, NMFS may, at its sole discretion, contact the bidder in an attempt to correct a bid deficiency.

4. Groundfish Reduction Permit. The bidder will specify, as a Groundfish Reduction Permit, a valid limited entry permit endorsed for the operation of groundfish trawl gear under the Pacific Coast Groundfish Fishery Management Plan. Such specification shall not include any permits registered to vessels harvesting and processing whiting in the catcher-processors sector, as defined in §660.323(a)(4)(A) of title 50, Code of Federal Regulations. The bidder acknowledges that it offers such Groundfish Reduction Permit for permanent revocation.

5. Fee-Share Reduction Permits. The bidder will specify any and all of its Dungeness crab permit(s) and pink shrimp permits(s) for fisheries in the States of Washington, Oregon, or California (herein referenced, collectively, as "Fee-Share Reduction Permits") that have been issued to the bidder or the Reduction Vessel. The bidder acknowledges that it offers to permanently relinquish the aforementioned Fee-Share Reduction Permits with the expectation that the issuing authorities will ultimately revoke them or otherwise permanently render them invalid.

6. Other Reduction Permits. The bidder will specify any and all Federal fishery permits, licenses, area and species endorsements, harvest authorizations, or fishery privileges, other than the Groundfish Reduction Permit, (herein referenced as "Other Reduction Permits") issued to either the Reduction Vessel or to persons on the basis of their operation or ownership of that Reduction Vessel. The bidder

will offer to relinquish, offer to surrender, or offer for revocation any such permits, licenses, endorsements, authorizations, or privileges, as well as any Reduction Vessel fishing histories, if any, or other present or future claims of eligibility for any fishery based upon such permits, licenses, endorsements, authorizations, privileges or histories.

7. Reduction Permit(s) Held by Bidder. The bidder shall not specify in any bid any Groundfish Reduction Permit, Fee-Share Reduction Permit, or Other Reduction Permit for which the bidder is not the person to whom any such permit is issued according to NMFS' official permit records or the official permit records of California, Oregon, or Washington.

8. Reduction Vessel. The bidder will specify a Reduction Vessel. The Reduction Vessel must exist, i.e., neither be lost nor destroyed. The bidder shall only specify a Reduction Vessel for which it is the owner of record. If the bidder should specify a Reduction Vessel that lacks Federal documentation, the bidder shall offer to scrap such vessel at the bidder's expense.

9. Reduction Vessel Fishing Privileges. In the event that the bidder specifies a Federally documented vessel as a Reduction Vessel, the bidder will offer to impose or allow title restrictions that have the effect of permanently revoking or relinquishing such Reduction Vessel's legal ability to fish anywhere in the world. Such items subject to revocation or relinquishment (herein referenced collectively as "Reduction Vessel Fishing Privileges") are as follows: Reduction Vessel's fisheries trade endorsement under 46 U.S.C. §12108; the Reduction Vessel's eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the Reduction Vessel's ability to fish under U.S. flag outside the U.S. Exclusive Economic Zone or anywhere else in the world.

10. Reduction Payment. The bidder will specify a dollar amount (herein referenced as "Reduction Payment") in exchange for which it is willing to surrender, relinquish, restrict, or allow the revocation of such items, including, but not necessarily limited to, the aforementioned Groundfish Reduction Permit, Fee-Share Reduction Permits, Other Reduction Permits, Reduction Vessel Fishing Privileges, and relevant fishery histories (if any). In the event that the bidder specifies a non-Federally documented vessel as a reduction vessel, the bidder must also be willing to scrap such vessel (in addition to surrendering, relinquishing, restricting, or allowing the revocation of such items detailed above) in exchange for such specified dollar amount.

11. Additional Elements. The bidder shall include with its bid an exact photocopy of each Reduction Vessel's official registration or vessel documentation (e.g. that issued by the U.S. Coast Guard's National Vessel Documentation Center (NVDC) for Federally documented vessels), and an exact photocopy of each Groundfish Reduction Permit, Fee-Share Reduction Permit, and Other Reduction Permit.

12. Use of Official Permit Databases. The Secretary shall use the appropriate official

permit database to determine the bidder's address of record, verify the bidder's eligibility to bid, determine the record holder of the bid's various specified Permits, and verify that every Groundfish Reduction Permit, Fee-Share Reduction Permit, or Other Reduction Permit associated with a specified Reduction Vessel is included in the bid.

13. Use of NVDC. The bidder acknowledges that the Secretary will use the records of the NVDC to determine the owner of record for a Federally documented Reduction Vessel and the appropriate State records to determine the owner of record of a non Federally documented vessel.

14. Bidder to Ensure Accurate Records. The bidder, to the best of its ability, will ensure that the records of the relevant permitting authorities and the NVDC are accurate and correct.

15. Bid Submissions are Irrevocable. The parties hereto acknowledge as the essence hereof that the bidder voluntarily submits to the United States a firm and irrevocable bid specifying a Reduction Payment for which the bidder is willing to relinquish, restrict, or allow the revocation of the Reduction Fishing Interest. Upon submission of a bid, the bidder hereby waives any privilege or right to change, modify, alter, rescind or cancel such bid. The Parties further agree that the time marked on the bid by NMFS upon the receipt thereof, pursuant to the terms of the Invitation to Bid, shall constitute the time of bid submission.

16. Bidder Retains Bid Elements. After submitting a bid, the bidder shall continue to hold, own, or retain each Groundfish Reduction Permit, Fee-Share Reduction Permit, Other Reduction Permit, Reduction Vessel and any other aspect of the Reduction Fishing Interest specified in this Document until such time as the bid expires, the bid is rejected, the bid or bidder is determined ineligible for participation, the Reduction Payment is tendered and the bidder complies with its obligations under the Reduction Contract, or the bidder's performance is otherwise excused by the Secretary.

17. Bid Rejection. A bid that fails to provide all of the required information or is deemed in any way unresponsive or not in conformance with the Invitation to Bid or applicable law will be deemed ineligible for consideration and will be rejected, unless the defect is corrected prior to the close of the Bid Submission Period.

18. Notarized Signatures of All Parties Required. A bid that fails to contain the notarized signatures of all parties will be deemed ineligible for consideration and will be rejected.

19. Rejections Constitute Final Agency Action. Rejections are conclusive and constitute final agency action as of the date of rejection.

20. Effect of Bid Submission. By submitting a bid, which constitutes an irrevocable offer, that conforms to the requirements, as stated within the Invitation to Bid and herein, the bidder is entitled to have its bid considered for acceptance by the Secretary.

21. Acceptance by Reverse Auction. In accordance with applicable requirements, such as those stated in this Document, the Invitation to Bid, and applicable law, the Secretary shall accept bids using a reverse auction. The Secretary shall formally notify the bidder if its bid is accepted.

22. Reduction Contract Formed. The bidder acknowledges that the formal acceptance of a bid by the Secretary shall form a binding contract. Such binding contract constitutes a Reduction Contract. The terms of such Reduction Contract are contained in this Document and also incorporate the requirements of the Invitation to bid by reference exactly as if they had been fully and exactly stated within this Document.

23. Reduction Contract Binding. Upon such acceptance, the Reduction Contract will become enforceable against and binding on the parties. The Parties will abide by the terms and conditions of the resultant Reduction Contract unless the Secretary provides the bidder with written notice indicating that the bidder is excused from the performance of any or all such terms and conditions.

24. Reduction Contract Subject to Federal Law. Any Reduction Contract so formed will be subject to applicable Federal law.

25. Notice to Creditors. Upon notice of bid acceptance, the bidder agrees to notify creditors or other parties with interests in Reduction Vessels or Groundfish Reduction Permits, Fee-Share Reduction Permits, or Other Reduction Permits that it has entered into a Reduction Contract.

26. Industry Referendum. Referendum approval of the industry fee system is an occurrence over which neither the bidder nor the Secretary has control.

27. Referendum Results. After an Industry Referendum, the Secretary shall inform the bidder of the results of such referendum.

28. Unsuccessful Referendum Excuses Performance. An unsuccessful referendum, wherein the weighted total of disapproving votes is the same as or exceeds the weighted total of approving votes, excuses the parties hereto from their obligations to perform their duties under any Reduction Contract formed by acceptance of this bid. In the event of such occurrence, the United States need not tender Reduction Payment nor does the bidder need to relinquish, transfer, restrict or allow the revocation of any element named below in the section entitled "Fishing Capacity Bid Submission."

29. Expiration of Reduction Contract. In the event that the aforementioned Referendum is unsuccessful, any reduction Contract or outstanding bid shall expire and be of no further force or effect.

30. Bidder Responsibilities upon Successful Referendum. Upon notice of a successful Industry Referendum, the bidder shall immediately become ready to relinquish, restrict, or allow the revocation of, as appropriate, all Groundfish Reduction Permits,

Fee-Share Reduction Permits, Other Reduction Permits, or Reduction Vessel Fishing Interests.

31. Written Payment Instructions. After a successful Industry Referendum, the Secretary shall request and the bidder shall give NMFS written payment instructions for Reduction Payment disbursement.

32. Request for Payment Instructions Constitutes Tender. Such aforementioned request for written payment instructions constitutes tender of Reduction Payment, as such is specified in 50 C.F.R. 1011.

33. Bidder Responsibilities upon Tender. Upon such aforementioned tender of Reduction Payment, the bidder shall immediately relinquish, restrict, or allow the revocation of, as appropriate, its Groundfish Reduction Permit, Fee-Share Reduction Permit(s), Other Reduction Permit(s), and Reduction Vessel Fishing Interest. The bidder must return its Groundfish Reduction Permit and Other Reduction Permits (if any) to NMFS. Also upon such tender, the bidder shall forever cease all fishing for any species with the Reduction Vessel and immediately retrieve all of its fixed fishing gear deployed in any fishery. The bidder shall certify compliance with its duties and obligations under the Reduction Contract and shall include such certification with the aforementioned payment instructions.

34. Reduction Vessel Lacking Federal Documentation. Upon Reduction Payment tender, the bidder shall immediately scrap any vessel that it specified as a Reduction Vessel that is documented solely under state law or otherwise lacks documentation under Federal law. Such vessel shall be scrapped at the bidder's expense. The bidder shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The bidder shall conclude such scrapping within a reasonable time.

35. Future Harvest Privilege Extinguished. Upon Reduction Payment tender, the bidder shall waive, surrender, withdraw, or extinguish by other means any other claim derived, in whole or in part, either from the use or ownership of the Reduction Vessel or from any harvests made under any permit, license or other harvest authorization, as specified below, that could ever qualify the bidder for any future limited access fishing license, fishing permit, harvest authorization.

36. Post Tender Use of Federally Documented Reduction Vessel. After Reduction Payment tender, the bidder may continue to use a Federally documented Reduction Vessel for any legal purpose except fishing and can transfer the vessel, subject to all restrictions imposed by the Reduction Contract and applicable law, to a new owner. The bidder or any subsequent owner shall only operate such Reduction Vessel under the United States flag. In the event the bidder or subsequent owners fail to abide by such restrictions, the bidder acknowledges and agrees to allow the United States to pursue any and all remedies available to it, including seizing the Reduction Vessel and scrapping it at the expense of the bidder.

37. Secretary's Actions upon Tender. Contemporaneously with tendering Reduction Payment, without regard to any party's refusal or failure to perform its duties and

obligations under a Reduction Contract, the Secretary will permanently render void the bidder's Groundfish Reduction Permit and any Other Reduction Permits, notify the relevant states that the bidder has relinquished its Fee-Share Reduction Permits, notify the NVDC in order to revoke the Reduction Vessel's fisheries trade endorsements, notify the U.S. Maritime Administration in order to make the Reduction Vessel ineligible for the approval of requests to place it under foreign registry or operate under a foreign country's authority; note in the appropriate NMFS records that any fishing histories, if any, accrued on the Reduction Vessel will never again be available to anyone for any fisheries purpose; and implement any other restrictions imposed by applicable law.

38. Material Disputes to be Identified. Members of the public shall be able to advise NMFS in writing of any material dispute with regard to any aspect of any bid, up until NMFS receives such aforementioned payment instructions. Such a material dispute shall neither relieve the bidder of any duties or obligations under any Reduction Contract nor shall it affect the United States' right to enforce performance of the terms and conditions of any Reduction Contract.

39. Reduction Payment Disbursement. Once the bidder's payment instructions and certification of compliance are received, the United States shall disburse to the bidder the amount specified as a Reduction Payment as soon as practicable, unless such disbursement is otherwise excused. Any Reduction Payment disbursement shall be in strict accordance with the bidder's payment instructions. Unless bidder's payment instructions direct NMFS to the contrary, the United States shall disburse the whole of the Reduction Payment to the bidder.

40. Reduction Payment Withheld for Scrapping or for Other Reasons. In the event that a Reduction Vessel must be scrapped, the Secretary shall withhold from disbursement an amount sufficient to scrap such vessel. The Secretary shall withhold such sum until the vessel is completely scrapped. The Secretary may confirm, if the Secretary so chooses, that the vessel has been scrapped before disbursing any amount withheld. If the Secretary has reason to believe that the bidder has failed to comply with any of the terms and conditions as stated herein, the Secretary shall withhold disbursement until such time as the bidder performs in accordance with the terms and conditions of the Reduction Contract.

41. Bidder Assistance with Restriction. The bidder shall, upon the United States' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable the United States to restrict, invalidate, or revoke any component of the bid's Reduction Fishing Interest in accordance with the terms and conditions of a Reduction Contract or requirements of applicable law.

42. Recordation of Restrictions. Upon revocation of all the Reduction Vessel Fishing Privileges, the bidder shall ensure that such revocation is recorded with the Reduction Vessel's title, such that the Reduction Vessel, regardless of its subsequent ownership, may never again fish for any species anywhere in the world under any conditions. Such term "fishing" includes the full range of activities defined in 16 U.S.C. §1802.

43. Lack of State Revocation Notwithstanding. In the event that California, Oregon, or Washington should fail to permanently revoke any Fee-Share Reduction Permit, the bidder will nevertheless be permanently barred from ever exercising any fishing privilege or claim associated with any such Fee-Share Reduction Permit. Moreover, the bidder will neither transfer nor allow any other person to exercise any fishing privilege or claim associated with any such Fee-Share Reduction Permit.

44. Reduction Element Omission. In the event that the Secretary accepts a bid wherein the bidder failed, for any reason, to specify and designate any Groundfish Reduction Permit, Fee-Share Reduction Permit, Other Reduction Permit, or Reduction Vessel that should have been specified in this Document, any requirements or terms and conditions that should have otherwise applied to such omitted item shall nevertheless still be applicable. Upon discovery by either or both parties, the bidder shall act in accordance with Program requirements.

45. Remedy for Breach. As money damages may not be a sufficient remedy for breach of the terms and conditions as set forth in this Document, the Parties explicitly agree and authorize specific performance, in addition to any money damages, as a remedy for any breach of Reduction Contract terms. In the event of breach by the bidder, the Secretary will take any reasonable action he deems necessary to carry out the Program's purpose as set forth above.

46. Waiver of Data Confidentiality. The bidder consents to the public release of any information the bidder may provide pursuant to Program requirements, including any information provided as a part of this bid or any other means, so long as the Secretary finds that the release of such information is necessary to achieve this Program's stated goals. The bidder shall and hereby explicitly waives any claim of confidentiality otherwise afforded to financial, catch, or harvest data, as well as trade secrets, fishing histories, or other personal information, otherwise protected from release under 16 U.S.C. §1881a(b) or any other law. In the event such information is released, the bidder shall and hereby does forever fully and unconditionally release and hold harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act, or event arising from, out of, or in any way related to, the release of any information associated with this Program.

47. Oral Agreements Invalid. This Document and the Invitation to Bid contain the final terms of any Reduction Contract between the bidder and the United States. They represent the entire and exclusive agreement between the parties. All parties hereto forever waive all right to sue, or otherwise counterclaim against each other based on any claim of past, present, or future oral agreement between the parties.

48. Severable Provisions. The provisions of this contract are severable and, in the event any portion thereof is held to be void, invalid, non-binding, or otherwise unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against all parties hereto.

49. Disputes. Any and all disputes arising in connection with the Fishing Capacity Reduction Program, including, but not limited to, the Invitation to Bid, this bid or any Reduction Contract shall in all respects be governed by the Federal laws of the United States, and the bidders and all other parties to the Reduction Contract irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body authorized to adjudicate such disputes, as set forth under applicable law.

50. Fishing Capacity Bid Submission:

I. Completion and submission. The bidder must fully, faithfully, and accurately complete this portion of this Document and thereafter submit this full Document to NMFS in accordance with the Invitation to Bid.

II. Bidder information.

(a) Insert the Qualified Bidder's name [must be the full legal name of the person, partnership, or corporation who is, at the time of bidding, the owner of record of the Bid's Reduction Vessel and the permit owner of the Groundfish Reduction Permit, the holder of record of each other Reduction Permit (if any), and the holder of record of each Fee-Share Reduction Permit (if any)]:

(b) Insert the Bidder's full address of record:

(c) Insert the Bidder's full business telephone number:

(d) Insert the Bidder's business full electronic mail address (if available):

III. Groundfish Reduction Permit number. Insert the full permit number of the Bid's Groundfish Reduction Permit. Enclose with this document an exact photocopy of such permit:

IV. Other Reduction Permit (if any). Insert the full permit number of each of the Bid's other Reduction Permits. Enclose with this document an exact photocopy of each such permit:

V. Fee-Share Reduction Permit (if any). Insert the full permit number, issuing state, and Fee-Share fishery for each of the bid's Fee-Share Reduction Permits. Enclose with this document an exact photocopy of each such permit:

PERMIT NUMBER	ISSUING STATE	FISHERY

VI. Reduction Vessel. Insert the full official name of the bid's Reduction Vessel and:

(a) If such vessel is Federally documented, insert the vessel's full official number. Enclose with this document an exact photocopy of such vessel's official document:

VESSEL'S NAME	VESSEL'S NUMBER

(b) If such vessel is state registered or otherwise documented, insert the vessel's full registration or other documentation number. Enclose with this document an exact photocopy of such vessel's official registration certificate or other form of official documentation:

VESSEL'S NAME	VESSEL'S NUMBER	STATE OF REGISTRATION

VII. Bid Price. Insert, in U.S. dollars, the Bidder's full bid amount:

VII. Bid signature.
In compliance with applicable law, this Document and the Invitation to Bid, I, the Qualified Bidder, submit the above written Bid Price as an irrevocable offer to the United States for the permanent revocation and surrender of the Groundfish Reduction Permit, any Fee-Share Reduction Permit(s), any Other Reduction Permits, and the Reduction Vessel's Fishing Privileges, all as identified in this bid or as required under applicable law.

I acknowledge that the acceptance of this bid by the United States and tender of the Reduction Payment to bidder in the amount written above (less any sum withheld for scrapping any Reduction Vessel lacking Federal documentation) will, among other things, permanently render the Reduction Vessel ineligible for any fisheries worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and will impose or create other legal and contractual restrictions and obligations that restrict or revoke the complete Reduction Fishing Interest, as well as revoke or restrict any other fishery privileges or claims associated with the Reduction Vessel, Groundfish Reduction Permit, any Fee-Share Reduction Permit, or Other Reduction Permit, as more fully set forth in the Invitation to Bid and applicable law.

By completing the sections above and signing below, I acknowledge that I have fully and completely reviewed this Document and the Invitation to Bid. I attest and warrant that I am fully able to enter into a Reduction Contract, and if I am completing the sections above and signing below on behalf of another person or

entity, I attest and warrant that I have express, written permission or grant of authority to bind such person or entity to the terms and conditions of a Reduction Contract. I expressly represent to the United States that I fully understand the consequences of a bid submission, pledge to abide by the terms and conditions of any Reduction Contract, and are aware of and consent to any and all remedies available upon the breach of any Reduction Contract or submission of a bid that fails to conform with applicable law. I expressly warrant and attest that all information included herein is accurate.

IN WITNESS WHEREOF, I, the Qualified Bidder, have executed this Document, in accordance with the requirements as specified above, on the date written below. Moreover, the Parties, hereto, execute an agreement which constitutes a Reduction Contract as of the date the Document is signed by the United States.

Signature	
Print Name	
Print Title	
Date	

State of _____

County of _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he/she signed this "FISHING CAPACITY REDUCTION BID and TERMS OF AGREEMENT FOR CAPACITY REDUCTION," on oath stated that he/she was authorized to execute the instrument and acknowledged it to be the free and voluntary act of his/hers for the uses and purposes mentioned in the document.

Dated: _____ _____

Notary Public

_____

My appointment expires

United States of America,
Acting by and through the Secretary of Commerce,
National Atmospheric Administration,
National Marine Fisheries Service,
Financial Services Division

By:_____
Chief, Financial Services Division

Date: _____

[FR Doc. 03–13274 Filed 5–27–03; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 68, No. 102

Wednesday, May 28, 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

Office of Procurement and Property Management; Proposed Collection; Comment Request Concerning Collection of Acquisition Information

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Notice and request for comments regarding a proposed extension of approved information collection requirements.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Procurement and Property Management (OPPM) intends to submit to the Office of Management and Budget (OMB) a request to review and approve an extension of five currently approved information collections related to the award of, or performance under, USDA contracts. OPPM invites comment on these information collections. These information requirements are currently approved by OMB for use through July 31, 2003. OPPM proposes that OMB extend its approval for use through July 31, 2006.

DATES: Comments on this notice must be received on or before July 28, 2003.

ADDRESSES: Address all comments concerning this notice to: Joseph J. Daragan, Procurement Analyst, Office of Procurement and Property Management, STOP 9303, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9303. Comments may also be submitted via fax at (202) 720–8972, or through the Internet at *jdaragan@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, Office of Procurement and Property Management, STOP 9303, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9303, (202) 720–5729.

SUPPLEMENTARY INFORMATION: USDA is seeking OMB approval of the following information collections:

1. *Title:* Procurement: Maximum Workweek—Construction Schedule.

OMB Number: 0505–0011.

Expiration Date: 7/31/2003.

Type of request: Extension of a currently approved collection.

Proposed use of information: Information about the contractor's proposed hours of work is requested prior to the start of construction so that the agency can determine when on-site representatives are needed. A contracting office will insert this clause in a construction contract when, because of the agency's staffing or budgetary constraints, it is necessary to limit the contractor's performance to a maximum number of hours per week.

Respondents: Businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: The information collected is the hours and days of the week the contractor proposes to carry out construction, with starting and stopping times. Public reporting burden for this collection of information is estimated to average fifteen minutes per response.

Estimated Total Annual Burden on Respondents: 100 hours.

2. *Title:* Procurement: Instruction for the Preparation of Business and Technical Proposals.

OMB Number: 0505–0013.

Expiration Date: 7/31/2003.

Type of request: Extension of a currently approved collection.

Proposed use of information: Technical and business proposals received from offerors, including information about offerors' organization and financial systems, are used when conducting negotiated procurement to evaluate and determine the feasibility of the prospective contractor's technical approach, management, and cost/price to accomplish the task and/or provide the supplies or services required under a resultant contract.

Respondents: State or local governments; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 3,600.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: Public reporting burden to prepare technical and business proposals as part of a response to a solicitation is estimated to average 32 hours per response. This estimate does not include burden associated with providing information required in accordance with information collections prescribed by the Federal Acquisition Regulation. Only businesses submitting offers in response to a solicitation are affected by this collection.

Estimated Total Annual Burden on Respondents: 115,200 hours.

3. *Title:* Procurement: Brand Name or Equal Clause.

OMB Number: 0505–0014.

Expiration Date: 7/31/2003.

Type of request: Extension of a currently approved collection.

Proposed use of information: The Agriculture Acquisition Regulation permits the use of ''brand name or equal'' purchase descriptions to procure commercial products. Such descriptions require the offeror on a supply procurement to identify the ''equal'' item being offered and to indicate how that item meets salient characteristics stated in the purchase description. The contracting officer can determine from the descriptive information furnished whether the offered ''equal'' item meets the salient characteristics of the Government's requirements. The use of brand name or equal descriptions eliminates the need for bidders or offerors to read and interpret detailed specifications or purchase descriptions.

Respondents: Businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 26,678.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: This information collection is limited to solicitations for products for which other methods of product specification are impracticable. Only businesses wishing to submit bids or offers in response to a solicitation are affected. Public reporting burden for this collection of information is estimated to average one tenth of an hour per response.

Estimated Total Annual Burden on Respondents: 2,668 hours.

4. *Title:* Procurement: Key Personnel Clause.

OMB Number: 0505–0015.

Expiration Date: 7/31/2003.

Type of request: Extension of a currently approved collection.

Proposed use of information: The information enables the agency to determine whether the departure of a key person from the contractor's staff may have a deleterious effect upon contract performance, and to determine what accommodations or remedies may be taken. If the agency could not obtain information about departing key personnel, it could not ensure that qualified personnel continue to perform contract work.

Respondents: State or local governments; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: One (1).

Estimate of Burden: The information collection is required only when a contractor proposes to make changes to key personnel assigned to performance of a contract. Consequently, information collection is occasional. Public reporting burden for this collection of information is estimated to average one hour per respondent.

Estimated Total Annual Burden on Respondents: 300 hours.

5. *Title:* Procurement: Progress Reporting Clause.

OMB Number: 0505–0016.

Expiration Date: 7/31/2003.

Type of request: Extension of a currently approved collection.

Proposed use of information: The information is requested monthly or quarterly from contractors performing research and development (R&D) or advisory and assistance services, including ADP system or software development. The information enables the contracting office to monitor actual progress and expenditures compared to anticipated performance and proposal representations upon which the contract award was made. The information alerts the contracting office to technical problems, to a need for additional staff resources or funding, and to the probability of timely completion within the contract cost or price. If the contracting office could not obtain a report of progress, it would have to physically monitor the contractor's operations on a day-to-day basis throughout the performance period.

Respondents: State or local government; businesses or other for-profit; small businesses or organizations.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: The frequency of progress reports varies from monthly to quarterly depending on the complexity of the contract and the risk of successful completion. Based on monthly reporting, each respondent would submit 12 responses per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average one and one half hours per respondent.

Estimated Total Annual Burden on Respondents: 5,400 hours.

Comments: Comments received will be considered in order to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of USDA contracting offices, including whether the information will have a practical utility; (b) evaluate the accuracy of OPPM's 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 those who respond, including through the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Dated: May 21, 2003.

W.R. Ashworth,

Director, Office of Procurement and Property Management.

[FR Doc. 03–13247 Filed 5–27–03; 8:45 am]

BILLING CODE 3410–TX–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–014N]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request an extension for and revision to a currently approved information collection package (ICP) regarding Pathogen Reduction and the Hazard Analysis and Critical Control Point (HACCP) System. In addition, FSIS plans to incorporate the currently approved *Eschericha coli (E. coli)* contamination in beef products information collection package into the revised and extended Pathogen Reduction/HACCP information collection package.

DATES: Comments on this notice must be received on or before July 28, 2003.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: John O' Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION: *Title:* Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) System.

OMB Number: 0583–0103.

Expiration Date of Approval: 2/29/2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by taking regulatory actions to provide that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting an extension and revision to the ICP addressing meat and poultry paperwork and recordkeeping requirements regarding Pathogen Reduction and the HACCP system.

FSIS has established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a new framework for modernization of the meat and poultry inspection system. The regulations (1) require that each establishment develop and implement written sanitation standard operating procedures (Sanitation SOPs); (2) require regular microbial testing for generic *E. coli* by slaughter establishments to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria; (3) establish pathogen reduction performance standards for *Salmonella* that slaughter

establishments and establishments producing raw ground products must meet; and (4) require that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP.

FSIS plans to incorporate the currently approved *E. coli* contamination in beef products ICP into this revised and extended Pathogen Reduction/HACCP ICP. The OMB approval number for the *E. coli* contamination ICP is 0583–0103. FSIS has decided to combine the *E. coli* contamination in beef products ICP into the Pathogen Reduction/HACCP ICP because the Pathogen Reduction/HACCP ICP covers information collections that occur under the Agency's pathogen reduction efforts. The *E. coli* contamination in beef products ICP covers the Agency's collection of information from Federal grinding establishments concerning the suppliers of source materials.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.128 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 8,114.

Estimated Number of Responses per Respondent: 7,732.

Estimated Total Annual Burden on Respondents: 8,051,306.

Copies of this information collection assessment can be obtained from John O' Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627,(202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O' Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the Internet at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm.* Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on: May 21, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–13252 Filed 5–27–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke From the People's Republic of China

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

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of foundry coke from the People's Republic of China.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit of the preliminary results of the antidumping duty administrative review of foundry coke from the People's Republic of China.

EFFECTIVE DATE: May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Holton, AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–1324.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on foundry coke from the People's Republic of China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 56267 (September 3, 2002). On September 30, 2002, Petitioners, ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation, requested the Department conduct an administrative review of sales of foundry coke from the PRC for the period March 8, 2001, through August 31, 2002. On October 24, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise by CITIC Trading Co., Ltd. for the period March 8, 2001, through August 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 65336 (October 24, 2002). The preliminary results of this administrative review are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of the issues, the Department requires additional time to fully develop the record with respect to factors of production information. Accordingly, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Therefore, we are extending the due date for the preliminary results by 120 days, until no later than September 7, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing this notice in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: May 19, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–13261 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Notice of Affirmative Preliminary Determination of Critical Circumstances for Voluntary Section A Respondents: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam

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

ACTION: Preliminary Critical Circumstances Determination.

EFFECTIVE DATE: May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

Critical Circumstances

On November 15, 2002, the Catfish Farmers of America (''CFA'') and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as ''the petitioners,'' alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of certain frozen fish fillets from Vietnam. In accordance with section 351.206(c)(2)(i) of the Department's regulations, because the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department of Commerce (''Department'') must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

On January 24, 2003, the Department determined that, pursuant to section 733(e) of the Tariff Act of 1930, as amended (''the Act''), preliminary critical circumstances exist for the four mandatory respondents: An Giang Fisheries Import Export Joint Stock Company (''Agifish''), Can Tho Agricultural and Animal Products Import Export Company (''CATACO'') Nam Viet Company Limited (''Nam Viet''), Vinh Hoan Company Limited (''Vinh Hoan''), as well as for the Vietnam-wide entity. However, at that time, we did not make critical circumstances determinations for the six voluntary Section A respondents with preliminary separate rates [1]: An Giang Agriculture and Food Import Export Company (''Afiex''), Can Tho Animal Fishery Products Processing Export Enterprise (''CAFATEX''), Da Nang Seaproducts Import-Export Corporation (''Da Nang''), Mekong Fish Company (''Mekonimex''), QVD Food Company Limited (''QVD''), and Viet Hai Seafood Company Limited (''Viet Hai''). Consequently, the Department determined that the most appropriate action was to obtain producer-specific shipment data from the non-selected respondents to form the basis of its analyses, and to publish the preliminary critical circumstances determinations with respect to the voluntary Section A respondent companies upon obtaining the additional data. (*See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam,* 68 FR 4986, (January 31, 2003)).

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) The evidence presented by petitioners in their November 15, 2002 letter; (ii) new evidence obtained since the initiation of the less-than-fair-value (''LTFV'') investigation (*i.e.*, additional import statistics released by the U.S. Census Bureau); and (iii) the International Trade Commission's (''ITC'') preliminary threat of injury determination.

To determine whether there is a history of injurious dumping of the

[1] Vinh Long Import-Export Company submitted a Section A response, but did not receive a preliminary separate rate, and therefore does not receive a preliminary critical circumstances determination.

merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers the existence of a current or recent antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide from the People's Republic of China,* 68 FR 23966 (May 6, 2003). With regard to imports of certain frozen fish fillets from Vietnam, the petitioners make no specific mention of a history of dumping for Vietnam. We are not aware of any antidumping order in the United States or elsewhere on certain frozen fish fillets from Vietnam. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Vietnam pursuant to section 733(e)(1)(A)(i) of the Act.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling certain frozen fish fillets at less than fair value, the Department normally considers margins of 25 percent or more for export price sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. *See e.g. Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 31972, 31978 (October 19, 2001). The Department normally bases its preliminary decision with respect to knowledge on the margins calculated in the preliminary determination. Because the preliminary dumping margins for the six voluntary Section A respondents with separate rates are greater than 25 percent, we find there is a reasonable basis to impute knowledge of dumping with respect to these imports from Vietnam.

In determining whether there is a reasonable basis to believe or suspect an importer knew or should have known there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the Commission. If the Commission finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will normally determine a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. *See e.g. Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 61967 (November 20, 1997). If, as in this case, the Commission preliminarily finds threat of material injury, the Department will also consider: (1) the extent of the increase in the volume of imports of the subject merchandise during the critical circumstances period and (2) the magnitude of the margins in determining whether a reasonable basis exists to impute knowledge that material injury was likely. (*See Preliminary Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China,* 62 FR 31972 (June 11, 1997); *Preliminary Determination of Sales at Less Than Fair Value, Certain Cut-to-Length Carbon Steel Plate from the Russian Federation,* 62 FR 31967 (June 11, 1997); *Preliminary Determination of Sales at Less Than Fair Value, Certain Cut-To-Length Carbon Steel Plate from Ukraine,* 62 FR 31958 (June 11, 1997)).

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the *Memorandum for Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, from Edward Yang, Director, Office IX, Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances for Voluntary Section A Respondents (''Voluntary Critical Circumstances Memo''),* we find sufficient bases exist for finding that importers, or exporters, or producers knew or should have known an antidumping case was pending on certain frozen fish fillet imports from Vietnam by May 2002 at the latest. Accordingly, we determined December 2001 through April 2002 should serve as the ''base period,'' while May 2002 through September 2002 should serve as the ''comparison period'' in determining whether or not imports have been massive.

In this case, the volume of imports of certain frozen fish fillets from Vietnam increased 72.91 percent from the critical circumstances base period (December 2001 to April 2002) to the critical circumstances comparison period (May 2002 to September 2002), nearly five times the level of increase needed to find ''massive imports.'' Furthermore, the amended preliminary dumping margins range from 31.45 to 41.06 percent for the mandatory respondents.

Based on the Commission's preliminary determination of threat of injury, the increase in the volume of imports of subject merchandise noted above, and the high preliminary dumping margins, the Department preliminarily finds that there is a reasonable basis to believe or suspect that the importer knew or should have known that there was likely to be material injury by means of sales at less than fair value of certain frozen fish fillets from Vietnam.

Pursuant to section 351.206(h) of the Department's regulations, we will not consider imports to be massive unless imports in the comparison period have increased by at least 15 percent over imports in the base period. On January 29, 2003, the Department requested company specific shipment data from the seven voluntary Section A respondent companies in order to determine whether there have been massive imports from these respondents. On February 10, 2003 and February 12, 2003, the Department received company-specific data from the seven voluntary Section A respondents. When we compared the import data during the base period with the comparison period for the six companies with preliminary separate rates, we found imports increased by more than 15 percent for QVD, Da Nang, Afiex, Cafatex, but did not increase by more than 15 percent for Viet Hai and Mekonimex. We therefore find that imports of subject merchandise were massive in the comparison period for QVD, Da Nang, Afiex, and Cafatex, but not for Viet Hai and Mekonimex.

In summary, we find there is a reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to imports of certain frozen fish fillets from Vietnam. We further find there have been massive imports of certain frozen fish fillets over a relatively short period from respondents QVD, Da Nang, Afiex, and Cafatex. However, such imports have been found

to be not massive over a relatively short period from Viet Hai and Mekonimex.

Given the analysis summarized above, and described in more detail in the *Voluntary Critical Circumstances Memo,* we preliminarily determine that critical circumstances exist for imports of certain frozen fish fillets from QVD, Da Nang, Afiex, and Cafatex.

In accordance with section 733(e)(2) of the Act, the Department will direct the U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) (''Customs'') to suspend liquidation of all entries of certain frozen fish fillets from QVD, Da Nang, Afiex, and Cafatex that are entered, or withdrawn from warehouse, for consumption on or after November 2, 2002. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the amended preliminary determinations published in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

We will make a final determination concerning critical circumstances for all producers and exporters of the subject merchandise from Vietnam when we make our final dumping determinations in this investigation, which will be 135 days after publication of the preliminary dumping determination.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 19, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13260 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Notice of Final Results of Administrative Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

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

SUMMARY: On March 7, 2003, the Department published the preliminary results of review of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (68 FR 11041). The review covers one manufacturer, Hunan Provincial Produce & Animal By-Products Import & Export Corporation (Hunan), and exports of the subject merchandise to the United States during the period February 1, 2001 through January 31, 2002.

We gave interested parties an opportunity to comment on the preliminary results of review. We received no comments from any of the parties.

EFFECTIVE DATE: May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Sean Carey, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3782 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural paintbrushes from the People's Republic of China (PRC) (67 FR 4945). On February 28, 2002, the Department received a timely request from the Paint Applicator Division of the American Brush Manufacturers Association, the petitioner, for administrative reviews of Hunan and Hebei Founder Import and Export Company (Hebei). On March 27, 2002, the Department initiated an administrative review of the antidumping duty order on natural paintbrushes, for the period from February 1, 2001 through January 31, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 67 FR 14696 (March 27, 2002).

On May 1, 2002, the Department issued antidumping questionnaires to Hunan and Hebei. In its reply to Section A of the questionnaire, Hebei stated that it had made no sales or shipments of subject merchandise to the United States during the POR. The Department also performed a U.S. Customs Service (Customs) data query for entries of paintbrushes from the PRC during the POR. We found no entries or shipments from Hebei during the POR. Thus, the Department rescinded the review with respect to Hebei. *See Natural Bristle Paintbrushes From the People's Republic of China; Notice of Rescission, In Part, of Antidumping Administrative Review,* 67 FR 58018 (September 13, 2002). On November 1, 2002, the Department extended the deadline for the preliminary results of review of Hunan until January 23, 2003 (67 FR 66614). This deadline was then fully extended, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (''the Act'') by another 36 days (68 FR 4761). On March 7, 2003, the Department published the preliminary results of review (68 FR 11041). The Department has now completed this review in accordance with section 751 of the Act.

Scope of the Antidumping Duty Order

The products covered by the order are natural paintbrushes from the PRC. Excluded from the order are paintbrushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments. Accordingly, we continued to find that a margin of 0.00 percent exists for Hunan for the period February 1, 2001 through January 31, 2002. The Department will issue assessment instructions directly to the U.S. Bureau of Customs and Border Protection (''Customs'').

Duty Assessment and Cash Deposit Requirement

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respect to all shipments of paintbrushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be the rate indicated above; (2) for companies previously found to be eligible for a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit

rate will be the PRC-wide rate of 351.92 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 exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under section 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.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the 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 administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 19, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13263 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Intent Not To Revoke the Antidumping Duty Order

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

ACTION: Notice of final results of changed circumstances antidumping duty administrative review and intent not to revoke antidumping duty order.

SUMMARY: On March 27, 2003, the Department published a notice of preliminary results of changed circumstances review and preliminarily found that there was no reasonable basis to determine that changed circumstances sufficient to warrant revocation exist. In our preliminary results, we gave interested parties an opportunity to comment. *See* 68 FR 14945 (March 27, 2003). On April 25, 2003, the sole domestic producer of sebacic acid, SST Materials, Inc., doing business as Genesis Chemicals, Inc. (Genesis), submitted a letter in support of the Department's preliminary results. We received no other comments. Therefore, the final results do not differ from the preliminary results, and we find that changed circumstances do not exist to warrant revocation of the order.

EFFECTIVE DATE: May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh at (202) 482–0629 or (202) 482–3693, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 2003, the Department published in the **Federal Register** a notice of preliminary results of changed circumstances review and preliminary intent not to revoke the antidumping duty order for sebacic acid from the People's Republic of China (PRC). *See* 68 FR 14945. On April 25, 2003, Genesis submitted comments on the Department's preliminary results. Genesis reiterated that it was the sole domestic producer of sebacic acid, produces commercial quantities of sebacic acid in the United States, and noted that since filing both its questionnaire response and additional comments in February 2003, it has increased its production staff and invested additional capital to increase domestic sebacic acid production capacity. We received no other comments from interested parties on the Department's preliminary results.

Scope of the Review

The products covered by this review are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maxim-um APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Final Results of Changed Circumstances Review

Pursuant to §751(d) of the Tariff Act of 1930 (the Act), the Department may revoke an antidumping duty order based on a review under §751(b) of the Act. 19 CFR 351.222(g)(1)(i) provides that the Department may revoke an order, in whole or in part, based on changed circumstances if ''(p)roducers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) * * * have expressed a lack of interest in the order, in whole or in part * * *'' *See also* §782(h)(2) of the Act. Based on the fact that Genesis objects to the revocation of the antidumping duty order, and has indicated that it comprises the universe of domestic sebacic acid producers, we have determined that there are no grounds for concluding that substantially all of the domestic producers of like product have expressed a lack of interest in maintaining the order.[1] As a result, we determine that changed circumstances sufficient to warrant revocation of the antidumping duty order on sebacic acid from the PRC do not exist. Therefore,

[1] An article from the trade journal ''Chemical Market Reporter,'' dated January 20, 2003, was placed on the record which indicated that: (1) Arizona Chemical Corporation and CasChem, Inc. had been the only domestic producers of sebacic acid but both ceased domestic production of sebacic acid in December 2002; (2) Genesis began producing sebacic acid in December 2002; and (3) Genesis, as of January 2003, was the sole domestic producer of sebacic acid.

the Department is maintaining the order on sebacic acid from the PRC.

This notice is published in accordance with §§ 751(b)(1) and 777(i) of the Act, and 19 CFR 351.221(c)(3).

Dated: May 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–13264 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Steel Concrete Reinforcing Bars from Latvia: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Kemp or Constance Handley at (202) 482–5346 or (202) 482–0631, respectively; Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On September 3, 2002, Joint Stock Company Liepajas Metalurgs, a Latvian producer of subject merchandise, requested an administrative review of the antidumping duty order on Steel Concrete Reinforcing Bars from Latvia. On October 24, 2002, the Department published a notice of initiation of the administrative review, covering the period January 30, 2001, through August 31, 2002 (67 FR 65336). The preliminary results are currently due no later than June 2, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman, Director, Office V, to Holly Kuga, Acting Deputy Assistant Secretary, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results by two months until no later than August 4, 2003. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 21, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement II.

[FR Doc. 03–13262 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–815]

Notice of Correction To the Notice of Intent To Rescind Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Argentina

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

ACTION: Notice of correction to notice of intent to rescind countervailing duty administrative review.

SUMMARY: On May 16, 2003, the Department of Commerce (the Department) issued a notice of intent to rescind the countervailing duty administrative review on certain hot-rolled carbon steel flat products from Argentina (hot-rolled products), covering the period January 1, 2001 through December 31, 2001, and one manufacturer/exporter of the subject merchandise, Siderar Sociedad Anomina Industrial & Commercial (Siderar). *See Notice of Intent to Rescind Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Argentina,* 68 FR 26572 (May 16, 2003).

EFFECTIVE DATE: May 28, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Cindy 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) 482–3692 or (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION: The Department inadvertently omitted to indicate that it was issuing a Notice of Preliminary Results and Intent to Rescind Countervailing Duty Administrative Review (CVD) when it issued the Notice of Intent to Rescind Countervailing Duty Administrative Review on Certain Hot-Rolled Carbon Steel Flat Products from Argentina. Therefore, this notice of correction serves as an amendment and notification of the issuance of the preliminary results and intent to rescind the CVD review. The Department also omitted the following paragraph. This paragraph is hereby incorporated into the preliminary results and notice of intent to rescind.

Public Comment

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to the notice of intent to rescind the countervailing duty administrative review on certain hot-rolled carbon steel flat products from Argentina. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument; (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. The Department will publish the final results on the rescission of the countervailing duty administrative

review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and §§ 351.213(d) and 351.309(b) of the Department's regulations.

Dated: May 20, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–13265 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051703A]

NOAA's New Strategic Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is the premier United States agency for environmental assessment, prediction and management providing broad benefits to the national economy, public safety and environment. NOAA has recently completed a new strategic plan for the agency responding to growing national needs for environmental information and management. NOAA's new Strategic Plan is now the blueprint for the direction of NOAA's core and future missions and is being institutionalized in every aspect of NOAA's resource planning and priority setting. An important step in this process is aligning all organizational components within NOAA to the Strategic Plan. To that end, NOAA Line organizations have now drafted new strategic plans together with new performance measures and performance metrics.

DATES: Comments will be accepted through June 20, 2003.

ADDRESSES: Send comments to Ms. Kelley Smith, NOAA Strategic Planning, Program Planning and Integration Office, National Oceanic and Atmospheric Administration (NOAA), Room 15755, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ms. Kelley Smith, phone: 301–713- 1622, ext. 197 , fax: 301–713–0585.

Status: NOAA encourages all stakeholders and users to review the NOAA Line Organization's draft Strategic Plans. All comments must be submitted by individuals or individual organizations. Group consensus comments will not be accepted. The drafts of the NOAA Line Organization's Strategic Plans and directions for submitting comments have been posted at *http://www.osp.noaa.gov/*. Comments, questions and suggestions are welcomed from both scientific and stakeholder communities. Comments on these draft Strategic Plans can be submitted up to June 20, 2003, by using the web site or by submitting directly to the following e-mail address: strategic.planning@noaa.gov.

Matters To Be Considered: All comments received will be reviewed and considered in the final drafting of NOAA's new Line Organization's Strategic Plans.

Dated: May 20, 2003.

Joyce Wood,

Director, NOAA Strategic Planning Office.

[FR Doc. 03–13273 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030506116–3116–01, I.D. 050103E]

RIN 0648–ZB51

Financial Assistance for Fisheries Disasters

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

ACTION: Notice of solicitation for applications.

SUMMARY: This Fisheries Disasters program provides financial assistance for assistance to the shrimp industries in the Gulf and South Atlantic. The Catalog of Federal Domestic Assistance Number is 11.452, titled Unallied Industry Projects.

DATES: Your application must be received by close of business (5 p.m. eastern standard time on June 27, 2003. Applications received after that time will not be considered for funding. The earliest start date of awards is approximately 45 days after the date of publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

ADDRESSES: You can obtain an application package from, National Marine Fisheries Service, State/Federal Liaison Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Send completed applications to this same address. You may also obtain forms from: *http://caldera.sero.nmfs.gov/grants/grants.htm*.

FOR FURTHER INFORMATION CONTACT: Ellie Francisco Roche, Chief, State/Federal Liaison Office at 727–570–5324 or at *Ellie.Roche@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authority

We are soliciting applications for Federal assistance pursuant to Division N, Title V, Section 501 (Fisheries Disasters),of the Consolidated Appropriations Resolution, 2003 P.L.108–7.

II. Program Description and Purpose

Economic assistance, as described below, is being provided to the South Atlantic shrimp fishery and the Gulf shrimp fishery. $17,500,000 shall be made available for assistance to the shrimp industries in the states of South Carolina, Georgia, North Carolina, and Florida, in proportion to the percentage of the shrimp catch landed by each state, for economic assistance to the South Atlantic shrimp fishery. The State of Florida shall receive only that proportion associated with landings of the Florida east coast fishery.

In addition, $17,500,000 shall be made available for assistance to the shrimp industries in the states of Mississippi, Texas, Alabama, Louisiana, and Florida, in proportion to the percentage of the shrimp catch landed by each state, for economic assistance to the Gulf shrimp fishery. The State of Florida shall receive only that proportion associated with landings of the Florida gulf coast fishery.

Two percent of funds received by each state shall be retained for distribution of additional payments to fishermen with a demonstrated record of compliance with turtle excluder and bycatch reduction device regulations. The remaining funds may be used only for: personal assistance, with priority given to food, energy needs, housing assistance, transportation fuel, and other urgent needs; assistance for small businesses including fishermen, fish processors, and related businesses serving the fishing industry; domestic product marketing and seafood promotion; state seafood testing programs; development of limited entry programs for the fishery; funding or other incentives to ensure wide-spread and proper use of turtle excluder devices and bycatch reduction devices in the fishery; and voluntary capacity

reduction programs for shrimp fisheries under limited access. The authority for the assistance described above does not impose residency requirements.

III. Funding Availability

Approximately $35.0 million will be available in fiscal year (FY) 2003 for projects. Consistent with the funding formula discussed in Section II above, of the $17,500,000 provided for economic assistance to the Gulf shrimp fishery, we anticipate that approximately $1,021,080 shall be available for the shrimp industry in Alabama, $1,072,006 shall be available for the shrimp industry in Florida, $8,688,866 shall be available for the shrimp industry in Louisiana, $1,003,307 shall be available for the shrimp industry in Mississippi, and $5,534,740 shall be made available for the shrimp industry in Texas. Of the $17,500,000 provided for economic assistance to the South Atlantic shrimp fishery, we anticipate that approximately $4,877,680 shall be available for the shrimp industry in North Carolina, $3,658,916 shall be available for the shrimp industry in South Carolina, $3,336,624 shall be available for the shrimp industry in Georgia, and $5,626,780 shall be available for the shrimp industry in Florida.

IV. Funding Period and Restrictions

Grants will be awarded for a maximum period of 36 months. Not more than 5 percent of grant funds may be used for administrative expenses, and no funds may be used for lobbying activities or representational expenses. Construction is not an allowable activity under this program. Therefore, applications will not be accepted for construction projects.

V. Cost Sharing

Cost-sharing is not required for this fisheries disasters program.

VI. Eligibility Information

Institutions of higher education, and state, local and Indian tribal governments are eligible to apply.

VII. Application Information

Content, Form and Submission of Applications

Project applications must include a narrative project description which provides a clear presentation of the proposed work, the methods for carrying out the project, and an explanation of how the proposed activities will fulfill the purposes of the disaster assistance, as described in Section II above. Project applications must identify the principal participants, and include copies of any agreements describing the specific tasks to be performed by participants. A budget, which includes a detailed breakdown by category of expenditures, with appropriate cost estimates and justifications as they relate to specific aspects of the project, must be provided.

Applications must be one-sided and unbound. You must submit one signed original and two signed copies of the completed application (including supporting information). We will accept neither facsimile applications, nor electronically forwarded applications.

Three copies (one original and two copies) of each application are required and should be submitted to the NMFS Southeast Regional Office, State/Federal Liaison Office (see **ADDRESSES**). We must receive your application by close of business (5 p.m. eastern daylight time on June 27, 2003. Applications received after that time will not be considered for funding. All incomplete applications are returned to the applicant.

VIII. Application Review and Selection Process

When we receive applications we will screen them to ensure that they were received by the deadline date (see **DATES**); include SF 424 signed and dated by an authorized representative; were submitted by an eligible applicant; address the program purpose; and include a budget, statement of work, milestones, and identify the principal organizations carrying out work under the grant.

Merit Review - Applications responsive to this solicitation will be evaluated by a review panel of three individuals with disaster assistance expertise, in order to determine their merit. Reviewers will assess the applications on the criteria listed below, which are weighted equally. Each reviewer will provide individual evaluations of the proposals Based on these individual evaluations, reviewers will rank the applications received on behalf of the fishing industries of the states listed in section II above.

The following Evaluation Criteria will be applied by the reviewers: (1) Importance/relevance and applicability of application - how the application relates to the accomplishments of the program's purpose; (2) Technical/scientific merit - whether the application has sufficient technical and scientific merit that will adequately address project goals and objectives; (3) Overall qualifications of the applicant - experience with the fisheries industry; (4) Project costs - whether the proposed costs are reasonable and consistent with Section III, Funding Availability; and (5) Outreach and education - whether the scope of the application's proposed activities are sufficient to disseminate disaster relief information.

Following the merit review, the applications will be provided to the Regional Administrator, Southeast Region, who is the selecting official. In determining the projects to be recommended for funding, the Regional Administrator will consider the evaluation and rankings of the review panel members, along with the following selection factors: Availability of funding; balance/distribution of funds by geography/institutions/project types; duplication of other projects funded or considered for funding by NOAA/Other Federal Agencies; program priorities and policy factors; applicants' prior award performance; and partnerships with/participation of targeted groups.

IX. Award Administration Information

1. Award Notices - Successful applications generally will be notified approximately within 45 days from the date of publication of this notice. Projects must not be initiated until a signed award is received from the NOAA grants Office. Unsuccessful applications will be returned to the applicant.

2. Administrative Requirements - If you are selected to receive a grant award for a project, you must:

- Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.
- Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA Grants in accordance with the award conditions.

3. Reporting - Successful applicants will be required to:

- Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.
- Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you

performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project. We will provide you with formats for the semiannual and final reports.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are encouraged to submit final reports in electronic format, in accordance with the award terms and conditions. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award.

X. Other Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67FR 55109), are applicable to this solicitation.

Intergovernmental Review - Applications under this program are subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs. Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under Executive Order 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html*.

Classification

This action has been determined to be not significant for the purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, cooperative agreements, benefits and contracts. 5 U.S.C. 553(a)(2). Therefore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget (OMB) control number. This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, and 269 has been approved by OMB under the respective control numbers 0348–0043, and 0348–0039.

Dated: May 20, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, Natiuonal Marine Fisheries Service.

[FR Doc. 03–13272 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051203C]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public workshops on collecting information about vessel expenses and earnings in the Gulf of Mexico reef fish and coastal pelagics (mackerel) fisheries.

DATES: The public workshops will be held in May and June. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to, and copies of the scoping document are available from, the Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

For specific location regarding the public workshops, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dr. Antonio Lamberte, Senior Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Council will conduct workshops on collecting information about vessel expenses and earnings in the Gulf of Mexico reef fish and coastal pelagics (mackerel) fisheries. The main goal of the workshops is to solicit the views of participants on the importance and necessity of collecting vessel and trip level information on expenses and earnings. In addition, participants will be asked for their views on the methods of collecting such information.

Vessel expenses and earnings, also known as cost and returns, information is extremely important as it allows the Council to have a better understanding of the economic impacts of proposed management actions while they are still under consideration. In addition, several laws such as the Magnuson-Stevens Fishery Conservation and Management Act, National Environmental Policy Act, Regulatory Flexibility Act, and Executive Order 12866 require the use of economic information in the deliberation and formulation of regulations. Fishery participants' views regarding the nature and collection of this information are critical so that at the time it is collected, assembled, and analyzed a more credible picture of the economic condition of the fishery will be depicted and used in the management process.

Council staff, with the assistance of NMFS staff, will conduct the workshops. All workshops will begin at 6 p.m. local time and conclude at about 9 p.m. at the following locations and dates:

1. Tuesday, May 27, 2003, Four Points Hotel by Sheraton, 1325 Miracle Strip Parkway, Fort Walton Beach, FL 32548; telephone: 850–796–3815;

2. Wednesday, May 28, 2003, Adam's Mark Hotel, 64 South Water Street, Mobile, AL 36602; telephone: 251–438–4000;

3. Thursday, May 29, 2003, Mississippi Department of Marine Resources, 1141 Bayview Avenue, Biloxi, MS 39530; telephone: 228–374–5000;

4. Monday, June 2, 2003, Texas City Department of Recreation &Tourism, Nessler Center, 2010 5th Avenue North, Texas City, TX 77590; telephone: 409–643–5990;

5. Tuesday, June 3, 2003, Lake Jackson Library, 250 Circle Way, Lake Jackson, TX 77566; telephone: 979–297–1271;

6. Wednesday, June 4, 2003, Matagorda Volunteer Fire Department, P. O. Box 70, Matagorda, TX 77457; telephone: 979–863–7551;

7. Thursday, June 5, 2003, Holiday Inn Beachside Key West, 3841 N. Roosevelt Blvd, Key West, FL 33040; telephone: 305–294–2571;

8. Friday, June 6, 2003, La Quinta Inn Fort Myers, 4850 S. Cleveland Avenue, Fort Myers, FL 33907; telephone: 941–275–3300;

9. Monday, June 9, 2003, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708; telephone: 727–391–9951;

10. Wednesday, June 11, 2003, Larose Civic Center, 307 East 5th Street, Larose, LA 70373; telephone: 985–693–7355;

11. Thursday, June 12, 2003, Police Jury Annex, 110 Smith Circle, Cameron, LA 70631; telephone: 333–775–5718; and

12. Friday, June 13, 2003, Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062; telephone: 504–469–5000.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**).

Dated: May 21, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–13276 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Change to the Nation's Tidal Datums With the Adoption of a New National Tidal Datum Epoch Period of 1983 through 2001

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice to advise the public of national updates to tidal datums due to the adoption of a new National Tidal Datum Epoch 1983 through 2001.

SUMMARY: NOAA's National Ocean Service, Center for Operational Oceanographic Products and Services (CO–OPS), will update the Nation's tidal datums to a new National Tidal Datum Epoch (NTDE) to adjust for changes in mean sea level that have occurred along the Nation's coast over the past 25 years. The NTDE update from the 1960–1978 to the 1983–2001 time period will be effective April 21, 2003. The NTDE is a specific 19-year period over which tide observations are taken to determine Mean Sea Level and other tidal datums such as Mean Lower Low Water and Mean High Water. This period includes an 18.6 year astronomical cycle that accounts for all significant variations in the distances to the moon and sun that cause slowly varying changes in the range of tide. It is the policy of NOS to consider a revised NTDE every 20–25 years in order to take into account relative sea level changes caused by global sea level rise and the effects of long term land movement on local sea level due to subsidence or glacial rebound. The NTDE of 1983–2001 has been adopted so that all tidal datums throughout the United States will be based on one specific common reference period.

This action is necessary to provide the latest up-to-date information available for applications that are essential to supporting Federal, State and private sector coastal zone activities, including hydrographic surveys and coastal mapping, navigational safety, wetland restoration, marine boundary determinations, coastal engineering, storm warnings and hazard mitigation, emergency management, and hydrodynamic modeling.

FOR FURTHER INFORMATION: Visit the NOS' CO–OPS Web site (*http://www.tidesandcurrents.noaa.gov*) or contact the CO–OPS office at the following address: NOAA, National Ocean Service, CO–OPS, Products and Services N/OPS3, Attn: Water Levels, 1305 East-West Highway, Silver Spring, MD 20910–32821, U.S.A., Telephone: 301–713–2877 x176, Fax: 301–713–4437.

SUPPLEMENTARY INFORMATION: Due to the small vertical changes (0.10 meters/0.3 foot or less) in comparison to the overall accuracy of hydrographic-cartographic processes and scale of the charts, for the most part, the shoreline, depth soundings values, isobaths, etc., will not be significantly modified as a result of the tidal datum updates. However, in some regions that have experienced rapid land movement, changes to actual soundings and shoreline depiction may be required on the next regularly scheduled chart edition. Although depictions of the datum changes will not be evident on the largest scale NOS nautical charts, the datum changes will be noticeable when establishing or re-occupying tide stations using accepted surveying techniques and the numerical relationships for tidal benchmarks provided by NOS' CO–OPS. These tidal datum relationships will be made available to the public in the form of updated published tidal benchmark sheets and accepted datums.

Dated: May 21, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–13190 Filed 5–27–03; 8:45 am]

BILLING CODE 3510–JE–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by August 31, 2003.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps, Attn: Angela Roberts, Senior Program Officer, 1201 New York Avenue, NW, Washington, DC 20525. Comments may also be sent via e-mail to *aroberts@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Angela Roberts, (202) 606–5000, ext. 111.

SUPPLEMENTARY INFORMATION: Currently, the Corporation is soliciting comments concerning the revision of its National Senior Service Corps Project Progress Report (OMB Control Number 3045–0033, with an expiration date of 5/31/2003). However, the Corporation has submitted an extension request to OMB to allow for the continued use of this report during the public comment period and the OMB review. Copies of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

Comment Request

The Corporation is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 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.

Background

The Progress Report (PPR) was designed to assure that National Service Corps (NSSC) grantees address and fulfill legislated program purposes, meet agency program management and grant requirements, and assess progress toward work plan objectives agreed upon in the granting of the award.

Current Action

The Corporation seeks to revise the current PPR: (a) Enhance data elements collected via this information collection tool; (b) migrate the paper version of the form to the Corporation's electronic grants management system, eGrants; and (c) establish reporting periods consistent with the Corporation's integrated grants management and reporting policies.

The Corporation anticipates making available to all NSSC grantees an OMB approved revised PPR by October of 2003.

The revised PPR will be used by NSSC grantees to report progress toward accomplishing work plan goals and objectives, meeting challenges encountered, describing significant activities, and requesting technical assistance. Submission requirements are proposed to be revised as follows:

• Established multi-year NSSC grantees will submit the complete report semi-annually within 30 days of the end of their annual budget cycle.

• New projects in their first year, new components of statewide projects, demonstrations, and projects experiencing problems or with substantial project revisions will submit the PPR quarterly.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: National Senior Services Corps Project Progress Report.

OMB Number: 3045–0033.

Agency Number: CNCS Form 1020.

Affected Public: Sponsors of National Senior Service Corps grants.

Total Respondents: 1,350.

Frequency: Semi-annual. It is estimated that 1,250 will respond semi-annually and 100 quarterly.

Average Time Per Response: 9.7 hours.

Estimated Total Burden Hours: 12,550 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): $2,599.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 21, 2003.

Tess Scannell,

Director, National Senior Service Corps.

[FR Doc. 03–13259 Filed 5–27–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the U.S. Joint Forces Command Transformation Advisory Group

AGENCY: Department of Defense

ACTION: Notice of establishment.

SUMMARY: The U.S. Joint Forces Command Transformation Advisory Group (TAG) is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' title 5 U.S.C., appendix 2. The TAG will provide guidance and assistance in fulfilling Joint Forces Command's mission. The TAG will address subject related to the study and experimentation of joint warfighting concepts and capabilities.

The TAG will be composed of a broad spectrum of nationally renowned civilian and military members able to give diverse and divergent points of view. The committee will be balanced among military and civilian national security experts, academicians, civilian leaders in public service, and others who will afford this command multiple views on issues affecting strategic planning.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Roper-Burton, at (757) 836–0965.

Dated: May 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–13228 Filed 5–27–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0152]

Federal Acquisition Regulation; Submission for OMB Review; Service Contracting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning service contracting. A request for public comments was published in the **Federal Register** at 68 FR 10212 on March 4, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before June 27, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB,

Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA, 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This FAR requirement implements the statutory requirements of Sec. 834, Pub. L. 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at $100,000 or more. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

B. Annual Reporting Burden

Number of Respondents: 19,906.
Responses Per Respondent: 1.
Annual Responses: 19,906.
Average Burden Per Response: 30 minutes.
Total Burden Hours: 9,953.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: May 20, 2003.

Ralph J. DeStefano,

Acting Director, Acquisition Policy Division.

[FR Doc. 03–13204 Filed 5–27–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Finance and Accounting Service Board of Advisers

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Comptroller).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the third meeting of the Defense Finance and Accounting Service (DFAS) Board of Advisers. The Deputy Secretary of Defense chartered the Board on October 4, 2000, to provide advice and recommendations to the Secretary of Defense and Deputy Secretary of Defense regarding the mission of DFAS as it transforms its financial management operations, processes, and systems. The Board's charter was renewed on October 4, 2002. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Thursday, June 19, 2003.

ADDRESSES: Double Tree Hotel, Crystal City—National Airport, Salon A, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Beverly A. Lemon, Corporate Planning, DFAS, Crystal Mall 3 (room 206), 1931 Jefferson Davis Highway, Arlington, VA 22240. Telephone (703) 607–3839.

SUPPLEMENTARY INFORMATION:

Proposed Schedule and Agenda

The Defense Finance and Accounting Service Board of Advisors will meet in open session from 2 p.m. to 4 p.m. on June 19, 2003. The meeting will include briefings and discussions on the State of DFAS, the DFAS Transformation, and DFAS Benchmarking results. Public seating is limited, and is available on a first-come first-served basis.

Dated: May 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–13229 Filed 5–27–03; 8:45 am]

BILLING CODE 5001–01–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 Missile Defense, Phase III (Modeling and Simulation) will meet in closed session on June 16, 2003, at the Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, VA. The Task Force will assess: The scope of the modeling and simulation effort; the appropriateness of the level of fidelity of classes of simulations; the impact of communications in the end-to-end models; the approaches to ensuring the validity of simulations for all uses, including exercises and wargaming done for training and operations concept development; and additional opportunities for modeling and simulation contribution to Ballistic Missile Defense Systems development and evaluation.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will address the above mentioned issues in a system of systems context with particular emphasis on battle management systems, command and control systems, and the global sensor system. The Task Force will provide advice on the state of modeling and simulation for use in assessing overall performance of segments of the Ballistic Missile Defense Systems; *e.g.,* ground-based midcourse intercept system, space-based interceptor system.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: May 20, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–13230 Filed 5–27–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Construction of the Thomas Jefferson Hall (Cadet Library-Learning Center) and Other Cadet Zone Activities Within the United States Military Academy (USMA), West Point, NY

AGENCY: U.S. Military Academy, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the DEIS which assesses the potential environmental impacts of the design, construction and operation of the new Cadet Library-Learning Center, identified as Thomas Jefferson Hall, and other Cadet Zone Activities at USMA.

DATES: The comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain copies of the DEIS or submit comments, contact Douglas R. Cubbison, Acting NEPA Coordinator, Directorate of Housing & Public Works, Engineering Plans & Services Division,

Building 667 Ruger Road, West Point, New York 10996.

FOR FURTHER INFORMATION CONTACT: Douglas R. Cubbison at (845) 938–3522, by fax at (845) 938–2529, by e-mail at *yd5777@exmail.usma.army.mil,* or by mail at the above address.

SUPPLEMENTARY INFORMATION: The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns regarding the proposed and alternative actions related to academic modernization activities within the Cadet Zone at the USMA. Modernization activities include the construction of a new library and learning center, potential demolition of structures that no longer contribute to the USMA mission, and construction of new facilities to support the USMA mission and modernize the Cadet Zone. These actions are needed to fulfill current and future needs for library and learning space necessary to maintain university accreditation and academic excellence, and to update existing cadet facilities.

Potential consequences of the proposed project identified during interagency and public scoping meetings and addressed in this DEIS include impacts to cultural and visual resources. In particular, these concerns involve the existing significant viewsheds of the Cadet Zone and the configuration and orientation of the new library on the preferred site. The Army anticipates that cultural and visual resources will be affected by the implementation of the proposed action. The Army has responded to these concerns by modifying elements of the proposed action, including the massing of the proposed building and architectural features of its facades.

Secondary and cumulative impacts also were evaluated for the proposed and alternative actions, as well as ongoing and recently completed projects and recently foreseeable future actions. The analyses indicate that adverse environmental consequences, such as the alteration of existing significant viewsheds, would be balanced by beneficial effects, such as the modernization of the Cadet Zone, the continuation of USMA accreditation and an enhanced academic environment.

The Army has considered agency concerns and responded by incorporating recommended changes in the design of the proposed action. Potential adverse environmental impacts to cultural and visual resources will be properly mitigated through a Programmatic Agreement with the New York Office of Parks Recreation and Historic Preservation, the Advisory Council on Historic Preservation and the National Park Service.

A public meeting will be held at the Highland Falls Library in the spring 2003 to solicit both oral and written comments from interested parties. The DEIS will be made available at least two weeks in advance of the scheduled public meeting. The public meeting date and time will be advertised in advance in local newspapers and meeting announcement letters will be sent to potentially interested parties.

Comments on the DEIS received during the 45-day public comment period will be considered in the preparation of the Army's Final EIS and Record of Decision. Copies of the DEIS are available for review at the following libraries: USMA Post Library (Building 622), USMA Cadet Library (Building 757), Cold Spring Public Library, Highland Falls Public Library, Cornwall Public Library and Garrison Public Library.

Dated: May 20, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 03–13219 Filed 5–27–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Navy Case No. 82,499, entitled ''Infrared Countermeasure System for Protecting Commercial Platforms'' and Navy Case No. 84,395, entitled ''Hollow Core Photonic Band Gap (HCPBG) Infrared Fiber Sensors.''

ADDRESSES: Requests for information about the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: May 20, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–13220 Filed 5–27–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 28, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will

this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 21, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: National Assessment of Educational Progress: 2004 Field Test and 2005 Full Scale Study, Science.

Frequency: Annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 45,130.

Burden Hours: 11,350.

Abstract: In 2004 the National Assessment of Educational Progress will field test materials for the 2005 full scale assessment on science. The materials contained in this clearance package are the questionnaires for students, teachers, and school administrators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2278. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@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. 03–13257 Filed 5–27–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 27, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 21, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of Children with Disabilities Exiting Special Education During the School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58.

Burden Hours: 30,508.

Abstract: This package provides instructions and a form necessary for States to report the number of students aged 14 and older served under the Individuals with Disabilities Education Act (IDEA)-B exiting special education. The form satisfies reporting requirements and is used by Office of Special Education Programs (OSEP) to monitor state educational agencies (SEAs) and for Congressional reporting.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2233. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@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. 03–13258 Filed 5–27–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 19, 2003, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

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 and waste management activities.

Tentative Agenda:

5:30 p.m. Informal Discussion.
6 p.m. Call to Order; Approve May Minutes; Review Agenda.
6:10 p.m. DDFO's Comments.
- Budget Update.
- ES & H Issues.
- EM Project Updates.
- CAB Recommendation Status.
- Other.

6:30 p.m. Federal Coordinator Comments.
6:40 p.m. Ex-officio Comments.
6:50 p.m. Public Comments and Questions.
7 p.m. Administrative Issues.
- June Dinner Meeting.
- Review of Workplan.
- Review Next Agenda.

7:20 p.m. Review of Action Items.
7:35 p.m. Break.
7:45 p.m. Presentation.
- Site Management Plan Dispute Resolution.
- Cleanup Scope Discussion.
- Kentucky Pollutant Discharge Elimination System (KPDES) Permit Update

8:45 p.m. Public Comments and Questions.
8:55 p.m. Task Force and Subcommittee Reports.
- Water Task Force.
- Waste Operations Task Force.
- Long Range Strategy/Stewardship.
- Community Concerns.
- Public Involvement/Membership.
- Chairs' Meeting Ad Hoc.

9:25 p.m. Final Comments.
9:30 p.m. Adjourn.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. 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 as the first item of the meeting agenda.

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 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC, on May 22, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–13249 Filed 5–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, June 11, 2003, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- The meeting presentation will feature an overview of the Tennessee Oversight Agreement as it pertains to ongoing monitoring programs. John Owsley, Director of the DOE Oversight Division of the Tennessee Department of Environment and Conservation and ORSSAB Ex Officio, will provide the information.

After offering background information on two other aspects of the Tennessee Oversight agreement, management of the Federal Facilities Agreement grant and operation with the Tennessee Emergency Management Agency, Mr. Owsley will focus on the Oversight and Monitoring Program. In particular, he will discuss recent findings by the state as they relate to ambient monitoring.

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 Pat Halsey 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. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN

37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on May 22, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–13250 Filed 5–27–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–583–001, FERC–583]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

May 20, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of November 18, 2002 (67 FR 69514–15) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by June 23, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC03–583–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to efiling@ferc.gov. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. **FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–583 ''Annual Kilowatt Generating Report''

2. *Sponsor:* Federal Energy Regulatory Commission

3. *Control No.:* 1902–0136.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 10(e) of the Federal Power Act (FPA), and section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA), 42 U.S.C. 7178. Section 10(e) authorizes the Commission to collect annual charges from hydroelectric licenses for among other things, the cost of administering part I of the FPA and for administering the costs of administering United States dams. Section 3401 of OBRA authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all the costs incurred . . . in that fiscal year''. The annual charges must be computed based on methods that the Commission has determined to be fair equitable. The annual charges do not enable the Commission to collect amounts in excess of expenses, but merely serve as a vehicle to reimburse the United States Treasury for the Commission's expenses. (42 U.S.C. 7178(f))

The Commission's staff use the information to determine the amounts of annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

5. *Respondent Description:* The respondent universe currently comprises 660 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 1,320 total hours, 660 respondents(average), 1 response per respondent, 2 hours per response (average).

7. *Estimated Cost Burden to respondents:* 1,320 hours/2080 hours per years x $117,041 per year = $74,276. The cost per respondent is equal to $113.00.

Statutory Authority: Section 10 of the Federal Power Act, 16 U.S.C. 803(3) and section 3401 of the Omnibus Budget Reconciliation Act of 1986, 42 U.S.C.7178.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13209 Filed 5–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–124–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

May 20, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Department of Energy Southwestern Power Administration, Complainant, v. Entergy, Arkansas, Incorporated, Respondent

[Docket No. EL03–124–000]

Take notice that on May 16, 2003, Southwestern Power Administration tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint related to the cancellation by Entergy, Arkansas, Incorporated of FERC Electric Rate Schedule No. 141, Docket No. ER94–104. Southwestern Power Administration asks the Commission to direct Entergy to cease and desist from the threatened termination of service and to comply with the terms and conditions of the Electric Rate Schedule and its contract.

Comment Date: June 5, 2003.

2. TransAlta Energy Marketing (U.S.) Inc., Complainant, v. Bonneville Power Administration, Respondent

[Docket No. EL03–125–000]

Take notice that on May 16, 2003, TransAlta Energy Marketing (U.S.) Inc. (TransAlta) filed a Complaint And Request For Fast Track Processing pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (2000), and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, requesting that the Commission issue an order directing the Bonneville Power Administration (BPA) to honor TransAlta's rollover rights to which TransAlta asserts it is entitled to under the provisions of BPA's Commission-approved open-access transmission tariff.

TransAlta states that copies of this filing were served on representatives of BPA by facsimile, electronic mail and Federal Express overnight delivery.

Comment Date: June 5, 2003.

3. Idaho Power Company

[Docket Nos. ER03–487–002 and ER03–488–002]

Take notice that on May 15, 2003, Idaho Power Company filed a revision to its May 1, 2003 compliance filing in Docket Nos. ER03–487–001 and ER03–488–001.

Comment Date: June 5, 2003.

4. Carolina Power & Light Company Florida Power Corporation

[Docket No. ER03–540–003]

Take notice that on May 15, 2003, Carolina Power & Light Company and Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission certain modifications to the credit security provisions of their Open Access Transmission Tariffs to become effective May 14, 2003, in compliance with the Commission's May 9, 2003 Order Accepting In part And Rejecting In part Tariff Sheets As Modified in this docket. Carolina Power & Light Company states that these tariff modifications supersede the tariff filings made on March 12, 2003 in Docket No. ER03–540–000.

Carolina Power & Light Company states that copies of the filing were served upon the public utilities' jurisdictional customers, the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment Date: June 5, 2003.

5. Entergy Services, Inc.

[Docket No. ER03–599–002]

Take notice that on May 15, 2003, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing revisions to Entergy Arkansas' 2003 Wholesale Formula Rate Update.

Comment Date: June 5, 2003.

6. Southern Power Company

[Docket No. ER03–713–001]

Take notice that on May 16, 2003, Southern Power Company (Southern Power) tendered a supplemental filing to its application for the approval of two long term market-rate power sale agreements by and between: (I) Georgia Power Company and Southern Power for Plant McIntosh Units 10 and 11, dated June 3, 2002, and (ii) Savannah Electric and Power Company and Southern Power for Plant McIntosh Units 10 and 11, dated June 3, 2002, in Docket No. ER03–713–000.

Comment Date: June 6, 2003.

7. Susquehanna Energy Products, LLC; Susquehanna Energy Products, LLLP

[Docket No. ER03–768–001]

Take notice that on May 15, 2003, Susquehanna Energy Products, LLC tendered for filing a Notice of Succession stating that Susquehanna Energy Products, LLC has adopted and succeeded to the rate schedule and petition submitted by Susquehanna Energy Products, LLLP on April 23, 2003 in Docket No. ER03–768–000. In addition, Susquehanna Energy Products, LLC states that the rate schedule has been updated as appropriate and in conformance with Order No. 614.

Comment Date: June 5, 2003.

8. Katahdin Paper Company LLC

[Docket No. ER03–796–001]

Take notice that on May 14, 2003, Katahdin Paper Company LLC submitted for filing an amendment to its application for authorization to sell energy, capacity and specified ancillary services at market-based rates, certain waivers and blanket exemptions and request for expedited action.

Comment Date: May 30, 2003.

9. Virginia Electric and Power Company

[Docket No. ER03–804–001]

Take notice that May 15, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion Virginia Power) tendered for filing an executed revised Network Integration Transmission Service Agreement including an executed revised Network Operating Agreement (collectively, Revised NITSA) between Dominion Virginia Power and Old Dominion Electric Cooperative (ODEC) with a revised cover page to reflect the appropriate designation.

Dominion Virginia Power requests that the Commission accept the Revised NITSA for filing and make it effective on April 1, 2003, the date on which the Company originally requested that the NITSA become effective and the date on which service began. Dominion Virginia Power states that copies of the filing were served upon ODEC and the Virginia State Corporation Commission.

Comment Date: June 5, 2003.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–848–000]

Take notice that on May 16, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing two construction service agreements (CSA). PJM states that the CSAs are related to the Conectiv Bethlehem, Inc. (a/k/a PJM Queue # D 18) project, and are: (1) Among PJM and Conectiv Bethlehem, LLC (Conectiv Bethlehem) and PPL Electric Utilities; and (2) among PJM and Conectiv Bethlehem and Jersey Central Power & Light a First Energy Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the requested effective dates for the CSAs. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: June 6, 2003.

11. ISO New England Inc.

[Docket No. ER03–849–000]

Take notice that on May 16, 2003, pursuant to Section 205 of the Federal Power Act, ISO New England Inc. submitted a package of amendments to Market Rule 1 and Appendix A

intended to implement general market power mitigation.

ISO New England Inc., states that copies of said filing have been served upon NEPOOL Participants. ISO New England Inc., also states that copies of this transmittal letter and the accompanying materials have also been sent to the Secretary of the NEPOOL Participants Committee, the governors and electric utility regulatory agencies for the six New England states which comprise the NEPOOL Control Area, and to the New England Conference of Public Utility Commissioners, Inc.

Comment Date: June 2, 2003.

12. Entergy Services, Inc.

[Docket No. ER03–850–000]

Take notice that on May 16, 2003, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing the Fourth Revised Network Integration Transmission Service Agreement (NITSA) between Entergy Services and East Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc. (SRG&T), and Tex-La Electric Cooperative, Inc. Entergy Services states that the Fourth Revised NITSA extends the term in Section 7.0 during which SRG&T receives a monthly facilities credit for network transmission service.

Comment Date: June 6, 2003.

13. Entergy Services, Inc.

[Docket No. ER03–851–000]

Take notice that on May 16, 2003, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing an unexecuted, amended and restated Interconnection and Operating Agreement with ExxonMobil Oil Corporation (ExxonMobil), and an updated Generator Imbalance Agreement with ExxonMobil.

Comment Date: June 6, 2003.

14. New England Inc.

[Docket No. ER03–854–000]

Take notice that on May 15, 2003, pursuant to Section 205 of the Federal Power Act, ISO New England Inc., submitted a package of amendments to Market Rule 1 and Appendix F intended to implement reforms that are intended to improve pricing in the Real-Time Market during periods of reserve scarcity.

ISO New England, Inc., states that copies of said filing have been served upon NEPOOL Participants.

Comment Date: June 5, 2003.

15. Florida Power Corporation

[Docket No. ER03–855–000]

Take notice that on May 16, 2003, Florida Power Corporation (FPC), tendered for filing revisions to its Cost-Based Wholesale Power Sales Tariff, FERC Electric Tariff, First Revised Volume No. 9 (CR–1 Tariff). FPC states that the CR–1 Tariff is revised to clarify language regarding compensation due when FPC purchases power from alternative sources and to correct the effective date listed in the footer on Tariff Sheet No. 29. FPC requests that the revisions become effective on July 15, 2003.

FPC states that copies of the filing were served upon the Florida Public Service Commission and those customers taking service from FPC under the CR–1 Tariff.

Comment Date: June 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secetary.

[FR Doc. 03–13208 Filed 5–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Availability of the Environmental Assessment for the Proposed White River Replacement Project

May 20, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities by Northwest Pipeline Corporation (Northwest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of:

- Abandonment by removal of approximately 2,100 feet of parallel 26-inch- and 30-inch-diameter pipelines.
- Abandonment in place of approximately 1,100 feet of parallel 26-inch- and 30-inch-diameter pipelines.
- Retention of approximately 1,100 feet of parallel 26-inch- and 30-inch-diameter pipelines for continued service to the Enumclaw Meter Station.
- Removal of a temporary riprap stabilization structure, 380 feet of sheet piling from the south floodplain, and a 665-foot-long previously abandoned 26-inch-diameter pipeline from the White River channel.
- Installation of 1,500 to 1,540 feet of 26-inch- and 30-inch-diameter replacement pipelines in the south floodplain using conventional construction.
- Installation of approximately 3,200 feet of 26-inch- and 30-inch-diameter replacement pipelines with 2 parallel HDDs traversing underneath the floodplain and White River channel, the slope north of the White River, State Route 164, and Cameron Park.
- Installation of 300 to 340 feet of 26-inch- and 30-inch-diameter replacement pipelines north of Cameron Park using conventional construction.

The purpose of the proposed project is to provide a more permanent solution for improved pipeline safety and reliability while restoring the natural environment of the White River and its floodplain at this crossing. Recent highwater events have increased the risk

of exposure to the 26-inch- and 30-inch-diameter pipelines underneath the White River and along its south and north banks. Northwest installed a temporary riprap stabilization structure on the north riverbank in 1996 to protect its existing pipelines.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to:

Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.
- Reference Docket No. CP03–032–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 18, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to*http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–13207 Filed 5–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing Procedural Schedule for Relicensing, and a Deadline for Submission of Final Amendments

May 20, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2586–023.

c. *Date filed:* April 29, 2003.

d. *Applicant:* Alabama Electric Cooperative, Inc.

e. *Name of Project:* Conecuh River Project.

f. *Location:* On the Conecuh River, in Covington County, Alabama, this project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Scott Wright (Engineering contact) or Mike Noel (Environmental contact), Alabama Electric Cooperative, Inc., 2027 East Three Notch Street, P.O. Box 550, Andalusia, AL 36420–0550.

i. *FERC Contact:* Sean Murphy (202) 502–6145, E-mail: *sean.murphy@ferc.gov*.

j. *Deadline for filing comments on the application or requests for cooperating agency status:* July 21, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

k. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and /or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperation status should follow the instruction for filing comments described in the item j above. Requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

l. This application is not ready for environmental analysis at this time.

m. *Brief Project Description:* The 8.25-megawatt (MW) project consists of two developments: the Gant Dam Development and the Point A Development. The Point ''A'' Development consists of the following existing facilities: (1) A 2,800-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 700-acre reservoir at a normal water surface elevation of 170 feet msl; (3) a powerhouse, integral with the dam,

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

containing three generating units with a total installed capacity of 5,200 kW, (4) a 0.39-mile-long, 46-kV transmission line; and (5) other appurtenances.

The Gantt Development consists of the following existing facilities: (1) A 1,562-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 2,767-acre reservoir at a normal water surface elevation of 198 feet msl; (3) a powerhouse, integral with the dam, containing two generating units with a total installed capacity of 3,050 kW, and (4) other appurtenances.

n. With this notice, we are initiating consultation with the Alabama State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* At this time we do not anticipate the need for preparing a draft EA. We intend to prepare a single environmental document. The EA will include our recommendations for operation procedures and environmental enhancement measures that should be part of any license issued by the Commission. Recipients will have 60 days to provide the Commission with any written comments on the EA. All comments filed with the Commission will be considered in the Order taking final action on the license applications. However, should substantive comments requiring analysis be received on the NEPA document, we would consider preparing a subsequent NEPA document. *Issue Acceptance or Deficiency Letter:* July 2003. *Notice soliciting final terms and conditions:* September 2003. *Notice of the availability of the EA:* March 2004. *Ready for Commission decision on the application:* May 2004.

Final amendments to the application must be filed with the Commission no later than 45 days from the issuance date of the notice soliciting final terms and conditions.

p. *Locations of the application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie Salas,

Secretary.

[FR Doc. 03–13211 Filed 5–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–036–NY]

New York Power Authority; Notice Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

May 20, 2003.

On April 14, 2000, the Federal Energy Regulatory Commission (Commission) issued a notice for the St. Lawrence-FDR Power Project proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. On June 5, 2000, the restricted service list was modified to include the Department of the Interior (Interior). On August 2, 2001, the restricted service list was modified to: (1) Change the address for Mr. Thomas Tatham; (2) change the contact for the Saint Regis Mohawk Tribe; (3) change the contact for Interior; and (4) delete Mr. Robert Dean. On June 26, 2002, the restricted service list was modified to change the contact for the Bureau of Indian Affairs. The St. Lawrence-FDR Power Project is located on the St. Lawrence River, in St. Lawrence County, New York. The New York Power Authority is the licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following change to the existing restricted service list is noted.

Addition of William A. Hurst, Esq. as a contact for the St. Regis Mohawk Tribe.

As a result of these changes, the revised final restricted service list, for the purpose of commenting on the PA for the St. Lawrence-FDR Power Project, is as follows:

Dr. Robert Kuhn, NY Office of Parks, Recreation, and Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188–0189

William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601

Kevin Mendik, National Park Service, 15 State Street, Boston, MA 02109

Dr. James Kardatzke, Eastern Region Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004

Thomas Tatham, New York Power Authority, 123 Main Street, White Plains, NY 10601

Judith M. Stolfo, Department of the Interior, Office of the Regional Solicitor, One Gateway Center, Suite 612, Newton, MA 02458–2802

Francis Botts, THPO, Saint Regis Mohawk Tribe, 412 State Route 37, Hogansburg, NY 13655

Salli Benedict, Henry Lickers, Mohawk Council of Awkesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3

David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401

Mohawk National Council of Chief, Box 366, Rooseveltown, NY 13683

William A. Hurst, Esq., Mcnamee, Locknere, Titus & Williams, PC, 75 State Street, P.O. Box 459, Albany, NY 12207–0459

Maxine Cole, Akwesasne Task Force on the Environment, P.O. Box 992, Hogansburg, NY 13655

James Teitt, Environmental Resources Management, Northwoods II, Suite 30, 8101 N. High Street, Columbus, OH 43235

Kimberly Owens, Department of the Interior, 1849 C Street, NW., Washington, DC 20240

Magalie R. Salas,

Secretary.

[FR Doc. 03–13210 Filed 5–27–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7503–6]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Pennsylvania; Revised Attainment Plan for Pennsylvania Portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the motor vehicle emission budgets (budgets) for Philadelphia, Chester, Delaware, Montgomery and Bucks Counties contained in the revised 2005 Attainment Plan (Plan) are adequate for transportation conformity purposes. The Plan was submitted to EPA by the Pennsylvania Department of Environmental Protection (PADEP) as a State Implementation Plan (SIP) revision on January 17, 2003. EPA has found that the Plan's budgets for those five counties, which comprise the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area, are adequate for transportation conformity purposes.

DATES: The findings that the budgets are adequate were made in a letter dated April 24, 2003 from EPA Region III to the PADEP. These adequacy findings are effective on June 12, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Budney, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2184 or by e-mail at *budney.larry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' '' us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the revised Attainment Plan for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area submitted to EPA as a SIP revision on January 17, 2003.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. On January 17, 2003, PADEP formally submitted a SIP revision to EPA consisting of a revised 2005 Attainment Plan (Plan) for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area (Philadelphia, Chester, Delaware, Montgomery and Bucks Counties). On February 25, 2003, we posted the availability of the Plan and the budgets for Southeast Pennsylvania on our conformity Web site for the purpose of soliciting public comment on the adequacy of the budgets. EPA's public comment period closed on March 27, 2003. We did not receive any comments.

On April 24, 2003, EPA Region III sent a letter to PADEP that constituted final Agency action on the adequacy of the budgets contained in the Plan submitted by PADEP. That action was EPA's findings that the Plan's budgets for Philadelphia, Chester, Delaware, Montgomery and Bucks Counties are adequate for transportation conformity purposes. As a result of our April 24, 2003 findings, the revised Plan budgets contained in Pennsylvania's January 17, 2003 SIP submittal for Philadelphia, Chester, Delaware, Montgomery and Bucks Counties (the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment Area) may be used for future conformity determinations.

This is an announcement of adequacy findings that we already made on April 24, 2003. The effective date of these findings is June 12, 2003. These findings will also be announced on EPA's Web site: *http://www.epa.gov/otaq/transp.htm* (once there, click on the ''Conformity'' button). The Web site will contain a detailed analysis of our adequacy findings.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118 (e) (4) through (5).

On July 28, 2000, EPA proposed (65 FR 46383) to clarify its December 16, 1999 proposal to approve or conditionally approve and disapprove in the alternative attainment demonstration SIPs for ten areas, including the Philadelphia-Wilmington-Trenton Ozone Nonattainment area, (64 FR 70317). In that proposal we stated that even though the approved SIP would contain budgets, once we found newly revised budgets based on MOBILE6 adequate, they would apply instead of the previously approved budgets. In the October 26, 2001 approval (66 FR 54143) of the attainment demonstration for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton Ozone Nonattainment area we approved that proposal. Therefore, this adequacy finding will allow the replacement of the mobile budgets in the one-hour ozone SIP previously approved by EPA.

Please note that this adequacy finding for the mobile budgets for the revised SIP is separate from EPA's completeness determination of the revised SIP submission, and separate from EPA's action to approve or disapprove the revised SIP. Even though we have found these budgets adequate and they are replacing the previously approved mobile budgets, the revised mobile budgets contained in the revised SIP still have to be approved or disapproved.

Dated: May 7, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–13253 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0020; FRL–7307–2]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGLs) Committee will be held on June 17–19, 2003, in Washington, DC. At this meeting, the NAC/AEGLs Committee will address, as time permits, the various aspects of the acute toxicity and the development of AEGLs for the following chemicals: Benzene, bromine pentafluoride, bromine trifluoride, chlorine pentafluoride, formaldehyde, hydrogen iodide, hydrogen selenide, methyl thiocyanate, nickel carbonyl and nitric acid.

DATES: The meeting of the NAC/AEGLs Committee, will be held from 10 a.m. to 5:30 p.m. on June 17, 2003, 8:30 a.m. to 5:30 p.m., on June 18, 2003, and 8 a.m. to noon on June 19, 2003.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, Room numbers, north 3437 B, C, and D.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected, if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0020. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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 in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for September, 2003, in Washington, DC.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: May 15, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–13256 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0174; FRL–7307–9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0174, must be received on or before June 27, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6502; e-mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0174. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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 in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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.

C. 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 ID 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 is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, 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 submitter of 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.

i. *EPA Dockets*. 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0174. 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.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0174. 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.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency

(7502C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2003–0174.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0174. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in Any Previously Registered Products

1. *File Symbol*: 71512–O. *Applicant*: ISK Biosciences Corporation 7470 Auburn Road, Suite A, Concord, OH 44077. *Product Name*: Flonicamid 50 WG. Insecticide. *Active ingredient*: Flonicamid at 50%. *Proposed classification/Use*: None. For use on potatoes, pome fruit, cotton, stone fruit, fruiting vegetables, cucurbits, and leafy vegetables.

2. *File Symbol*: 279–GETT. *Applicant*: FMC Corporation 1735 Market Street, Philadelphia, PA 19103. *Product Name*: F1785 N 50 WG. Insecticide. *Active ingredient*: Flonicamid at 50%. *Proposed classification/Use*: None. For ornamental uses in nurseries and landscapes.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 13, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–13003 Filed 5–27–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–1649]

Annual Adjustment of Revenue Thresholds

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice announces that the 2002 revenue threshold between Class A carriers and Class B carriers is increased to $121 million. The 2002 revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.083 billion.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice released May 13, 2003. This notice announces the inflation-adjusted 2002 revenue thresholds used for classifying carrier categories for various accounting and reporting purposes: (1) Distinguishing Class A carriers from Class B carriers; and (2) distinguishing larger Class A carriers from mid-sized carriers. The revenue threshold between Class A carriers and Class B carriers is increased to $121 million. The revenue threshold between larger Class A carriers and mid-sized carriers is increased to $7.083 billion. The revenue thresholds for 2002 were determined as follows:

	Mid-sized threshold	Larger Class A threshold
(1) GDP–CPI Base	91.62	109.37
(2) 2002 GDP–CPI	110.66	110.66
(3) Inflation Factor (line 2 ÷ 1)	1.2078	1.0118
(4) Original Revenue Threshold	$100 million	$7 billion
(5) 2002 Revenue Threshold (line 3 * 4)	$121 million	$7.083 billion

Federal Communications Commission.

Tamara L. Preiss,

Chief, Pricing Policy Division.

[FR Doc. 03–13233 Filed 5–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–1735]

Audit of Certain 220–222 MHz Band Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireless Telecommunications Bureau (Bureau) announces it has mailed audit letters to licensees holding authorizations for certain site-specific licenses operating in three commercial radio services in the 220–222 MHz band.

DATES: Response is needed by June 13, 2003.

ADDRESSES: *http://www.wireless.fcc.gov/uls.*

FOR FURTHER INFORMATION CONTACT: Denise D. Walter, Commercial Wireless Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice,* DA 03–1735, released on May 20, 2003. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On May 14, 2003, the Federal Communications Commission's (FCC) Wireless Telecommunications Bureau (Bureau) began its license audit of the operational status of certain site-specific licenses operating in the 220–222 MHz band in the following radio services: QT (non-nationwide 5-channel trunked systems), QD (non-nationwide data), and QO (non-nationwide other).

2. Every licensee in these radio services must respond and certify, by June 13, 2003, that its authorized station(s) has not discontinued operations for one year or more.

3. Audit letters were mailed to the licensees at their address of record. If a licensee received more than one audit letter, they must respond to each letter sent by the Commission in order to account for all of its call signs that are part of the audit. Licensees can use the *Audit Search* at *http://wireless.fcc.gov/licensing/audits/220* to determine if a particular call sign is part of the audit. If the *Audit Search* shows a letter was mailed, the licensee is required to respond to the audit even though the audit letter was not received. For instructions on how to proceed in this instance, licensees should call the Commission at 717–338–2888 or 888–CALLFCC (888–225–5322) and select option 2.

4. The process for responding to the audit was included in the audit letter. A response is mandatory and must be submitted electronically by June 13, 2003. Failure to provide a timely response may result in the Commission presuming that the station has been non-operational for one year or more, and thus the license may be presumed to have automatically cancelled. Failure to provide a timely response may also result in a enforcement action, including monetary forfeiture, pursuant to section 503(b)(1)(B) of the Communications Act and 47 CFR 1.80(a)(2).

Federal Communications Commission.

William W. Kunze,

Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–13194 Filed 5–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 76A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Radino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted by early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/07/2003			
20030501	A. Jerrold Perenchio	Lowell W. Paxson	A. Jerrold Perenchio.
Transactions Granted Early Termination—04/09/2003			
20030474	Odyssey Investment Partners Fund, LP	DLJ Merchant Banking Partners II, L.P	Odyssey Investment Partners Fund, LP.
20030482	Novartis AG	Pfizer, Inc	Novartis AG.
Transactions Granted Early Termination—04/11/2003			
20030478	UXT AIV, L.P	TXU Energy Corp	UXT AIV, L.P.
20030489	Round Table Healthcare Management, L.L.C.	Mormon Holdings, Inc	Round Table Healthcare Management, L.L.C.
20030503	Pegasus Partners II, L.P	Cannondale Corporation	Pegasus Partners II, L.P.
Transactions Granted Early Termination—04/14/2003			
20021153	UTStarcom, Inc	3Com Corporation	UTStarcom, Inc.

Trans #	Acquiring	Acquired	Entities
20030500	Clear Channel Communications, Inc	A Jerrold Perenchio	Clear Channel Communications, Inc.
20030506	B. Thomas Golisano	Niagara Frontiere Hockey, L.P., Debtor in POssession.	B. Thomas Golisano
20030508	TRW Systems Federl Credit Union	Western Federal Credit Union	TRW Sytems Federal Credit Union
20030512	Matlin Patterson Global Opportunities Partners L.P.	Vantico Group S.A	Matlin Patterson Global Opportunities Partners L.P.
20030513	Jon M. Huntsman	Vantico Group S.A	Jon M. Huntsman.
20030514	EdPerPartners Limited	Great Northern Paper, Inc., (Debtor-in-Possession).	EdPerPartners Limited.
20030517	CTI Foods, LLC	J.R. Simplot Company	CTI Foods, LLC.
Transactions Granted Early Termination—04/15/2003			
20030494	Novartis AG	Idenix Pharmaceuticals, Inc	Novartis AG.
20030502	Bristol-Myers Squibb Company	OPR Development, L.P	Bristol-Meyers Squibb Company.
Transactions Granted Early Termination—04/16/2003			
20030492	UniSource Energy Corporation	Citizens Communication Company	UniSource Energy Corporation
20030523	Gary L. and Mary E. West	ITC Holding Company, Inc	Gary L. and Mary E. West.
Transactions Granted Early Termination—04/17/2003			
20030490	KL Hldings Inc	ARAMARK Corporation	KL Holdings Inc.
20030493	Fritz Gerber	Disetronic Holding AG	Fritz Gerber.
20030497	Cumulus Media Inc	Gaylord Entertainment Company	Cumulus Media Inc.
20030510	Wachovia Corporation	Prudential Financial, Inc	Wachovia Corporation.
Transactions Granted Early Termination—04/18/2003			
20030518	OCM Principal Oportunities Fund II, L.P	JR Shaw	OCM Priuncipal Opportunities Fund II, L.P.
20030521	STrigeant Holdings, Ltd	El Paso Corporation	Trigeant Holdings, Ltd.
20030522	Lincolnshiire Equity Fund II, L.P	Benetton Group S.p.A	Ljncolnshire Eqity Fund II, L.P.
20030526	SR Telecom Inc	Netro Corporation	SR Telecom Inc.
20030527	Round Table Healthcare Partners, L.P	MedAssist, Incorporated	RoundTable Healthcare Partners, L.P.
20030529	Sports Brand International LLC	Holding di Partecipazioni Industrali S.p.A.	Sports Brand International LLC.
20030531	John Hancock Financial Services, Inc	Weyerhaeuser Company	John Hancock Financial Services, Inc.
20030532	Mr. Paul G. Desmarais	Canada Life Financial Corporation	Mr. Paul G. Desmarais.
Transactions Granted Early Termination—04/23/2003			
20030525	Cablevision System Corporation	The News Corporation Limited	Cablevision System Corporation.
20030549	Russell Corporation	SHC Inc	Russell Corporation.
Transactions Granted Early Termination—04/24/2003			
20030486	Cisco Systems, Inc	Victor Tsao and Janie Tsao	Cisco Systems, Inc.
20030487	Victor Tsao and Janie Tsao	Cisco Systems, Inc	Victor Tsao and Janie Tsao.
20030528	Swiss Reinsurance Company	Irish Life & Pemannt pic	Swiss Reinsurance Company.
20030544	Apollo Investment Fund IV, L.P	Sylvan Learning Systems, Inc	Apollo Investment Fund IV, L.P.
20030545	Sylvan Learning Systems, Inc	Sylvan Learning Systems, Inc	Sylvan Learning Systems, Inc.
Transactions Granted Early Termination—04/25/2003			
20030515	SPO Partners II, L.P	ProQuest Company	SPO Partners II, L.P.
20030541	DeVry Inc	Dominica Management, Inc	DeVry Inc.
20030542	Johnson & Johnson	Aimiall=Prodesfarma S/A	Johnson & Johnson.
20030548	Cleveland-Cliffs Inc	Bethlehem Steel Corporation	Cleveland-Cliffs Inc.
20030553	APAX Europe IV-A L.P	Xerium S.A	APAX Europe IV-A L.P.
Transactions Granted Early Termination—04/28/2003			
20030554	The Goldman Sachs Group, Inc	The Ayco Company, L.P	The Goldman Sachs Group, Inc.
20030565	Bank One Corporation	Johnson & Johnson	Bank One Corporation.
20030571	The Goldman Sachs Group, Inc	El Paso Corporation	The Goldman Sachs Group, Inc.
Transactions Granted Early Termination—04/29/2003			
20030533	Engineered Support Systems, Inc	William H. Bklawa and Lauri S. Bilawa	Engineered Support Systems, Inc.
20030555	Kansas City Life Insurance Company	GuideOne Mutual Insurance Company	Kansas City Life Insurance Company.
20030559	Wind Point Partners V, L.P	Midway Investors, LLC	Wind Point Partners V, L.P
200305	Loews Corporation	The Williams Companies, Inc	Loews Corporation.

Trans #	Acquiring	Acquired	Entities
20030562	AT&T Wireless Services, Inc	Everett R. Dobson Irrevocable Family Trust.	AT&T Wireless Services, Inc.
20030563	Everett R. Dobson Irrevocable Family Trust.	AT&T Wireless Services, Inc.	Everett R. Dobson Irrevocable Family Trust.
20030564	Dow Jones & Company, Inc	Omaha World-Herald Company	Dow Jones & Company, Inc
20030566	Michael R. Kelly	National Services Industries, Inc	Michael R. Kelly
20030569	Volcano Therapeutics, Inc	JOMED, N.V	Volcano Therapeutics, Inc.
Transactions Granted Early Termination—04/30/2003			
20030543	Computer Network Technology Corporation.	SPX Corporation	Computer Network Technology Corporation.
Transactions Granted Early Termination—05/01/2003			
20030534	CIENA Corporation	WaveSmith Networks, Inc	CIENA Corporation.
20030547	Fiserv, Inc	WB Investors of Wausau, LLC	Fiserv, Inc.
20030561	NORPAC Foods, Inc	J.R. Simplot Company	NORPAC Foods, Inc.
Transactions Granted Early Termination—05/05/2003			
20030568	Andrew Corporation	Allen Telecom Inc	Andrew Corporation.
20030573	Berkshire Hathaway Inc	Clayton Homes, Inc	Berkshire Hathaway Inc.
20030575	General Electric Company	Cogentrix Energy, Inc	General Elecrtric Company.
20030579	Marc A. Utay	Janet R. Mordecai	Marc A. Utay.
20030584	Allergan, Inc	Farallon Pharma Investors, LLC	Allergan, Inc.
Transactions Granted Early Termination—05/06/2003			
20030568	Berkshire Hathaway Inc	Harvey N. Gainey, Sr	Berkshire Hathaway Inc.
20030580	Appollo Investment Fund V, LP	Hayes Lemmerz International, Inc	Appollo Investment Fund V, L.P.
20030581	Whitney V, L.P	Tom T. Gores	Whitney V, L.P.
20030582	Arturo R. Moreno	The Walt Disney Company	Arturo R. Moreno.
20030583	Citigroup Inc	Euramax International, Inc	Citigroup Inc.
20030585	FMR Corp	UBS AB	FMR Corp.
Transactions Granted Early Termination—05/08/2003			
20030552	Kenneth R. Thomson	Elite Information Group, Inc	Kenneth R. Thompson.
20030567	Nationwide Mutual Insurance Company	Prudential Financial, Inc	Nationwide Mutual Insurance Company.
20030572	Amersham plc	Oncura Inc	Amersham plc.
Transactions Granted Early Termination—05/09/2003			
20030586	Sun Capital Partners II L.P	Owens Corning	Sun Capital Partners II L.P.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–13251 Filed 5–27–03; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for California

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03–2, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This notice announces the new per diem rates for California.

DATES: This notice is effective June 12, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite Notice of Per Diem Bulletin 03–2.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to

better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amount published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002, and 68 FR 25034, May 9, 2003, is being charged in the following location:

State of California

- City of San Diego.

B. Change in standard procedure

Since per diem rates frequently change, effective April 28, 2003 (68 FR 22314), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the internet at *http://www.qsa.gov/perdiem*. This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: May 20, 2003.

David A. Drabkin,

Acting Associate Administrator.

[FR Doc. 03–13205 Filed 5–27–03; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03032]

Addressing Asthma From a Public Health Perspective; Notice of Availability of Funds

Application Deadline: July 14, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317 of the Public Health Service Act [42 U.S.C. section 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for ''Addressing Asthma from a Public Health Perspective.'' This program addresses the ''Healthy People 2010'' focus areas Environmental Health, Occupational Safety and Health, and Respiratory Diseases.

The purpose of the program is to provide the impetus to begin development of program capacity to address asthma from a public health perspective in order to bring about: (1) A focus of asthma-related activity within the agency; (2) an increased understanding of asthma-related data and its application to program planning through development of an ongoing surveillance system; (3) an increased recognition within the public health structure of the state or territory of the potential to use a public health approach to reduce the burden of asthma; (4) linkages of the agency to the many agencies and organizations addressing asthma in the population; and (5) participation in intervention program activities. Epidemiological surveillance is ''the ongoing systematic collection, analysis, and interpretation of health data essential to the planning, implementation, and evaluation of public health practice, closely integrated with the timely dissemination of these data to those who need to know. The final link in the surveillance chain is the application of these data to prevention and control. A surveillance system includes a functional capacity for data collection, analysis, and dissemination linked to public health programs.'' Refer to Boss, L.; Kreutzer, R.; Luttinger, D.; Leighton, J.; Wilcox, K.; and Redd, S. The Public Health Surveillance of Asthma, *Journal of Asthma,* 38(1), 83–89, 2001.

This program announcement has three parts: (1) Part A: Developing State Capacity to Address Asthma, (2) Part A Enhanced: Enhancing State Capacity to Address Asthma, and (3) Part B: Implementation of State Asthma Plans.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Reduce the burden of asthma.

C. Eligible Applicants

Applications may be submitted by:

- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State public health departments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Part A: Developing State Capacity to Control Asthma. Eligible applicants are those entities listed above that do not have a final, approved, comprehensive, asthma plan or a well-developed asthma surveillance system. Grantees currently funded by CDC Announcement #99109, #01106, or #02085 are not eligible to apply because they have already received funds to conduct activities in Part A: Developing State Capacity to Control Asthma. See Attachment II for a list of states funded by these announcements. All attachments referenced in this announcement are posted with the announcement on the CDC Web site, Internet address: *http://www.cdc.gov,* click on ''Funding'', then click on ''Grants and Cooperative Agreements.''

Part A Enhanced: Enhancing State Capacity to Address Asthma. Eligible applicants are those entities that are currently funded by CDC Announcement #99109, are in the latter stages of finishing the capacity building process, and are preparing to begin implementing interventions. These states are Colorado, Iowa, Maine, New Jersey, New Mexico, Rhode Island, and Vermont.

Applicants for Part A Enhanced: Enhancing State Capacity to Address Asthma must:

1. Submit a copy of the final, approved, comprehensive State Asthma Plan. Approval can be documented with a letter from the Agency's Health or Medical Director and letters from key partners or by appropriate sign-offs on the asthma plan. Plans that are pending final approval may be accepted if the draft plan is accompanied by letters from the Agency's Health or Medical Director and key partners stating their commitment to and approval of the plan, a time frame for final approval, as well as a description of the plan's approval process status.

2. Have an operational surveillance system for asthma. This may be demonstrated through submission of your most recent and comprehensive published surveillance report that describes asthma within the jurisdiction, including, if available, a report on asthma in the Medicaid population.

Applications for Part A Enhanced: Enhancing State Capacity to Address Asthma that fail to submit evidence requested will be considered non-responsive and returned without review.

Part B: Implementation of State Asthma Plans. Eligible applicants are those entities that have a final, approved, comprehensive, State Asthma Plan and an operational surveillance system for asthma. The states of California, Illinois, Michigan, Minnesota, New York, and Oregon are not eligible to apply for any parts: Part A: Developing State Capacity to Address Asthma; Part A Enhanced: Enhancing State Capacity to Address Asthma; or Part B: Implementation of State Asthma Plans, because they are currently funded by CDC Program Announcement #01106 (Part B) or #02085 to implement State asthma activities. *See* Attachment II for a list of states funded by these announcements.

Applicants for Part B: Implementation of State Asthma Plans must:

1. Submit a copy of the final, approved, comprehensive State Asthma Plan. Approval may be documented with a letter from the Agency's Health or Medical Director and letters from key partners or by appropriate sign-offs on the asthma plan. Plans that are pending final approval may be accepted if the draft plan is accompanied by letters from the Agency's Health or Medical Director and key partners stating their commitment to and approval of the plan. Include a description of the plan's approval process status.

2. Have an operational surveillance system for asthma. This may be demonstrated through submission of your most recent, comprehensive published surveillance report that describes asthma within the State, territory, tribe, or jurisdiction, including, if available, a report on asthma in the Medicaid population.

Applications for Part B: Implementation of State Asthma Plans that fail to submit evidence requested will be considered non-responsive and returned without review.

Based on eligibility requirements described in Section C Eligible Applicants, an applicant may apply for:

- Part A: Developing State Capacity to Address Asthma,
- Part A Enhanced: Enhancing State Capacity to Address Asthma,
- Part B: Implementation of State Asthma Plans, or
- Any combination

However, only one award per applicant will be made. Applicants must submit a separate application for each part they are applying for.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501 (c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $4,450,000 is available in FY 2003 to fund approximately 9–12 awards.

Part A: Developing State Capacity to Address Asthma. Approximately $600,000 is available to fund approximately one to three awards. It is expected that the average award will be $200,000.

Part A Enhanced: Enhancing State Capacity to Address Asthma

Approximately $2,450,000 is available to fund approximately seven awards. It is expected that the average award will be $350,000.

Part B: Implementation of State Asthma Plans.

Approximately $1,400,000 is available to fund approximately one to two awards. It is expected that the average award will be $700,000.

It is expected that awards under this program announcement will begin on or about August 1, 2003 and will be made for a 12-month budget period for the first year that will end on August 31, 2004. The project period for Part A: Developing State Capacity to Address Asthma will be up to three years, Part A Enhanced: Enhancing State Capacity to Address Asthma for up to three years, and Part B: Implementation of State Asthma Plans for up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds may be used to support costs directly related to the program activities and consistent with the scope of the cooperative agreement. Funds under this program announcement may not be used to conduct research projects. Surveillance and evaluation activities that are for the purposes of monitoring program performance are not considered research. Funds under this program announcement may not be used for screening or registry activities. Federal funds awarded under this program announcement may not be used to supplant State or local funds.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Funding preferences may include (1) geographic distribution, and (2) racial and ethnic populations with a disproportionate asthma burden.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

Part A: Developing State Capacity To Address Asthma

1. Recipient Activities

a. Implement a new (or enhance an existing) asthma surveillance system in order to gather and interpret data that will quantify the burden of asthma within the State, and upon which to base the development of the State Asthma Plan. Include asthma morbidity, mortality and work-related asthma.

b. Develop a comprehensive State Asthma Plan.

c. Develop and implement an evaluation plan that measures the effectiveness of the program as a whole as well as each intervention. Systematically document lessons learned.

d. Develop and organize collaborative linkages with appropriate agencies and organizations statewide to together (1) systematically describe the asthma problem in the State; (2) identify available resources; and (3) in conjunction with partners, develop a comprehensive State Asthma Plan.

e. Establish a strong agency commitment within the State Health Department to support the asthma program.

f. Participate in CDC convened meetings and periodic conference calls for grantees to share experiences, data, and materials.

Part A Enhanced: Enhancing State Capacity To Address Asthma

1. Recipient Activities

a. Enhance the existing asthma surveillance system to include asthma hospitalizations. Conduct analysis and interpretation of surveillance data and disseminate these data through reports to local, State, and Federal partners and agencies.

b. If not already completed, obtain final approval for a comprehensive State Asthma Plan. This activity should be completed within three months of the year one budget period.

c. Implement a subset of interventions described in the State Asthma Plan.

d. Develop and implement an evaluation plan that measures the effectiveness of your program as a whole as well as each intervention.

Systematically document lessons learned.

e. Maintain existing or expand (as appropriate) statewide coalition and partnership activities; including a workgroup to address work-related asthma if one does not exist. Include as members of this workgroup representatives from State governmental agencies (*e.g.* state department of labor), Federal agencies, public health agencies, and professional care organizations conducting or interested in occupational health activities.

f. Maintain a strong agency commitment within the State Health Department to support continued efforts of the asthma program.

g. Participate in CDC convened meetings and periodic conference calls for grantees to share experiences, data, and materials.

Part B: Implementation of State Asthma Plans

1. Recipient Activities

a. Expand existing surveillance efforts for, but not limited to, asthma prevalence, severity, management, mortality, hospitalizations, emergency care, costs of asthma and other indicators in order to monitor the effectiveness of the intervention activities. Include surveillance of work-related asthma.

b. Conduct analysis and interpretation of surveillance data and disseminate these data through appropriate surveillance reports to local, state, and federal partners and agencies.

c. Develop and implement an evaluation plan that measures the effectiveness of your program as a whole and each intervention. Systematically document lessons learned.

d. Maintain existing statewide coalition and partnership activities to oversee implementation and evaluation of the State Asthma Plan. Expand partnership activities as appropriate.

e. Implement defined aspects of the final, approved, comprehensive State Asthma Plan. Maintain existing asthma-related activities currently underway in the health agency and expand as appropriate. Assure institutionalization of asthma intervention activities.

f. Maintain a strong agency commitment within the State Health Department to support continued efforts of the asthma program.

g. Participate in CDC convened meetings and periodic conference calls for grantees to share experiences, data, and materials.

2. CDC Activities for Part A: Developing State Capacity to Address Asthma, Part A Enhanced: Enhancing State Capacity to Address Asthma, and Part B: Implementation of State Asthma Plans

a. Participate with recipients in further development and enhancement of existing surveillance activities, including data collection methods and data analysis.

b. Collaborate with recipients on data analysis and interpretation of individual state surveillance data and release of surveillance reports.

c. Provide technical and scientific assistance and consultation on program development, implementation of the State Asthma Plan, intervention activities and operational issues.

d. Serve as a facilitator for communication between states to share expertise regarding various topics, including the expansion and development of partnerships, implementation of State Asthma Plans, and surveillance activities.

e. Facilitate working group conference calls with recipients.

f. Collaborate on the development of an appropriate evaluation plan that measures the effectiveness of the program as a whole and each intervention.

g. Convene meetings and periodic conference calls for grantees to share experiences, data, and materials.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one page, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter will be used to ascertain the level of interest in this announcement and to assist in determining the size and composition of the independent review panel. It should include the following information:

1. Name and address of organization.
2. Name, address, telephone number, fax number, and e-mail address of the organization's primary contact for writing and submitting the application.
3. A clear description of which part of the program announcement (Part A: Developing State Capacity To Address Asthma, Part A Enhanced: Enhancing State Capacity to Address Asthma, Part B: Implementation of State Asthma Plans, or any combination) you are applying for.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this section to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages for Part A: Developing State Capacity to Address Asthma, 35 pages for Part A Enhanced: Enhancing State Capacity to Address Asthma, or 40 pages for Part B: Implementation of State Asthma Plans, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. The application must be submitted unstapled and unbound. Appendices are limited to a maximum of 100 pages and must be submitted unstapled and unbound.

Part A: Developing State Capacity To Address Asthma

Include each of the following sections:

1. Description of the Problem

Describe what is known about the asthma burden in the State, territory, tribe, or jurisdiction and efforts to begin to systematically address the problem. Identify existing initiatives, capacity, and infrastructure of the agency within which asthma programs will occur. Describe the barriers that need to be addressed to develop a comprehensive asthma program in the State.

2. Workplan

Provide specific goals, objectives, and activities that describe what the agency intends to accomplish by the end of the three-year project period. These goals, objectives and activities should be measurable, realistic, related to Recipient Activities, and reflect activities in year one, two, and three of the project. Include a project time-line that indicates when the proposed goals, objectives, and activities will be met. Document how progress made toward meeting the objectives will be evaluated. Provide measures for evaluating process, impact, and outcome for each goal and objective. Refer to ''Framework for Program Evaluation in Public Health,'' *Morbidity and Mortality Weekly Report*, September 17, 1999/48(RR–11); 1–40 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm* or other evaluation resources on the CDC website at *http://www.cdc.gov/eval/index).*

In addition, describe how lessons learned will be systematically gathered, documented, and included as an integral part of the program evaluation process.

3. Surveillance Plan

Describe the current operational asthma surveillance system within the health agency (if one exists). Provide a surveillance plan containing the following information: (a) A description of data currently available to the program; (b) additional data the agency will obtain and methods for obtaining it; (c) plans for identifying specific populations at-risk for poorly controlled asthma (*e.g.* gender, age groups, racial/ethnic groups, socio-economic groups, and/or geographic areas); (d) how the agency will use data to develop (or enhance) an ongoing surveillance system; and (e) how the surveillance data will be used to support policy, program development, implementation, and evaluation activities. At a minimum, the surveillance system should include measures to track asthma morbidity, asthma mortality, and work-related asthma. For more information about work-related asthma, refer to:

''Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995,'' *Morbidity and Mortality Weekly Report,* June 25, 1999/48 (SS03); 1–20 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a1.htm.*

Workgroup Report ''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards'' at *http://www.cste.org/occupationalhealth.htm.*

''Minimum and Comprehensive State-Based Activities in Occupational Safety and Health,'' June 1995—DHHS (NIOSH) Publication No. 95–107 at *http://www.cdc.gov/niosh/95–107.html.*

Applicants funded by this announcement will be expected to use the Behavioral Risk Factor Surveillance System (BRFSS) supplemental asthma module within the first year of the project.

Describe a strategy to conduct analysis, interpret surveillance data, and disseminate data through published reports to local, state, and federal partners and agencies.

Present a detailed plan for evaluating whether the asthma surveillance system is useful for monitoring trends over time. Refer to ''Updated Guidelines for Evaluating Surveillance Systems, Recommendations from the Guidelines Working Group,'' *Morbidity and Mortality Weekly Report,* July 27, 2001/(50)RR–13; 1–35 or *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm*

4. State Asthma Plan

Describe the process by which a comprehensive State Asthma Plan will be developed. The plan must address all persons with asthma in the State regardless of age, race/ethnicity, gender or geographic area. Include key environments in which persons with asthma spend significant time (*e.g.* home, school, and workplace). If a specific population in the State is not affected by asthma, clearly identify and describe this population.

Include information about the agencies and organizations that will participate in developing the State Asthma Plan. Describe each partner's roles and responsibilities. Explain how the collaborative relationships will be used after the plan is in place and the agency is ready to implement interventions.

Describe how data collected in the asthma surveillance system will be used to identify priority areas and guide the development of program goals and objectives. Explain how the State Asthma Plan will evolve and change based on surveillance data, evaluation of interventions, and other outside factors that affect the overall climate in the State.

5. Collaboration Plan

Describe experiences with collaborative relationships around asthma or with other chronic or environmentally-related or occupationally-related disease requiring extensive collaborative relationships both within and outside the agency. Specifically define the approach to be used to establish or further develop these relationships.

Document partnerships with the clinical community; local health agencies; physician organizations; community health centers; local, State, or regional asthma or respiratory health organizations (such as the American Lung Association); local education authorities; and groups or organizations that serve minority or other populations experiencing a disproportionate burden of asthma. If one or more of these partners will not be included, the applicant should explain why.

Describe how the collaboration will (1) establish leadership, (2) develop consensus regarding goals, (3) identify roles and responsibilities of members, (4) develop procedures and patterns of communications, and (5) sustain the participation of members over time.

Provide letters of commitment from each specific organization, including a statement of how they intend to collaborate, as well as their expertise, and capacity to carry out assigned responsibilities.

Grant funds may be used to leverage asthma program development in the State, territory, tribe or jurisdiction along with resources from other agencies and organizations.

Present a plan to determine the effectiveness of collaborations.

6. Management and Staffing Plan

Demonstrate the applicant's organizational commitment to the asthma program by describing how the agency as a whole will focus its efforts on asthma. Provide a plan to maintain a strong commitment within the State Health Department to support continued efforts of the asthma program.

Describe the organizational location of the proposed staff, their relation to the State's asthma contact (the position in the agency currently responsible for contact with CDC on asthma issues), and the support within the organizational structure for the activities defined for the project staff. Attach an organizational chart for the unit where asthma activities will be located and, at a minimum, the next two levels above it.

Describe the qualifications and roles of trained public health professionals to serve as a full-time asthma coordinator for the agency to manage the planning process and conduct other programmatic activities; a full-time epidemiologist to develop and implement surveillance activities for the asthma project; and a supervisor who will assure support for the project staff. Other program positions may also be proposed. Attach position descriptions, qualifications, and curricula vitae for all staff positions.

For each position, describe the primary roles and responsibilities for the project staff over the three-year grant period. Also, include the specific staff activities that will contribute to meeting each objective.

Provide a plan to expedite filling of the staff position(s) and assure that they have been or will be approved by the applicant's personnel system. Include a letter of support from the agency guaranteeing hiring of personnel and support for the asthma program. Also, describe positions in the asthma program that are currently filled, but will not be funded by resources under this cooperative agreement.

Document assurance of the ability of key project staff to participate in conferences or grantee meetings convened by CDC and willingness to share innovations, information, data, and materials.

7. Budget

Include a detailed first-year budget and narrative justifications as well as annual budget projections for years two and three. The applicant should describe the program purpose for each budget item. For each contract contained within the budget, provide (1) the name the contractor(s); (2) method of selection; (3) period of performance; (4) description of activities; and (5) an itemized budget with narrative justifications. If this information is not available when the application is submitted, and the contract(s) is approved by the CDC, then the funds for the contract(s) will be restricted for expenditure on the award.

The budget should include travel funds for project staff to attend a yearly conference or grantee meeting convened by CDC. In addition, the applicant should include costs for one person to travel to Atlanta, GA, to attend the 6th National Environmental Health Conference on December 3–5, 2003. Review the CDC/NCEH web site for additional information concerning this conference: *http://www.cdc.gov/nceh/default.htm.*

List other funds, outside this cooperative agreement, that will be used to support this program.

Part A Enhanced: Enhancing State Capacity To Address Asthma

1. Description of the Problem

Describe what is known about the asthma burden in the State, territory, tribe or jurisdiction and efforts to systematically address the problem. Include a description of populations at increased risk of poorly controlled asthma (*e.g.* gender, age groups, racial/ethnic groups, socio-economic groups, and geographic areas).

Identify existing initiatives, capacity, and infrastructure of the agency within which the asthma programs will occur.

Describe how barriers, identified when developing the State Asthma Plan, were addressed.

2. Workplan

Provide specific goals, objectives, and activities that describe what the agency intends to accomplish by the end of the three-year project period. These goals, objectives and activities should be measurable, realistic, related to Recipient Activities, and reflect activities in year one, two, and three of the project. Include a project time-line that indicates when the proposed goals, objectives, and activities will be met.

Document how progress made toward meeting the objectives will be evaluated. Provide measures for evaluating process, impact, and outcome for each goal and objective. Refer to ''Framework for Program Evaluation in Public Health,'' *MMWR*, September 17, 1999/48 RR–11; 1–40 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm* or other evaluation resources on the CDC website at *http://www.cdc.gov/eval/index).*

In addition, describe how lessons learned will be systematically gathered, documented, and included as an integral part of the evaluation process.

3. Surveillance Plan

Describe the current operational asthma surveillance system within the health agency. Submit copies of the most recent and comprehensive published surveillance report that describes asthma within the State, territory, tribe or jurisdiction, including if available, a report of asthma in the Medicaid population and for enrollees of the State Children's Health Insurance Program (SCHIP).

Provide a surveillance plan containing the following information: (a) A description of data currently available to the program; (b) additional data the agency will obtain and methods for obtaining it; (c) plans for identifying specific populations at risk for poorly controlled asthma (*e.g.* gender, age groups, racial/ethnic groups, socio-economic groups, or geographic areas); (d) how the agency will use data to develop or enhance an ongoing surveillance system; and (e) how the surveillance data will be used to support policy, program development, implementation, and evaluation activities.

At a minimum, the surveillance system should include measures to track asthma morbidity, asthma mortality, work-related asthma, and asthma hospitalizations. For more information about work-related asthma, refer to the following references:

''Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995,'' *Morbidity and Mortality Weekly Report,* June 25, 1999/48 (SS03); 1–20 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a1.htm.*

Workgroup Report ''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards'' at *http://www.cste.org/occupationalhealth.htm.*

''Minimum and Comprehensive State-Based Activities in Occupational Safety and Health,'' June 1995—DHHS (NIOSH) Publication No. 95–107 at *http://www.cdc.gov/niosh/95–107.html.*

Applicants funded by this announcement will be expected to use the Behavioral Risk Factor Surveillance System (BRFSS) supplemental asthma module within the first year of the project.

Describe the methods that will be used to conduct analysis, interpret surveillance data, and a strategy for disseminating data through published reports to local, State, and Federal partners and agencies.

Present a detailed plan to determine whether the asthma surveillance system is useful for monitoring asthma trends over time, determining the effectiveness of interventions, and modifying the State Asthma Plans. Refer to ''Updated Guidelines for Evaluating Surveillance Systems, *Morbidity and Mortality Weekly Report,* July 27, 2001/(50)RR13; 1–35 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm.*

4. State Asthma Plan

Submit a copy of the final, approved, comprehensive State Asthma Plan. Approval may be documented with a letter from the agency's Health or Medical Director and letters from key partners or by appropriate sign-offs on the plan. State Asthma Plans that are pending final approval may be accepted if the draft plan is accompanied by letters from the agency's Health or Medical Director and key partners stating their commitment to and approval of the plan, a time frame for final approval, as well as a description of the approval process status. The letters should assure that the State Asthma Plan would be completed within the first three months of the year one budget period.

Describe the process by which the comprehensive State Asthma Plan was developed and how it addresses all persons with asthma in the State regardless of age, race/ethnicity, gender, or geographic area and includes key environments in which persons with asthma spend significant time (*e.g.* home, school, workplace). If a specific population in the State is not affected by asthma, clearly identify and describe this population.

Include information about the agencies and organizations that are participating in the planning process and describe their roles and responsibilities.

Explain how the collaborative relationships will be used after the plan is in place and the agency is ready to implement interventions.

Describe how data collected in the asthma surveillance system is used to

identify priority areas and guide the development of program goals and objectives. If a State Asthma Plan already exists, describe the subset of interventions to be implemented with these grant funds. Note that a statewide approach is encouraged. If focusing on one part of the state's population, explain and justify the rationale for this approach.

Proposed activities to meet the plan's objectives may include, but are not limited to, efforts to (1) expand surveillance for asthma; (2) improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No. 97–4051, April 1997); (3) improve the skills of patients and families affected by asthma to manage the disease; (4) review legislation and policies impacting people with asthma; (5) identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors; and (6) communicate between those implementing and those affected by planned activities.

Explain how the State Asthma Plan will evolve and change based on analysis of surveillance data, evaluation of interventions, and other outside factors that affect the overall climate in the State.

5. Collaboration Plan

Describe experiences with collaborative relationships around asthma or with other chronic or environmentally-related or occupationally-related disease requiring extensive collaborative relationships both within and outside the agency. Specifically define the approach to be used to establish or further develop these relationships.

Document partnerships with the clinical community; local health agencies; physician organizations; community health centers; local, State, or regional asthma or respiratory health organizations (*e.g.* American Lung Association); local education authorities, and groups or organizations that serve minority or other populations experiencing a disproportionate burden of asthma. If one or more of these partners is not listed, the applicant should explain why.

Describe how the collaboration (1) established leadership, (2) developed consensus regarding goals, (3) identified roles and responsibilities, (4) developed procedures and patterns for communication, (5) and sustained the participation of members over time.

Provide letters of commitment from each specific organization, including a statement of how they are or intend to collaborate, as well as their expertise, and capacity to carry out assigned responsibilities.

Describe how the partners who developed the State Asthma Plan will continue to work together to implement and monitor the intervention strategies and modify the plan over time. Expand partnership activities as appropriate.

Grant funds may be used to leverage asthma program development in the State, territory, tribe or jurisdiction along with resources from other collaborative agencies and organizations.

6. Implementation Plan

Provide specific, realistic, measurable, and time-phased objectives for each of the interventions to be implemented over the three-year project period using resources of this announcement. If objectives and interventions from the plan are addressed using other resources, explain how they are related. While the overall State Asthma Plan must address all populations, interventions should be prioritized based on surveillance data, focusing on high priority and disparate populations first.

Interventions that change systems and individuals to provide improved disease management or education are preferred. This discussion might include the guidelines that the applicant will use for work-related asthma (*e.g.*, adapted from generic Minimum and Comprehensive State-Based Activities in Occupational Safety Health, June 1995—DHHS (NIOSH) Publication No. 95–107) at *http:/www.cdc.gov/niosh/95–107.html;* or from the Workgroup Report ''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards'' (refer to *http://www.cste.org/occupationalhealth.htm).* Include an assessment of existing and needed resources to implement these strategies.

Describe how the State Asthma Plan implementation activities were developed and how members of the statewide partnership group determined that these particular objectives and strategies would be addressed first. Demonstrate the extent to which the intervention plan is supported in the community by the inclusion of letters of support from key members of the community. Describe how the partners who developed the asthma plan will continue to work together to implement and monitor the intervention strategies and modify the plan over time. Expand partnership activities as appropriate.

Demonstrate the scientific basis for proposed interventions. If proposed interventions include case management programs, assure that patients enrolled are those with moderate to severe persistent asthma and are receiving care consistent with the National Asthma Education and Prevention Program (NAEPP) Guidelines for the Diagnosis and Management of Asthma. Refer to ''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No.97–4051, April 1997) or link to *http://www.nhlbi.nih.gov/guidelines/asthma/asthgdln.htm.*

Provide the methodology and specific measures for monitoring progress in meeting all objectives related to implementation of activities in the asthma plan.

Describe how process, impact, and outcome objectives will be evaluated. (Refer to ''Framework for Program Evaluation in Public Health,'' *Morbidity and Mortality Weekly Report,* September 17, 1999/48 RR–11; 1–40 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm* or other evaluation resources on the CDC Web site at *http://www.cdc.gov/eval/index).*

7. Management and Staffing

Demonstrate the applicant's organizational commitment to the asthma program by describing how the agency as a whole will focus its efforts on asthma. Provide a plan to maintain a strong agency commitment within the State Health Department to support continued efforts of the asthma program.

Describe the organizational location of the proposed staff, their relation to the State's asthma contact (the position in the agency currently responsible for contact with CDC on asthma issues), and the support within the organizational structure for the activities defined for the project staff. Attach an organizational chart for the unit where asthma activities will be located and, at a minimum, the next two levels above it.

Describe the qualifications and roles of trained public health professionals to serve as a full-time asthma coordinator for the agency to manage the planning process and conduct other programmatic activities; a full-time epidemiologist to develop and implement surveillance activities for the

asthma project; and a supervisor who will assure support for the project staff. Other program positions may also be proposed. Attach position descriptions, qualifications and curricula vitae for all staff positions.

For each position, describe the primary roles and responsibilities for the project staff over the three-year grant period. Also, include the specific staff activities that will contribute to meeting each objective.

Provide a plan to expedite filling of the staff position(s) and assure that they have been or will be approved by the applicant's personnel system. Include a letter of support from the agency guaranteeing hiring of personnel and support for the asthma program. Also, describe positions in the asthma program that are currently filled, but will not be funded by resources under this cooperative agreement.

Document assurance of the ability of key project staff to participate in the conferences or grantee meetings convened by CDC and willingness to share innovations, information, data, and materials.

8. Budget

Include a detailed first-year budget, narrative justifications, as well as annual budget projections for years two and three. The applicant should describe the program purpose for each budget item. For each contract contained within the budget, provide (1) the name the contractor(s); (2) method of selection; (3) period of performance; (4) description of activities; and (5) an itemized budget with narrative justifications. If this information is not available when the application is submitted, and CDC approves the contract(s), then the funds for the contract(s) will be restricted for expenditure on the award.

The budget should include travel funds for project staff to attend a yearly conference or grantee meeting convened by CDC. In addition, the applicant should include costs for one person to travel to Atlanta, GA, to attend the 6th National Environmental Health Conference on December 3–5, 2003. Review the CDC/NCEH web site for additional information concerning this conference: *http://www.cdc.gov/nceh/default.htm.*

If applicable, list other funds outside of this cooperative agreement that will be used to support this program.

Part B: Implementation of State Asthma Plans

Include each of the following sections:

1. Description of Problem

Describe what is known of the asthma problem in the State, territory, tribe, or jurisdiction and efforts to systematically address the problem. Include a description of populations at increased risk of poorly controlled asthma (*e.g.* gender, age groups, racial/ethnic groups, socio-economic groups, or geographic areas).

Describe existing asthma initiatives, capacity, and infrastructure of the agency within which the asthma programs occur.

2. Workplan

Provide specific goals, objectives and activities that describe what the agency intends to accomplish by the end of the five-year project period. These goals, objectives and activities should be measurable, realistic, related to the Recipient Activities, and reflect plans in year one through five of the project. Include a project time-line that indicates when the proposed goals, objectives, and activities will be met.

Document how progress made toward meeting the objectives will be evaluated. Provide measures for evaluating process, impact, and outcome for each goal and objective. Refer to ''Framework for Program Evaluation in Public Health,'' *MMWR,* September 17, 1999/48 RR–11; 1–40 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm* or other evaluation resources on the CDC website at *http://www.cdc.gov/eval/index).*

In addition, describe how lessons learned will be systematically gathered, documented, and included as an integral part of the evaluation process.

3. Surveillance Plan

Describe the current operational asthma surveillance system within the health agency. Submit copies of the most recent, comprehensive published surveillance report that describes asthma within the State, territory, tribe, or jurisdiction, including if available, a report of asthma in the Medicaid population and for enrollees of the State Children's Health Insurance Program (SCHIP).

Provide a surveillance plan containing the following information: (a) A description of data currently available to the program; (b) additional data the agency will obtain and methods for obtaining it; (c) plans for identifying specific populations at risk for poorly controlled asthma (*e.g.* gender, age groups, racial/ethnic groups, socio-economic groups, or geographic areas); (d) how the agency will use data to develop or enhance an ongoing surveillance system; and (e) how the surveillance data will be used to support policy, program development, implementation, and evaluation activities.

Describe all asthma indicators to be assessed over time including, but not limited to, prevalence, severity, management, mortality, hospitalization, emergency care, and costs of asthma. Refer to Boss, L.; Kreutzer, R.; Luttinger, D.; Leighton, J.; Wilcox, K.; and Redd, S. ''The Public Health Surveillance of Asthma,'' Journal of Asthma, 38(1), 83–89, 2001.

Discuss the use of the Behavioral Risk Factor Surveillance System (BRFSS) asthma module(s) and the frequency of its use.

Include surveillance and public health intervention of work-related asthma. Provide the applicant's definition of work-related asthma. (Refer to ''Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995,'' *Morbidity and Mortality Weekly Report*, June 25, 1999/48 (SS03); 1–20) at *http://www.cdc.gov/mmwr/preview/mmwrhtml/ss4803a1.htm.*

Describe the methods that will be used to conduct analysis, interpret surveillance data, and a strategy for disseminating this data (*e.g.* published reports) to local, State, and Federal partner and agencies.

Present a detailed plan to determine whether the asthma surveillance system is useful for monitoring asthma trends over time, determining the effectiveness of asthma interventions, and modifying the State Asthma Plan. (Refer to ''Updated Guidelines for Evaluating Surveillance Systems,'' *Morbidity and Mortality Weekly Report,* July 27, 2001/(50)RR13; 1–35) at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5013a1.htm.*

4. Approved State Asthma Plan

Submit a copy of the final, approved, comprehensive State Asthma Plan. Approval may be documented with a letter from the agency's Health or Medical Director and letters from key partners, or by appropriate sign-offs on the plan. State Asthma Plans that are pending final approval may be accepted if the draft plan is accompanied by letters from the agency's Health or Medical Director and key partners stating their commitment to and approval of the plan. Also include a description of the plan's approval process and a time-line for final approval.

The approved plan (or attachments to the plan) must include:

a. Background information that defines the current condition and describes why asthma should be a public health priority, and an assessment of the asthma burden in the State, territory, tribe, or jurisdiction using population-based data. The plan must address all persons with asthma in the State regardless of age, race/ethnicity, or gender and include key environments in which persons with asthma spend significant time (*e.g.* home, school, or workplace). If a specific population in the State is not affected by asthma, the plan should clearly identify and describe this population.

b. A description of the process by which the plan was developed, a list of partners that participated in the development of the plan, and how they contributed to the process.

c. A description of the established asthma priorities within the State, territory, tribe, or jurisdiction based on the results of surveillance activities. These objectives should be time-phased and organized in accordance with the priorities identified in the State Asthma Plan. Highlight issues unique to your region and note how your priorities may differ or coincide with national asthma control priorities.

d. Proposed activities to meet the plan's objectives including, but not limited to, efforts to (1) expand surveillance for asthma; (2) improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No. 97–4051, April 1997); (3) improve the skills of patients and families affected by asthma to manage the disease; (4) review legislation and policies impacting people with asthma; (5) identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors; and (6) communicate between those implementing and those affected by planned activities.

5. Collaboration Plan

Describe experiences with collaborative relationships around asthma or with other chronic or environmentally related or occupationally related disease requiring extensive collaborative relationships both within and outside the agency. Specifically define the approach to be used to establish or further develop these relationships.

Document partnerships with the clinical community; local health agencies; physician organizations; community health centers; local, State, or regional asthma or respiratory health organizations (*e.g.* American Lung Association); local education authorities; and groups or organizations that serve minority or other populations experiencing a disproportionate burden of asthma. If one or more of these partners will not be included, the applicant should explain why.

Describe how the collaboration will (1) establish leadership, (2) develop consensus regarding goals, (3) identify roles and responsibilities of members, (4) develop procedures and patterns of communications, and (5) sustain the participation of members over time.

Provide letters of commitment from each specific organization, including a statement of how they intend to collaborate, as well as their expertise, and capacity to carry out assigned responsibilities.

Describe how partners who developed the State Asthma Plan will continue to work together to implement and monitor intervention strategies and modify the plan over time. Expand partnership activities as appropriate.

Note that grant funds may be used to leverage asthma program development in the State, territory, tribe or jurisdiction along with resources from other agencies and organizations.

Present a plan to determine the effectiveness of collaborations.

6. Implementation Plan

Provide specific, realistic, measurable, and time-phased objectives for each of the interventions to be implemented over the five-year project period using resources of this announcement. If objectives and interventions from the plan are addressed using other resources, explain how they are related. While the overall State Asthma Plan must address all populations, implementation strategies should be prioritized based on surveillance data, focusing on high priority and disparate populations first. Interventions that change systems and individuals to provide improved disease management or education are preferred.

Discuss guidelines the applicant will use for work-related asthma (*e.g.*, adapted from generic Minimum and Comprehensive State-Based Activities in Occupational Safety Health, June 1995—DHHS (NIOSH) Publication No. 95–107) at *http:/www.cdc.gov/niosh/95–107.html;* or from the Workgroup Report ''The Role of States in a Nationwide Comprehensive Surveillance System for Work-related Diseases, Injuries and Hazards'' at *http://www.cste.org/occupationalhealth.htm).*

Include an assessment of existing and needed resources to implement these strategies.

Describe how the State Asthma Plan implementation activities were developed and how members of the statewide partnership group determined that these particular objectives and strategies would be addressed. Demonstrate the extent to which the intervention plan is supported in the community by including letters of support from key members of the community.

Demonstrate the scientific basis for proposed interventions. If proposed interventions include case management programs, assure that patients enrolled are those with moderate to severe persistent asthma and are receiving care consistent with the National Asthma Education and Prevention Program (NAEPP) Guidelines for the Diagnosis and Management of Asthma. Refer to ''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No. 97–4051, April 1997) at *http://www.nhlbi.nih.gov/guidelines/asthma/asthgdln.htm.*

Provide the methodology and specific measures for monitoring progress in meeting all objectives related to implementation of activities in the asthma plan. Discuss how process, impact and outcome objectives will be evaluated. Refer to ''Framework for Program Evaluation in Public Health,'' *Morbidity and Mortality Weekly Report,* September 17, 1999/48 RR–11; 1–40 at *http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4811a1.htm* or other evaluation resources on the CDC Web site at *http://www.cdc.gov/eval/index).*

7. Management and Staffing Plan

Demonstrate the applicant's organizational commitment to the asthma program by describing how the agency as a whole will focus its efforts on asthma. Explain how the overall asthma program will be institutionalized and sustained upon completion of funding from this cooperative agreement.

Describe the organizational location of proposed staff, their relation to the State's asthma contact (the position in the agency currently responsible for contact with the CDC on asthma issues), and the support within the

organizational structure for the activities defined for the project staff. Attach an organizational chart for the unit where the asthma activities will be located and, at a minimum, the next two levels above it.

Describe the qualifications and roles of trained public health professionals who will serve as a full-time asthma coordinator for the agency to manage programmatic activities; 2 full-time epidemiologists to develop and implement surveillance activities for the asthma project; and a supervisor who will assure support for the project staff. Other program positions may also be proposed. Attach position descriptions, qualifications, and curricula vitae for all staff positions.

Include a description of existing asthma program staff within the health department, the current function of these staff members, their role in developing this project plan, and management structure of the asthma program. Describe asthma surveillance staff and their role within the project activities.

For each position, describe the primary roles and responsibilities for the program staff over the five-year project period. Include specific activities that will contribute to meeting stated program goals/objectives.

Document assurance of ability to access and utilize funds, if awarded, for the purposes of this announcement.

If intervention activities will be implemented through contracts, define the process by which these contracts will be awarded and monitored.

Discuss the role of the statewide partnership group and oversight of intervention activities.

Document assurance of ability of key project staff to participate in the conferences or grantee meetings convened by CDC and willingness to share innovations, information, data, and materials.

8. Budget

Include a detailed first-year budget, narrative justifications, as well as annual budget projections for years two through five. The applicant should describe the program purpose for each budget item. For each contract contained within the budget, applicants should provide (1) the name the contractor(s); (2) method of selection; (3) period of performance; (4) description of activities; and (5) an itemized budget with narrative justifications. If this information is not available when the application is submitted, and CDC approves the contract(s), then the funds for the contract(s) will be restricted for expenditure on the award.

The budget should include travel for key project staff to attend a yearly conference or grantee meeting convened by CDC. In addition, the applicant should include costs for one person to travel to Atlanta, GA, to attend the 6th National Environmental Health Conference on December 3–5, 2003. Review the CDC/NCEH web site for additional information concerning this conference: *http://www.cdc.gov/nceh/default.htm.*

If applicable, list other funds outside this cooperative agreement that will be used to support this program.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before June 27, 2003, submit the LOI to the Grants Management Officer identified in the ''Where to Obtain Additional Information'' section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIMS) at: (770) 488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time on July 14, 2003. Submit the application to: Technical Information Management—PA#03032, Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal as stated in purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

Part A: Developing State Capacity To Address Asthma

1. Workplan (25 points)

The extent to which:

a. The applicant identifies goals, objectives, and activities that are consistent with the Recipient Activities; are specific, measurable and realistic; and reflect activities in year one, two, and three of the project period.

b. Objectives will contribute to accomplishment of the goals.

c. Activities are likely to achieve objectives.

d. The time-line for accomplishing proposed goals, objectives, and activities is reasonable.

e. Measures for monitoring and evaluating the process, impact, and outcome of each goal and objective are specific and appropriate.

f. The plan to systematically gather and document lessons learned is incorporated into the program evaluation process.

2. Management and Staffing Plan (20 points)

The extent to which:

a. The agency demonstrates a high level of commitment and organizational support for the asthma program. Organizational charts show where the asthma program is located.

b. The roles of proposed staff members are defined and appropriate for carrying out stated responsibilities.

c. The staffing plan identifies at least a full-time asthma coordinator, at least a full-time epidemiologist, and a supervisor.

d. Job descriptions, qualifications, and curricula vitae indicate that each proposed staff member has the credentials, knowledge, training, and experience to perform assigned tasks.

e. The plan to expedite filling of the staff position(s), assuring that they will be approved by the applicant's personnel system, is realistic.

f. The applicant plans to attend CDC conferences/meetings and is willing to share innovations, information, data, and materials.

3. Surveillance Plan (20 points)

The extent to which the plan:

a. Provides a comprehensive description of data currently available to the program, additional data the agency will obtain, and methods for obtaining it.

b. Identifies populations at risk for poorly controlled asthma, such as specific age groups, ethnic groups, socio-economic groups, or geographic areas.

c. The applicant provides a reasonable approach for how the agency will develop or enhance an ongoing surveillance system and how the data will be used to support policy, program development, implementation, and evaluation.

d. Uses appropriate measures to track asthma morbidity, asthma mortality, and work-related asthma over time.

e. Includes the Behavioral Risk Factor Surveillance System supplemental asthma module within the first year of the project period.

f. Uses appropriate strategies for conducting analysis, interpreting surveillance data, and disseminating data through published reports.

g. Includes reasonable strategies for evaluating whether the asthma surveillance system is useful for monitoring trends over time.

4. State Asthma Plan (15 points)

The extent to which:

a. The applicant describes how the comprehensive State Asthma Plan will be developed.

b. The plan addresses all persons with asthma regardless of age, race/ethnicity, gender, or geographic area and includes key environments in which persons with asthma spend significant time (*e.g.* home, school, workplace).

c. The number and type of agencies and organizations proposed to participate in developing the State Asthma Plan are appropriate. Partner's roles and responsibilities are fully described and reasonable.

d. Collaborative relationships will be used appropriately when implementing interventions.

e. Data collected in the asthma surveillance system will be used to identify priority areas and guide the development of program goals and objectives.

f. The process of making changes to the State Asthma Plan is reasonable.

5. Collaboration Plan (10 points)

The extent to which:

a. The applicant demonstrates prior successful collaborations that address asthma or other chronic or environmentally-related or occupationally-related problems.

b. Collaborating organizations and agencies include a wide variety of appropriate partners in the clinical community; local health agencies; physician organizations; community health centers; local, state or regional asthma or respiratory health organizations (such as the American Lung Association), local education authorities; and groups or organizations that serve populations experiencing a disproportionate burden of asthma. If one or more of these partners are not included, the applicant explains why.

c. Partners will work together to: (1) Establish leadership, (2) develop a consensus regarding goals, (3) identify roles and responsibilities through a negotiated process, (4) develop routine and consistent patterns of communications, and (5) sustain the participation of members over time.

d. Letters of commitment from key organizations demonstrate their willingness, expertise, and capacity to carry out assigned responsibilities.

e. The plan for determining the effectiveness of collaborations is reasonable.

6. Description of the Problem (10 points)

The extent to which:

a. The applicant fully describes what is known about the asthma burden in the State, tribe, territory or jurisdiction; identifies populations at increased risk of poorly controlled asthma (regardless of gender, age, race/ethnicity, or geographic area); and explains efforts to systematically address the problem.

b. The applicant identifies existing initiatives, capacity, and infrastructure of the agency within which asthma programs will occur.

c. The applicant identifies barriers that need to be resolved in order to develop comprehensive asthma program in the State.

d. The applicant demonstrates the agency's commitment to addressing asthma by accomplishments to date and understanding of the problem.

7. Budget (reviewed, but not scored)

The extent to which:

a. The budget is comprehensive and includes details for year one projections and details for year two and three of the budget period.

b. The budget contains justifications that are consistent with stated goals, objectives, activities, and the intended use of cooperative agreement funds.

c. The budget is reasonable and includes funds for project staff to attend a yearly conference or grantee meeting convened by CDC. In addition, the applicant should include costs for one person to travel to Atlanta, GA, to attend the 6th National Environmental Health Conference on December 3–5, 2003. Review the CDC/NCEH web site for additional information concerning this conference: *http://www.cdc.gov/nceh/default.htm.*

8. Performance Goals (reviewed, but not scored)

The extent to which the applicant will reduce the burden of asthma in the State, territory, tribe or jurisdiction.

Part A Enhanced: Enhancing State Capacity To Address Asthma

1. Workplan (25 points)

The extent to which:

a. The applicant identifies goals, objectives, and activities that are consistent with the Recipient Activities, are specific, measurable and realistic, and reflect activities in year one, two, and three of the project period.

b. Objectives will contribute to accomplishment of the goals.

c. Activities are likely to achieve objectives.

d. The time-line for accomplishing proposed goals, objectives, and activities is reasonable.

e. Measures for monitoring and evaluating the process, impact, and outcome of each goal and objective are specific and appropriate.

f. The plan to systematically gather and document lessons learned is incorporated into the program evaluation process.

2. Management and Staffing Plan (20 points)

The extent to which:

a. The agency demonstrates a high level of commitment and organizational support for the asthma program. Organizational charts show where the asthma program is located.

b. The roles of proposed staff members are defined and appropriate for carrying out stated responsibilities.

c. The staffing plan includes at least a full-time asthma coordinator, at least a full time epidemiologist, and a supervisor.

d. Job descriptions, qualifications, and curricula vitae indicate that each proposed staff member has the credentials, knowledge, training, and experience to perform assigned tasks.

e. The plan to expedite filling of the staff position(s), assuring that they will be approved by the applicant's personnel system, is realistic.

f. The applicant plans to attend CDC conferences and meetings and is willing to share innovations, information, data, and materials.

3. State Asthma Plan (15 points)

The extent to which:

a. The State Asthma Plan is comprehensive and approved by the state health agency. If not already approved, the applicant provides assurance that the State Asthma Plan will be completed within 3 months of the first budget year.

b. The plan addresses all persons with asthma regardless of gender, age, race/ethnicity, or geographic area and includes key environments in which persons with asthma spend significant time (*e.g.* home, school, workplace).

c. The number and type of agencies and organizations that participated in developing the State Asthma Plan are appropriate. Partner's roles and responsibilities are fully described and reasonable.

d. The applicant describes the collaboration's progress in (1) establishing leadership, (2) developing a consensus regarding goals, (3) identifying roles and responsibilities through a negotiated process, (4) developing routine and consistent patterns of communications, and (5) sustaining the participation of members over time.

e. Collaborative relationships are used after the plan is in place and the agency begins to implement selected interventions.

f. Proposed activities to meet the plan's objectives include, but are not limited to, efforts to (1) expand surveillance for asthma; (2) improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No. 97–4051, April 1997); (3) improve the skills of patients and families affected by asthma to manage the disease; (4) review legislation and policies impacting people with asthma; (5) identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors; and (6) communicate between those implementing and those affected by planned activities.

g. Data collected in the asthma surveillance system was (and will be) used to identify priority areas and guide the development of program goals and objectives.

h. The applicant describes how the State Asthma Plan will evolves over time and the process by which changes are made.

4. Surveillance Plan (15 points)

The extent to which:

a. The applicant has an operational surveillance system for asthma.

b. Attached surveillance reports are of high quality and fully describe the burden of asthma within State, territory, tribe, or jurisdiction, including, if available a report on asthma in the Medicaid population.

c. The applicant describes data currently available, additional data the agency will obtain, and methods for obtaining it.

d. The applicant clearly identifies populations at risk for poorly controlled asthma such as specific age groups, ethnic/racial groups, socio-economic groups, or geographic areas.

e. The applicant explains how the agency will enhance an ongoing surveillance system and how data will be used to support policy, program development, implementation, and evaluation activities.

f. The plan uses appropriate measures to track asthma morbidity, asthma mortality, work-related asthma, and asthma hospitalizations over time.

g. The applicant plans to use the Behavioral Risk Factor Surveillance System supplemental asthma module within the first year of the project period.

h. The surveillance plan describes appropriate strategies to conduct analysis, interpret surveillance data, and disseminate data through published reports.

i. Includes reasonable strategies for evaluating whether the asthma surveillance system is useful for monitoring trends over time.

5. Collaboration Plan (10 points)

The extent to which:

a. The applicant has had previous experience collaborating with other chronic or environmentally related or occupationally related agencies.

b. Collaborating organizations and agencies include a wide variety of appropriate partners in the clinical community; local health agencies; physician organizations; community health centers; local, state or regional asthma or respiratory health organizations (such as the American Lung Association), local education authorities; and groups or organizations that serve populations experiencing a disproportionate burden of asthma. If one or more of these partners are not included, the applicant explains why.

c. The applicant describes how the collaboration's progress in: (1) Establishing leadership, (2) developing a consensus regarding goals, (3) identifying roles and responsibilities through a negotiated process, (4) developing routine and consistent procedures and patterns of communications, and (5) sustaining the participation of members over time will be documented and monitored.

d. Letters of commitment from key organizations demonstrate their willingness, expertise, and capacity to carry out assigned responsibilities.

e. The applicant fully describes how partners who developed the State Asthma Plan will continue to work together to monitor the intervention strategies over time.

f. The plan for determining the effectiveness of collaborations is reasonable.

6. Implementation Plan (10 points)

The extent to which:

a. The applicant presents specific, realistic, measurable and time-phased objectives for each intervention proposed.

b. Interventions focus on high priority and disparate populations. Priorities are based on surveillance data.

c. Interventions will change systems and individuals to provide improved disease management or education.

d. The community supports the intervention plan.

e. The applicant demonstrates a scientific basis for each intervention.

f. The methods and measures for monitoring progress of interventions are appropriate.

7. Description of the Problem (5 points)

The extent to which:

a. The applicant provides a comprehensive description of what is known about the asthma burden in the State, tribe, territory or jurisdiction including all ages, race/ethnic groups, and geographic areas.

b. The applicant fully identifies existing initiatives, capacity, and

infrastructure of the agency within which the asthma programs will occur.

c. The barriers identified when developing the State Asthma Plan were addressed.

d. The agency's commitment to addressing asthma is demonstrated by accomplishments to date and understanding of the problem.

8. Budget (reviewed, but not scored)

The extent to which:

a. The budget is comprehensive and includes details for year one and projections for year two and three of the project period.

b. The budget contains justifications that are consistent with stated goals, objectives, activities, and the intended use of cooperative agreement funds.

c. The budget is reasonable and includes funds for project staff to attend a yearly conference or grantee meeting convened by CDC. In addition, the applicant included costs for one person to travel to Atlanta, GA, to attend the 6th National Environmental Health Conference on December 3–5, 2003.

9. Performance Goals (reviewed, but not scored)

The extent to which the applicant will reduce the burden of asthma in the State, tribe, territory, tribe or jurisdiction.

Part B: Implementation of State Asthma Plan

1. Implementation Plan (25 Points)

The extent to which:

a. Implementation objectives are specific, realistic, measurable and time-phased for each of the interventions.

b. High priority interventions are based on surveillance data and focus on disparate populations first. Strategies that change systems and individuals to provide improved disease management are included.

c. There is a clear link between the State Asthma Plan and the proposed interventions, including an assessment of existing and needed resources to implement these strategies.

d. The intervention plan is supported in the community and this is demonstrated by the inclusion of letters of support from key members of the community.

e. Statewide partners are involved in implementing and monitoring the plan over time.

f. Proposed intervention strategies are appropriate and have a scientific basis. Asthma management activities are consistent with the National Asthma Education and Prevention Program (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma.''

g. Methods and measures for monitoring intervention activities are specific, reasonable, and likely to assess the effectiveness of activities in reaching program goals and objectives. Process, impact, and outcome objectives are included.

2. Management and Staffing Plan (20 Points)

The extent to which:

a. The applicant demonstrates a high level of commitment and organizational support for the asthma program. Organizational charts demonstrate clear lines of authority and coordination with related programs at the State health department such as tobacco control, environmental health, or maternal and child health. The plan for institutionalizing and sustaining the asthma program beyond the 5-year project period is achievable.

b. Job descriptions and curricula vitae indicate that each proposed staff member has the credentials, knowledge, training and experience to perform assigned tasks.

c. The roles of proposed staff members are defined and appropriate for carrying out stated responsibilities.

d. The staffing plan includes at least a full-time asthma coordinator, at least 2 full-time epidemiologists, and a supervisor. Other staff position(s) are also included.

e. The plan to expedite filling of the staff position(s), assuring that they will be approved by the applicant's personnel system, is realistic.

f. The role of the statewide partnership group is appropriate for the oversight of intervention activities.

g. The applicant documents assurance that key personnel will attend scheduled grantee meetings and CDC-sponsored national asthma conferences, and that the applicant agrees to share innovations, information, data and materials.

3. Workplan (15 Points)

The extent to which:

a. The applicant identifies goals, objectives and activities that are specific, measurable, realistic, related to the Recipient Activities, and reflect plans in year one through five of the project.

b. Objectives will contribute to the accomplishment of the stated goals.

c. Activities are likely to achieve related objectives.

d. Project time-line is realistic and indicates when each goal, objective, and activity will be met.

e. Measures for monitoring and evaluating the process, impact, and outcome of each goal and objective are appropriate and specific.

4. Surveillance System (15 Points)

The extent to which:

a. The applicant has an operational surveillance system for asthma within the health agency.

b. Attached surveillance reports are of high quality and comprehensively describe the asthma burden within the State, territory, tribe, or jurisdiction, including, if available, a report on asthma in the Medicaid population and the State Children's Health Insurance Program (SCHIP).

c. The applicant identifies all data currently available to the program as well as additional data the agency will obtain and methods for obtaining it. Plan includes use of the Behavioral Risk Factor Surveillance System (BRFSS) asthma module(s).

d. The plan identifies populations at risk for poorly controlled asthma such as specific racial/ethnic groups, socio-economic groups, and/or geographic areas.

e. The applicant presents a reasonable approach for how the agency will enhance an ongoing surveillance system and how the data will be used to support policy, program development, implementation, and evaluation activities.

f. The plan describes appropriate measures for asthma prevalence, severity, management, mortality, hospitalization, emergency care, and costs of asthma.

g. The plan includes surveillance and public health interventions for work-related asthma.

h. The approach for conducting analysis, interpreting surveillance data, and disseminating data through published reports is appropriate.

i. The plan for evaluating the asthma surveillance system addresses all program goals and objectives, will be effective in monitoring asthma trends over time, will determine the effectiveness of asthma interventions, and will support modifications to the State Asthma Plan.

5. Approved State Asthma Plan (15 Points)

The extent to which:

a. A commitment by the Agency to implement this plan is demonstrated by the inclusion of a letter of support from the Secretary of Health or the Agency's Medical Director. If the State Asthma Plan is not already approved, the applicant provides assurance that it will be completed within 3 months of the first budget year.

b. The State Asthma plan is comprehensive, addressing all persons with asthma regardless of age, race/

ethnicity, gender, or geographic area. It also includes key environments in which persons with asthma spend significant time such as the home, school, and workplace.

c. The Plan defines the current status of asthma, why asthma should be a public health priority, and an assessment of the asthma burden in the State, territory, tribe, or jurisdiction. Applicant also lists asthma priorities and provides evidence that these priorities are directly related to analysis of population-based surveillance data. Objectives are time-phased and organized in accordance with the priorities identified in the State Asthma Plan.

d. The applicant fully describes how the Plan was developed and how partners participated in the process. The number and type of agencies that participated and their contributions in developing the State Asthma Plan are appropriate.

e. Proposed activities to meet the plan's objectives include, but are not limited to, efforts to: (1) Expand surveillance for asthma; (2) improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) ''Guidelines for the Diagnosis and Management of Asthma,'' (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH publication No. 97–4051, April 1997); (3) improve the skills of patients and families affected by asthma to manage the disease; (4) review legislation and policies impacting people with asthma; (5) identify environmental factors that contribute to asthma prevalence and morbidity, and reduce or eliminate exposure to these factors; and (6) communicate between those implementing and those affected by planned activities.

6. Collaboration Plan (5 Points)

The extent to which:

a. The applicant has experience collaborating with partners around asthma or other chronic or environmental related or occupationally related diseases both within and outside the agency.

b. Collaborating organizations and agencies include a wide variety of appropriate partners in the clinical community; local health agencies; physician organizations; community health centers; local, state or regional asthma or respiratory health organizations (such as the American Lung Association), local education authorities; and groups or organizations that serve populations experiencing a disproportionate burden of asthma. If one or more of these partners are not included, the applicant explains why.

c. The applicant includes a description of the collaboration's progress in: (1) Establishing leadership, (2) developing a consensus regarding goals, (3) identifying roles and responsibilities through a negotiated process, (4) developing routine and consistent patterns of communications, and (5) sustaining the participation of members over time.

d. Letters of commitment from key organizations demonstrate their willingness, expertise, and capacity to carry out assigned responsibilities.

e. The applicant presents a sound plan to determine the effectiveness of collaborations.

7. Description of the Problem (5 Points)

The extent to which:

a. The applicant provides a comprehensive description on what is known about the asthma burden in the State, tribe, territory, or jurisdiction, and a description of populations at increased risk of poorly controlled asthma within the jurisdiction (*e.g.*, ethnic groups, socio-economic groups, and geographic areas).

b. The applicant identifies existing initiatives, capacity, and infrastructure of the agency within which the asthma programs will occur.

c. The agency's commitment to addressing asthma is demonstrated by accomplishments to date and understanding of the problem.

8. Budget (reviewed, but not scored)

The extent to which:

a. The budget is comprehensive and includes details for year one and projections for year two and three of the project period.

b. The budget contains justifications that are consistent with stated goals, objectives, activities, and the intended use of cooperative agreement funds.

c. The budget is reasonable and includes funds for project staff to attend a yearly conference or grantee meeting convened by CDC. In addition, the applicant included costs for one person to travel to Atlanta, GA, to attend the 6th National Environmental Health Conference on December 3–5, 2003.

9. Performance Goals (reviewed, but not scored)

The extent to which the applicant will reduce the burden of asthma in the State, territory, tribe or jurisdiction.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement as posted on the CDC web site.

AR–7 Executive Order 12372
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–21 Small, Minority and Women-owned Business

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements''.

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For business management and budget assistance, contact: Mildred Garner, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA

30341–4146, Telephone: (770) 488–2745, e-mail address: *mqg4@cdc.gov.*

For business management and budget assistance in the territories, contact: Charlotte Flitcraft, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control and Prevention, 2020 Brandywine Rd., Atlanta, GA 30319, Telephone: (770) 488–2632, e-mail address: *caf5@cdc.gov.*

For program technical assistance, contact: Kathie Sunnarborg, MPH, CHES, Public Health Advisor, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Rd., NE, Mailstop E–17, Atlanta, GA 30333, Telephone number: (404) 498–1451, e-mail address: *ksunnarborg@cdc.gov.*

Dated: May 21, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–13222 Filed 5–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0479]

Determination That Periactin Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that Periactin (cyproheptadine hydrochloride (HCl)) 4-milligram (mg) tablets were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for cyproheptadine HCl 4-mg tablets.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

Periactin 4-mg tablets are the subject of NDA 12–649. On October 17, 1961, Merck & Co., Inc., received approval to market Periactin 4-mg tablets.

On November 5, 2002, CorePharma LLC submitted a citizen petition (Docket No. 02P–0479/CP1) under 21 CFR 10.30 requesting that the agency assign reference listed drug status to a currently marketed cyproheptadine hydrochloride 4-mg tablet drug product. At that time, FDA exercised its discretion under § 314.161(a) to determine if Periactin 4-mg tablets were withdrawn for reasons of safety or effectiveness.

After reviewing agency records, FDA has determined that Periactin 4-mg tablets were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list Periactin 4-mg tablets in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to Periactin 4-mg tablets may be approved by the agency.

Dated: May 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13193 Filed 5–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA/Industry Exchange Workshop on FDA Clinical Trials Statutory and Regulatory Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Philadelphia District, in cooperation with the Society of Clinical Research Associates, (SoCRA) is announcing a workshop on FDA clinical trial statutory and regulatory requirements. Topics for discussion include: Financial incentives and funding, pre-IND (investigational new drug application) meetings and FDA meeting process, medical device aspects of clinical research, informed consent requirements, adverse event reporting, how FDA conducts bioresearch inspections, ethics in clinical research, FDA and confidence in the conduct of clinical research, and how FDA addresses fraud in clinical research. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards and those who interact with them for the purpose of conducting FDA regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, June 25, 2003, from 8:30 a.m. to 4:45 p.m. and Thursday, June 26, 2003, from 8:45 a.m. to 4:45 p.m.

Location: The public workshop will be held at the Pittsburgh Marriott Center City Hotel, 112 Washington Pl., Pittsburgh, PA 15219.

Contact: Daniel R. Tammariello, FDA, 7 Parkway Center, Suite 250, Pittsburgh, PA 15220, 412–644–3394, ext. 16, FAX: 412–644–4496, e-mail: *dtammari@ora.fda.gov* or Marie Falcone, Industry and Small Business Representative, FDA, Room 900 U.S. Customhouse, 200 Chestnut St.,

Philadelphia, PA 19106, 215–597–2120, ext. 4003, FAX: 215–597–5798, e-mail: *mfalcone@ora.fda.gov.*

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and $460 (member) or $535 (non-member) registration fee made payable to SoCRA, P.O. Box 101, Furlong, PA 18925. To register via the Internet go to *http://www.socra.org/FDA_Conference.htm.* FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

Registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800 -SoCRA92 (800–762–7292), or 215–345–7369 or via e-mail to *socramail@aol.com.* Attendees are responsible for their own accommodations. To make reservations at the Pittsburgh Marriott Center City Hotel at the reduced conference rate, contact the Pittsburgh Marriott Center City Hotel at 412–471–4000 or 888–456–6600 or by fax at hotel FAX: 412–281–4797 before June 3, 2003.

The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Marie Falcone at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The ''FDA Clinical Trials Statutory and Regulatory Requirements'' workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. FDA has made education of the research community a high priority to assure the quality of clinical data and protect research subjects.

The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: May 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–13192 Filed 5–27–03; 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: Web-based Semi Annual Report (SAR) (OMB No. 0915–0262)—Revision

The Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC) plans to collect the annual reporting requirements for the primary care grantees funded by BPHC using the web-based Semi Annual Report (SAR). The SAR includes reporting requirements for grantees of the following primary care programs: State Primary Care Associations and State Primary Care Offices. Authorizing legislation is found in Section 330(m) of the Public Health Service Act, as amended.

BPHC collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected semi-annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The SAR has been a valuable instrument for collecting this information from grantees. The SAR provides data on services, characteristics of populations, leveraged funds, and services that fall within the scope of the grant.

The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
SAR	103	1	18	1854

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: May 20, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–13224 Filed 5–27–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: This notice extends the deadline for fiscal year 2003 applications for Chiropractic Demonstration Project (CHIRO) Grants (Sec. 755(b)(3) of the Public Health Service Act) and expands the purpose of the Program. An August 9, 2002 **Federal Register** notice in the HRSA Preview (67 FR 52049) announced that the deadline for applications for the Chiropractic Demonstration Projects Program was March 31, 2003 and that the purpose of the Chiropractic Demonstration Projects Program is to carry out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions. The FY 2003 Appropriations Act, Public Law 108–7, expanded the purpose of the program to add funding for training components. Therefore, the deadline for applications is extended to June 20, 2003. Please mail applications to HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20857, postmarked no later than June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Hannah, Division of State, Community and Public Health, Bureau of Health Professions, Parklawn Building, Room 8–103, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–0908 *(jhannah@hrs.gov).*

Dated: May 20, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–13226 Filed 5–27–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

HRSA–03–101 Fiscal Year 2003 Competitive Application Cycle for the Comprehensive Geriatrics Education Program (CGEP)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications will be accepted for the Comprehensive Geriatrics Education Program for Fiscal Year 2003.

Authorizing legislation: These applications are solicited under the authority of Title VIII, Section 855 of the Public Health Service (PHS) Act, as amended.

Purpose: Grants will be awarded to eligible entities for programs that—Provide training to individuals who will provide geriatric care for the elderly by enhancing the knowledge, skills, and leadership potential of registered nurses (RN) providing care to older adults in a variety of settings. Projects must demonstrate that the preparation of RNs benefits licensed practical nurses (LPN) and certified nurse assistants (CNA). Each project must describe the program for RNs and the specific activities designed to develop and strengthen the skills of LPNs and CNAs to promote quality care for the geriatric population.

Statutory matching or cost sharing requirement: None.

Eligible applicants: The following are eligible entities: Schools of nursing, academic health centers, health care facilities, partnerships of a school and a health care facility, partnerships of a program leading to CNA certification and a health care facility, and appropriate public or private entities.

Funding preference: As provided in Section 805 of the Public Health Service Act, a funding preference will be applied to approved applications with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments. This preference will be applied to applications that rank above the 20th percentile of applications recommended for approval.

Administrative special consideration: Special consideration will be given to applicants that propose collaborative approaches for increasing the number of students in rural and underserved areas who can access educational opportunities through the use of electronic distance learning methodologies.

Review criteria: Applications will be reviewed by a panel of peer reviewers using the following criteria:

(a) A clearly stated project purpose;

(b) A documented need for the proposed project;

(c) The potential effectiveness of the proposed project;

(d) A clearly articulated project plan including evaluation of project objectives;

(e) A plan for addressing diversity and cultural competence;

(f) A comprehensive plan for project management;

(g) The reasonableness of the budget and fiscal plan;

(h) The presence of established and/or planned linkages with relevant entities.

Estimated amount of available funds: It is estimated that $3 million will be available in fiscal year 2003.

Estimated number of awards: This is a new program; the estimated number of awards may range from 12–30 for fiscal year 2003.

Estimated or average size of each award: This is a new grant program; the estimated costs are expected to range from $75,000 to $200,000.

Estimated project period: Applications may be submitted for 2 years and ten months. The first budget period is September 1, 2003-June 30, 2004; the second and third budget periods are July 1, 2004—June 30, 2005 and July 1, 2005—June 30, 2006 respectively.

Application requests, availability, dates and addresses: Applicants for this program are encouraged to notify HRSA, Division of Nursing of their intent to apply. Notification can be made in one of three ways: Phone, e-mail or mail Dr. Patricia Calico of your intent. Telephone (301) 443–5486; e-mail *pcalico@hrsa.gov*; mail: Division of Nursing, Bureau of Health Professions, HRSA, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville MD 20857. Application materials will be available for downloading via the web at *http://bhpr.hrsa.gov/grants* on May 28, 2003. Applicants may also request a hardcopy of the application material by contacting the HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland, 20879, by calling at 1–877–477–2123, or by Fax at 1–877–477–2345. In order to be considered for competition, hard copy applications must be postmarked by the due date of July 7, 2003. Applicants should request a legibly dated U.S. Postal postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal service. Private metered postmarks shall not be acceptable as proof of timely mailing. An application receipt will be provided. Applications submitted after the deadline date will be returned to the applicant and not processed. Applications may not be submitted electronically, at this time. Applicants should note that HRSA anticipates accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

Projected award date: September 1, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Calico, Division of Nursing, Bureau of Health Professions, HRSA, Room 9–36, Parklawn Building, 5600

Fishers Lane, Rockville, Maryland 20857. Central telephone is (301) 443–6333. E-mail: *pcalico@hrsa.gov.*

Paperwork Reduction Act

The Application for the Comprehensive Geriatrics Education Grant Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: May 16, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–13225 Filed 5–27–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15169]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 1625–0039 (Formerly 2115–0506), 1625–0038 (Formerly 2115–0505), 1625–0066 (Formerly 2115–0595), and 1625–0012 (Formerly 2115–0042)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of four Information Collection Requests (ICRs). The ICRs comprise Declaration of Inspection Before Transfer of Liquid Cargo in Bulk, Plan Approval and Records for Tank, Passenger, Cargo, and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels, Oceanographic Research Vessels, and Electrical Engineering—46 CFR subchapters D, H, I, I–A, J, R, and U, Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Requirements for Prince William Sound, and Certificate of Discharge to Merchant Mariners. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before July 28, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2003–15169) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. 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) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

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 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit comments. Persons submitting comments should include their names and addresses, identify this document (USCG 2003–15169), and give the reasons for the comments. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Declaration of Inspection Before Transfer of Liquid Cargo in Bulk.

OMB Control Number: 1625–0039.

Summary: A Declaration of Inspection (DOI) documents the transfer of oil and hazardous materials, to help prevent spills and damage to a facility or vessel. Persons in charge of transfers must review and certify compliance with procedures specified by the terms of the DOI.

Need: 33 U.S.C. 1221 authorizes the Coast Guard to establish rules to prevent the discharge of oil and hazardous material from vessels and facilities. The rules for DOIs appear at 33 CFR 156.150 and 46 CFR 35.35–30.

Respondents: Persons in charge of transfers.

Frequency: On occasion.

Burden: The estimated burden is 66,223 hours a year.

2. *Title:* Plan Approval and Records for Tank, Passenger, Cargo, and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical School Vessels, Oceanographic Research Vessels, and Electrical Engineering—46 CFR Subchapters D, H, I, I–A, J, R, and U.

OMB Control Number: 1625–0038.

Summary: This information collected requires the shipyard, designer, or manufacturer for the construction of a vessel to submit plans, technical information, and operating manuals to the Coast Guard.

Need: Under 46 U.S.C. 3301 and 3306, the Coast Guard is responsible for enforcing rules promoting the safety of life and property in marine transportation. The Coast Guard uses this information to ensure that a vessel meets the applicable standards for construction, arrangement, and equipment.

Respondents: Shipyards, designers, and manufacturers of certain vessels.

Frequency: On occasion.

Burden: The estimated burden is 8,835 hours a year.

3. *Title:* Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Requirements for Prince William Sound.

OMB Control Number: 1625–0066.

Summary: The Oil Pollution Act of 1990 (OPA 90) required the development of Vessel and Facility Response Plans to minimize the impact of oil spills. It required added measures for Prince William Sound. About the same time, the treaty known in short as Marpol required Shipboard Oil Pollution Emergency Plans of other vessels to minimize impacts of oil spills.

Need: This information ensures that vessels and facilities are prepared to respond in event of oil spills. The Coast Guard will review the Plans and measures to assess their effectiveness.

Respondents: Owners and operators of vessels and facilities.

Frequency: On occasion.

Burden: The estimated burden is 137,199 hours a year.

4. *Title:* Certificate of Discharge to Merchant Mariners.

OMB Control Number: 1625–0012.

Summary: The information collected requires a master or mate of a shipping company to submit information on merchant mariners to the Coast Guard that: (1) Establishes their sea-service time; (2) sets forth their qualifications for their original, or for upgrading their existing, merchant-mariner credentials; and (3) sets forth their qualifications for retirement or insurance benefits.

Need: Under 46 U.S.C. 10311, the information collected shows eligibility for merchant mariners' documents and tells the Maritime Administration the availability of mariners in a time of national emergency.

Respondents: Masters or mates of shipping companies and merchant mariners.

Frequency: On occasion.

Burden: The estimated burden is 4,500 hours a year.

Dated: May 19, 2003.

Nathaniel S. Heiner,

Acting, Director of Information and Technology.

[FR Doc. 03–13185 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15188]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). TSAC provides advice and makes recommendations to the Secretary on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Application forms should reach us on or before July 18, 2003.

ADDRESSES: You may request an application form by writing to TSAC Application; Commandant (G–MSO–1), Room 1210; U.S. Coast Guard; 2100 Second Street SW.; Washington, DC 20593–0001; by calling 202–267–0214; or by faxing 202–267–4570. Send your original completed and signed application in written form to the above street address. This notice and the application are available on the Internet at *http://dms.dot.gov* and the application form is also available at *http://www.uscg.mil/hq/g-m/advisory/index.htm*.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante; Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail gmiante@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Secretary on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its working groups may meet to consider specific problems as required. We will consider applications for five positions that expire or become vacant in September 2003 as follows: two members from the barge and towing industry, reflecting a geographical balance; one member from the offshore mineral and oil supply vessel industry; one member from a shipping company (who, together with one other shipping member, at least one shall be engaged in the shipment of oil or hazardous materials by barge); and one member from the general public. To be eligible, applicants should have particular expertise, knowledge, and experience relative to the position, or general public interest, in towing operations, marine transportation, occupational safety and health, environmental protection, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: May 19, 2003.

Joseph J. Angelo,

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

[FR Doc. 03–13237 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD01–03–045]

Closure of Coast Guard Station (Small) Rockaway

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The U.S. Coast Guard (USCG) and the National Parks Service (NPS) are holding a Public Information Meeting on Tuesday, May 27, 2003, at 5:30 p.m. at the Chapel at Fort Tilden, Rockaway Point Boulevard, Rockaway, New York to present information relating to the NPS plans to expand Gateway National Recreation Area by developing the property currently managed by the USCG as Station (Small) Rockaway. The meeting will be open to the public.

DATES: The United States Coast Guard and National Park Service will conduct this meeting on Tuesday, May 27, 2003, from 5:30 p.m. to 10 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 27, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before May 23, 2003.

ADDRESSES: The meeting will be held in the Chapel at Fort Tilden, Rockaway Point Boulevard, Rockaway, NY. Send written material and requests to make oral presentations to CDR Peter Sammis, Marine Response Division (CGD01–03–045), Coast Guard Activities New York, 212 Coast Guard Drive, room 210, Staten Island, NY 10305. This notice is available on the Internet at *http://www.harborops.com*.

FOR FURTHER INFORMATION CONTACT: CDR Peter Sammis, Chief, Marine Response

Division, telephone 718–354–4102, fax 718–354–4125.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) NPS plans for establishment of public ferry service, rehabilitation of the main station building for possible use as a small hotel/bed and breakfast facility, and development of other waterfront facilities including at least one restaurant, all to serve the communities located on the Rockaway peninsula and around Jamaica Bay. NPS plans also include permanent facilities for the U.S. Park Police and cooperating law enforcement and maritime rescue agencies.

(2) The Coast Guard's plans of consolidating its New York operations to improve efficiency in overall operations and response to maritime emergencies in the New York metropolitan area including Jamaica Bay. In order to complete this consolidation, the one USCG small boat assigned at Rockaway would be moved to USCG Station New York on Staten Island, NY. The USCG would close Station Rockaway and transfer ownership of the Rockaway property to the NPS. The USCG would continue routine patrols of Jamaica Bay/Rockaway area waters, along with other federal, state and local law enforcement and rescue agencies.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Coast Guard's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify CDR Sammis no later than May 27, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than May 27, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to CDR Sammis no later than May 27, 2003. Should you be interested in this matter but unable to attend the meeting, you may submit written comments to: CDR Peter Sammis, Marine Response Division (CGD01–03–045), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY 10305 or Mr. Chris Soller, Gateway National Recreation Area, Headquarters Building 69, Floyd Bennett Field, Brooklyn, NY 11234. All comments must be received no later than June 3, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact CDR Sammis as soon as possible.

Dated: May 16, 2003.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 03–13187 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–27]

Notice of Proposed Information Collection: Comment Request; Management Review for Subsidized Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: July 28, 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: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

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 affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Management Review for Subsidized Multifamily Housing Projects.

OMB Control Number, if applicable: 2502–0178.

Description of the need for the information and proposed use: The form is completed by HUD staff and Contract Administrators gathering and recording information during an on-site review of the project operations. The information gathered from the form is used to evaluate the quality of management, determine causes of problems, and devise corrective actions to safeguard the Department's financial interest and ensure that tenants are provided with decent, safe, and sanitary housing.

Agency form numbers, if applicable: HUD–9834.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 6,720; the number of respondents is 1,120 generating approximately 1,120 annual responses; the frequency of response is on occasion and annually; and the estimated time to gather and prepare the necessary documents is 6 hours per submission.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 15, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–13198 Filed 5–27–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–28]

Notice of Proposed Information Collection: Comment Request; Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: July 28, 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: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

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 affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 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: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Control Number, if applicable: 2502–0044.

Description of the need for the information and proposed use: Contractors use the form HUD–2328 to establish a schedule of values of construction items on which the monthly advances or mortgage proceeds are based. Contractors use the form HUD–92330–A to convey actual construction costs in a standardized format of cost certification. In addition to assuring that the mortgage proceeds have not been used for purposes other than construction costs, HUD–92330–A further protects the interest of the Department by directly monitoring the accuracy of the itemized trades on form HUD–2328. This form also serves as project data to keep Field Office cost data banks and cost estimates current and accurate. HUD–2205–A is used to certify the actual costs of acquisition or refinancing of projects insured under the section 223(f) program.

Agency form numbers, if applicable: HUD–2205–A, HUD–2328, and HUD–92330–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 10,200; the number of respondents is 925 generating approximately 925 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 4 hours to 8 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: May 14, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–13199 Filed 5–27–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4800–C–02]

Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs for Fiscal Year 2003; Technical Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Programs; technical correction.

SUMMARY: On April 25, 2003, HUD published its Fiscal Year 2003 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs. This document makes certain technical corrections with respect to the section 202 Supportive Housing for the Elderly Program and the section 811 Supportive Housing for Persons with Disabilities Program.

DATES: The application due dates of June 13, 2003, for both programs, remains unchanged from the application due dates as published in the **Federal Register** on April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–3000 (this is not a toll-free number). Speech- or hearing-impaired individuals may call the toll-free Federal Information Relay Service TTY at (800) 877–8399.

SUPPLEMENTARY INFORMATION: On April 25, 2003 (68 FR 21001), HUD published its Fiscal Year (FY) 2003 Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs. The FY 2003 SuperNOFA announced approximately $2.3 billion in HUD program funds covering 43 funding opportunities within programs operated and administered by HUD offices.

This notice published in today's **Federal Register** makes certain corrections and clarifications to the FY 2003 funding announcements for the section 202 Supportive Housing for the Elderly Program and the section 811 Supportive Housing for Persons with Disabilities Program.

Section 811 Supportive Housing for Persons With Disabilities

This notice amends the FY 2003 section 811 Allocations Chart because, subsequent to the April 25, 2003, publication, it was determined that the chart required modification. (*See* pages 21941 through 21943). To ensure fairness to applicants that have already submitted an application and consistent with the requirements of section IV(B) of the program section of this NOFA, HUD will reduce the number of units requested to the revised number of units allocated as detailed in this correction, provided that the number originally requested did not exceed the number of units allocated in the April 25, 2003, publication.

In addition, the NOFA contained an incorrect amount under ''Amount Allocated.'' The amount is corrected in this notice. This notice also clarifies in Rating Factor 3 that the site must also be in compliance with the site and neighborhood standards in 24 CFR 891.320. Finally, in Appendix A, in the description of what is required for an application to earn two bonus points, HUD is removing the words ''high performing'' from the description of a Federally designated RC/EZ/EC community because such a community does not have to be high performing for a 202 or 811 application to receive the bonus points if it is proposing a site located in an RC/EZ/EC community.

Finally, the NOFA inadvertently excluded Exhibit 4(d)(ix) Exception to project size limit in the list of deficiencies that will be considered curable.

Section 202 Supportive Housing for the Elderly

In section II ''Amount Allocated,'' HUD amends the first data element taken from the 2000 Census to determine the section 202 allocation formula for FY 2003 to make it clear that the data element includes those elderly renter households of all sizes (householder age 65 and older) who pay more than 30 percent of their incomes for gross rent. (*See* page 21924.) Accordingly, in the Super Notice of Funding Availability (SuperNOFA) for HUD's Discretionary Programs in Fiscal Year 2003 (Docket No. FR–4800–N–01) in the issue of Friday, April 25, 2003, the following corrections are made:

1. Section 811 Supportive Housing for Persons with Disabilities Notice of Funding Availability which begins at 68 FR 21937:

On page 21939, in the third column, the first sentence under ''II. Amount Allocated'' is amended to read as follows: ''For FY 2003, $116,760,434 for capital advances is available for the section 811 Program of Supportive Housing for Persons with Disabilities.''

On page 21941—21943, a revised Fiscal Year 2003 section 811 Allocations Chart is substituted for the chart published on April 25, 2003, as follows:

BILLING CODE 4210–27–P

Fiscal Year 2003 Allocations for Supportive Housing for Persons with Disabilities

[Fiscal Year 2003 Section 811 Allocations]

Office	Capital Advance Authority	Units
Boston Hub:		
Boston	$2,882,229	31
Hartford	1,879,516	20
Manchester	1,470,721	20
Providence	953,813	10
Total	**7,186,279**	**81**
New York Hub:		
New York	6,242,982	55
Total	**6,242,982**	**55**
Buffalo Hub:		
Buffalo	2,411,846	29
Total	**2,411,846**	**29**
Philadelphia Hub:		
Newark	3,541,851	35
Pittsburgh	1,650,458	22
Philadelphia	3,422,418	38
Charleston	1,265,705	18
Total	**9,880,432**	**113**
Baltimore Hub:		
Baltimore	1,681,004	22
Richmond	1,871,830	28
D.C.	1,740,967	22
Total	**5,293,801**	**72**
Greensboro Hub:		
Columbia	1,920,610	26
Greensboro	3,507,768	40
Total	**5,428,378**	**66**

Atlanta Hub:		
Atlanta	2,636,544	39
San Juan	2,194,939	29
Louisville	1,974,386	27
Knoxville	1,208,641	19
Nashville	1,547,123	23
Total	**9,561,633**	**137**
Jacksonville Hub:		
Jacksonville	4,541,303	70
Birmingham	1,859,631	28
Jackson	1,397,305	22
Total	**7,798,239**	**120**
Chicago Hub:		
Chicago	4,529,429	48
Indianapolis	2,214,683	30
Total	**6,744,112**	**78**
Columbus Hub:		
Cincinnati	1,223,277	18
Cleveland	2,108,840	27
Columbus	1,442,452	20
Total	**4,774,569**	**65**
Detroit Hub:		
Detroit	2,509,189	31
Grand Rapids	1,484,452	21
Total	**3,993,641**	**52**
Minneapolis Hub:		
Milwaukee	2,020,605	24
Minneapolis	1,941,142	22
Total	**3,961,747**	**46**
Fort Worth Hub:		
Fort Worth	3,205,618	53
Houston	1,969,739	31
Little Rock	1,275,113	22
New Orleans	1,733,412	27
San Antonio	1,788,371	30
Total	**9,972,253**	**163**
Kansas City Hub:		
Des Moines	1,219,468	18
Kansas City	1,832,214	26
Omaha	724,632	10
Oklahoma City	1,433,327	23
St. Louis	1,624,788	20
Total	**6,834,429**	**97**

Denver Hub:		
Denver	2,488,179	37
Total	**2,488,179**	**37**
San Francisco Hub:		
Honolulu (Guam)	1,711,728	10
Phoenix	1,844,180	27
Sacramento	1,949,590	22
San Francisco	4,942,696	47
Total	**10,448,194**	**106**
Los Angeles Hub:		
Los Angeles	7,620,592	85
Total	**7,620,592**	**85**
Seattle Hub:		
Anchorage	1,711,728	10
Portland	1,990,603	26
Seattle	2,416,797	28
Total	**6,119,128**	**64**
National Total	**$116,760,434**	**1,466**

NOTE: In the event that an applicant submits an application requesting more units than allocated for the applicable Multifamily Program Center in the amended Allocation Chart, HUD will reduce the number of units requested to the revised number of units allocated to that Multifamily Program Center, provided the number requested does not exceed the original number of units allocated to that Multifamily Program Center in accordance with the requirements in Section IV(B) of this program section of the SuperNOFA.

BILLING CODE 4210–27–C

On page 21947, in the middle column, under section V. ''Application Selection Process,'' in the list of Exhibits, after (4)(d)(viii) ''Seek alternate site,'' the list is corrected by inserting the following: ''(4)(d)(ix) Exception to project size limit.''

On page 21949, in the middle column, paragraph (a)(i) under Rating Factor 3 is amended to read as follows: ''(a)(i) (10 points) Site Approvability—The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended tenants; adequacy of utilities and streets, and freedom of the site from adverse environmental conditions (based on site visit for site control projects only); and compliance with site and neighborhood standards in 24 CFR 891.125(a), (d) and (e) and 24 CFR 891.320. Sites where amenities are accessible other than by project residence or private vehicle will be rated more favorably.''

On page 21968, the description of what is required for a section 202 or 811 application to earn two bonus points is amended to read as follows:

Bonus Points (2 Bonus Pts)

(Exhibit References: Exhibits 1 and 8(h))

''Location of proposed site in a Federally designated RC/EZ/EC community that will serve residents of the RC/EZ/EC and is consistent with the strategic plan of the RC/EZ/EC.''

2. Section 202 Supportive Housing for the Elderly Program Notice of Funding Availability, which begins at 68 FR 21921:

On page 21924, in the first column, HUD amends the first full paragraph to read as follows: ''The allocation formula used for section 202 reflects the ''relevant characteristics of prospective program participants,'' as specified in 24 CFR 791.402(a). The FY 2003 formula consists of two data elements from the 2000 Census: (1) number of elderly renter households of all sizes (householder age 65 and older) paying more than 30 percent of their incomes for gross rent and (2) number of elderly households (householder age 60 and older) living alone with incomes below the poverty level.''

Dated: May 16, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing.

[FR Doc. 03–13196 Filed 5–27–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–12]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St., SW., Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999, notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the fourteenth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 275 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are: (1) Those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender; and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if: (1) The mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12; (2) there has been no Origination Approval Agreement for at least six months; and (3) the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Amwest Financial, Inc.	4550 Post Oak Place, Ste 326, Houston, TX 77027.	Houston, TX	03/20/2003	Denver
Discover Mortgage Company.	4282 Memorial Drive, Decatur, GA 30032	Atlanta, GA	03/20/2003	Atlanta
Imperial Mortgage Finance Corporation	623 Red Lane Road, Birmingham, AL 35215.	Birmingham, AL	03/20/2003	Atlanta
Loans by Summerville, Inc.	3008 Tobacco Road, Hephzibah, GA 30815.	Atlanta, GA	03/20/2003	Atlanta
Prodigy Mortgage Corporation	1844 Atlantic Blvd, Jacksonville, FL 32207	Jacksonville, FL	03/20/2003	Atlanta
Westminster Mortgage Corporation	1777 N.E. Expressway, Ste 14, Atlanta, GA 30329.	Atlanta, GA	03/20/2003	Atlanta

Dated: May 16, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–13195 Filed 5–27–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians; Submission of Information Collections for Review by the Office of Management and Budget With Comment Request

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of requests for extension of information collection approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians announces the following Information Collection Requests have been submitted to the Office of Management and Budget (OMB) for review and approval: Application for Technical Assistance, OMB No. 1035–0001; Application for Technical Assistance to Withdraw Funds from Trust Status (General), OMB No. 1035–0002; and Application to Withdraw Tribal Funds from Trust Status, OMB No. 1035–0003. These information collections and their expected burdens and costs remain unchanged from their original review and approval by the Office of Management and Budget. The request to the Office of Management and Budget is to extend these currently approved collections for three years.

DATES: Comments must be submitted on or before June 27, 2003.

ADDRESSES: You may telefax your comments to: Attention: Desk Officer for the Interior Department, Office of Management and Budget at (202) 395–5806. You may also e-mail comments to: *Ruth_Solomon@omb.eop.gov.*

Please also send a copy of your comments to: Ms. Sarah Yepa, Office of the Special Trustee for American Indians, Trust Regulations, Policy & Procedures, 505 Marquette, NW., Suite 1000, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Sarah Yepa, telephone (505) 816–1003, FAX (505) 816–1377.

SUPPLEMENTARY INFORMATION: The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) allows tribes to withdraw their money held in trust by the U.S. Government. To withdraw their money, tribes must first submit an application and get approval from the Secretary of the Interior. The Reform Act also allows tribes to apply for technical assistance and financial assistance to complete the application. Section 1200.13 tells tribes how to submit an application to withdraw their money and Section 1200.14 tells them how they can apply for technical assistance and financial assistance. These information collections allow us to collect documents associated with tribes withdrawing their funds held in trust and applying for technical assistance to withdraw funds under 25 CFR 1200.

Responses to these collections of information are required to obtain or retain a benefit. A **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on proposed renewal of these collections of information, was published on February 21, 2003 (68 FR 8524); no comments were received.

Request for comments: The Office of the Special Trustee for American Indians requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address:

(a) Is this information collection necessary for the proper performance of the functions of the Special Trustee and will the information have practical utility?

(b) Is the Special Trustee's estimate of the burden (hours and cost) of the collection of information accurate? Are the methodology and assumptions used valid?

(c) Could we enhance the quality, utility and clarity of the information to be collected? and

(d) Are there ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

1. OMB Approval Number: 1035–0001.

Title: Application for Technical Assistance, 25 CFR Part 1200.

Brief Description of collection: This collection provides a benefit and a vehicle for tribes to obtain help in withdrawing funds from their trust account held by the U. S. Government using OST Form No. SF–424A, ''Application for Technical Assistance to Withdraw Funds from Trust Status (Specific Budget).''

Type of review: Renewal.

Respondents: Tribal Governments.

Number of Respondents per year: 12.

Estimated Time per Response: 39 hours.

Frequency of Response: Once.

Total Annual Burden to Respondents: 468 hours.

2. OMB Approval Number: 1035–0002.

Title: Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General), 25 CFR Part 1200.

Brief Description of collection: This collection provides a benefit and a vehicle for tribes to obtain help in withdrawing funds from their trust account held by the U. S. Government using OST Form No. SF–424, ''Application for Technical Assistance to Withdraw Funds from Trust Status (General).''

Type of review: Renewal.

Respondents: Tribal Governments.

Number of Respondents per year: 12.

Estimated Time per Response: 13 hours.

Frequency of Response: Once.

Total Annual Burden to Respondents: 156 hours.

3. OMB Approval Number: 1035–0003.

Title: Application to Withdraw Tribal Funds from Trust Status, 25 CFR Part 1200.

Brief Description of collection: This collection provides a benefit and a vehicle for tribes to obtain help in withdrawing funds from their trust account held by the U. S. ''Application for Technical Assistance to Withdraw Funds from Trust Status.''

Type of review: Renewal.

Respondents: Tribal Governments.

Number of Respondents per year: 12.

Estimated Time per Response: 342 hours.

Frequency of Response: Once.

Total Annual Burden to Respondents: 4,104 hours.

A Federal 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.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, Suite 1000, during the hours of 8 a.m.—4:30 p.m., MDT Monday through Friday except for legal holidays. If you wish to have your name or address withheld from review, you must state so prominently at the beginning of your comment. We honor all requests to the extent allowable by law. However, comments from businesses or their represents are made public. We may decide to withhold the information for other reasons.

The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days;

therefore, public comments should be submitted to OMB within 30 days to assure full consideration.

Dated: May 22, 2003.

Richard Fitzgerald,

Acting Director, Trust Regulations, Policy & Procedures.

[FR Doc. 03–13234 Filed 5–27–03; 8:45 am]

BILLING CODE 4310–2W–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 2, 3, and 4, 2003. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, June 2, 2003

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Review of current program developments.
2. Discussion of new business.
3. Topics for next meeting.

1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Update on program developments.
a. Consumer Price Indexes.
b. International Price Indexes.
c. Producer Price Indexes.
2. Topics for next meeting.

Tuesday, June 3, 2003

9:30 a.m.—Committee on Compensation and Working Conditions—Meeting Room 9

1. Discussion of current program developments.
2. New business.
3. Topics for next meeting.

1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. Status reports.
2. Injuries and Illnesses.
3. Topics for next meeting.

Wednesday, June 4, 2003

9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9

1. Brief update on Office of Productivity and Technology plans for conversion to the North American Industry Classification System (NAICS)
2. Industry productivity measures for the service sector: Overview of trends and plans for future development
3. Update for Office of Occupational Statistics and Employment Projections
4. Can occupational labor shortages be identified using available data?
5. Topics for next meeting: *Committee on Foreign Labor Statistics—Meeting Room 9*
1. Program update
2. International trends in manufacturing productivity
3. Topics for next meeting

The meetings are open to the public. Persons with disabilities, who need special accommodations, should contact Wilhelmina Abner on 202–691–5970. Persons who wish to attend these meetings as observers should also contact Ms. Abner to facilitate their admission to the building.

Due to scheduling difficulties, we are unable to provide the full fifteen days of advance notice of this meeting.

Signed at Washington, DC this 23rd day of May, 2003.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 03–13391 Filed 5–27–03; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

TIME: 10:30 a.m., Tuesday, June 3, 2003.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the Public.

MATTER TO BE CONSIDERED:

7561 Highway Accident Report—Ford Explorer Sport Collision with Ford Windstar and Jeep Grand Cherokee on Interstate 95/495 near Largo, Maryland, on February 1, 2002.

7558 Railroad Accident Report—Collision of Two Burlington Northern Santa Fe Freight Trains near Clarendon, Texas, on May 28, 2002.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, May 30, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: May 23, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–13439 Filed 5–23–03; 2:15 pm]

BILLING CODE 7533–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

TIME: 3:15 p.m., Thursday, May 22, 2003.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Emergency Board Meeting on less-than-normal notice. The one item is Closed to the Public.

MATTER TO BE CONSIDERED:

7555A Opinion and Order: Administrator v. Duchek, Docket SE–16842; disposition of the Administrator's appeal.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: May 22, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–13438 Filed 5–23–03; 2:15 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison; San Onofre Nuclear Generating Station, Unit 1 Exemption from Certain Requirements in 10 CFR Part 20 Appendix G

1.0 Background

Southern California Edison (SCE) is the licensee and holder of Facility Operating License No. DPR–13 for San Onofre Nuclear Generating Station, Unit 1 (SONGS–1), a permanently shutdown nuclear reactor facility located in San Diego County, California. When SONGS–1 was permanently shut down in 1992, SCE's license was amended pursuant to the Atomic Energy Act and 10 CFR Part 50 to possess, but not operate, the facility. Although permanently shutdown, the facility is still subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission).

In 1999, the licensee began active decommissioning of SONGS–1 and

significant dismantlement of the facility has been accomplished to date. In 2002, the reactor vessel was removed and packaged for transport and burial at a low-level radioactive waste disposal facility. The licensee is planning to transport the reactor vessel from SONGS–1 to the Chem-Nuclear low-level radioactive waste disposal facility at Barnwell County, South Carolina, by a combination of overland vehicle, ocean going vessel or barge, and rail transportation. The shipment is planned to begin sometime in the period between November 2003, and February 2004. The travel time is estimated to be as long as 90 days.

2.0 Request/Action

In a letter to the Commission dated March 7, 2003, the licensee requested a one-time exemption from certain requirements in 10 CFR part 20, appendix G, Section III.E. These requirements would require a licensee to investigate and file a report with the NRC if a shipment of radioactive waste is not acknowledged by the intended recipient within 20 days when making a shipment of low-level radioactive waste to a land disposal facility. The licensee has requested a one-time exemption from the 20-day investigation and reporting requirements for shipment of the SONGS Unit 1 reactor vessel since the transport time for the reactor vessel to the disposal site is currently expected to take as long as 90 days. If the regulation were to be applied to the shipment of the SONGS–1 reactor vessel, the licensee would be required to investigate, trace, and submit a report to the Commission on the shipment 20 days into the approximately 90-day journey to the Barnwell disposal site. The licensee believes the underlying purpose of the rule is to trace radioactive shipments which have not reached their destination as scheduled for unknown reasons. Application of this regulation for shipment of the SONGS–1 reactor vessel would not be meaningful for a shipment expected to take up to 90 days.

3.0 Discussion

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of regulations in 10 CFR part 20, appendix G, section III.E if it determines the exemption is authorized by law and would not result in undue hazards to life or property.

There are no provisions in the Atomic Energy Act (or in any other Federal statute) that impose a requirement to investigate and report on low-level radioactive waste shipments that have not been acknowledged by the recipient within 20 days of transfer. Therefore, the Commission concludes that there is no statutory prohibition on the issuance of the requested exemption and the Commission is authorized to grant the exemption by law.

The Commission acknowledges that investigation of the shipment status well before its expected completion would not be meaningful. The Commission also agrees with the licensee that the underlying purpose of the rule is to investigate a late shipment that may be lost, misdirected, or diverted. Because of the particular circumstances of this shipment and the massive size and weight of the reactor vessel, special planning, shipping arrangements, oversight, and monitoring will be needed throughout the entire journey from SONGS–1 to the disposal site. It is unlikely that the shipment could be lost, misdirected, or diverted without the knowledge of the carrier or the licensee. Furthermore, there is no need to specify any arbitrary time to complete the shipment. Because the nature of this shipment will necessitate considerable oversight well beyond that employed for most low-level radioactive waste shipments, the Commission finds that there is no hazard to life or property by not investigating, tracing, and reporting on the reactor vessel shipment 20 days into its potential 90-day journey. Therefore, the Commission concludes that the underlying purpose of 10 CFR part 20, appendix G, section III.E will be met.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption requested by SCE in its March 7, 2003 letter is authorized by law and will not result in undue hazards to life or property. Therefore, the Commission hereby grants SCE a one-time exemption from the need to investigate, trace, and report on the shipment of the SONGS–1 reactor vessel when the reactor vessel is not received and acknowledged by the land disposal site at Barnwell, SC, within 20 days from the start of the shipment as required by 10 CFR part 20, appendix G, section III.E.

Pursuant to 10 CFR 51.31, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as documented in **Federal Register** notice 68 FR 20033.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 15th day of May, 2003.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Waste Management, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 03–13214 Filed 5–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Notice of Amendment of Charter

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment of the Charter of the Licensing Support Network Advisory Review Panel (LSNARP).

SUMMARY: The Licensing Support System Advisory Review Panel was established by the U.S. Nuclear Regulatory Commission as a Federal Advisory Committee in 1989. Its purpose was to provide advice on the fundamental issues of design and development of an electronic information management system to be used to store and retrieve documents relating to the licensing of a geologic repository for the disposal of high-level radioactive waste, and on the operation and maintenance of the system. This electronic information management system was known as the Licensing Support System (LSS). In November 1998, the Commission approved amendments to 10 CFR part 2 that renamed the Licensing Support System Advisory Review Panel as the Licensing Support Network Advisory Review Panel.

Membership on the Panel continues to be drawn from those interests that will be affected by the use of the LSN, including the Department of Energy, the NRC, the State of Nevada, the National Congress of American Indians, affected units of local governments in Nevada, the Nevada Nuclear Waste Task Force, and a coalition of nuclear industry groups. Federal agencies with expertise and experience in electronic information management systems may also participate on the Panel.

The Nuclear Regulatory Commission has decided to amend the charter for the LSNARP to remove the designation of the LSN Administrator as the NRC member of the Panel. This will allow the Secretary of the Commission flexibility in naming the NRC representative. This action is being

taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: Telephone 301–504–1963.

Dated: May 20, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–13213 Filed 5–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Company; McGuire Nuclear Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G, for Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Unit Nos. 1 and 2 (McGuire), nuclear power plant, located in Mecklenburg County, North Carolina. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action:

The proposed action would exempt the licensee from the requirements of 10 CFR part 50, appendix G, which would allow the use of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code) Code Case N–641 as the basis for revised reactor vessel pressure (RVP) and temperature (P/T) curves, and low temperature overpressure protection system setpoints in the McGuire, Unit Nos. 1 and 2 Technical Specifications.

The regulation at 10 CFR part 50, section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in appendix G to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that P/T limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G, states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Appendix G of 10 CFR part 50 specifies that the requirements for these limits are the ASME Code, Section XI, Appendix G, limits.

ASME Code Case N–641 permits the use of alternate reference fracture toughness for reactor vessel materials in determining the P/T curves and low temperature overpressure protection system setpoints for effective temperature and allowable pressure. The alternate reference fracture toughness involves the use of the ''K_{IC} fracture toughness curve'' instead of the ''K_{IA} fracture toughness curve,'' where K_{IC} and K_{IA} are ''Reference Stress Intensity Factors,'' as defined in ASME Code, Section XI, Appendices A and G, respectively. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1 (the K_{IC} fracture toughness curve), provides a higher fracture toughness value than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1 (the K_{IA} fracture toughness curve), using ASME Code Case N–641 to establish the P/T curves and low temperature overpressure protection system setpoints would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. The provisions of ASME Code Case N–641 were incorporated into the Appendix G to Section XI of the ASME Code in the 1998 Edition through 2000 Addenda which is the Edition and Addenda of record in the 2003 edition of 10 CFR part 50. However, in this case, the McGuire licensing basis has only been updated to include the 1995 Edition through 1996 Addenda of the ASME Code. tHerefore, an exemption to apply ASME Code Case N–641 is required.

The poposed action is in accordance with the licensee's application dated December 12, 2002, as supplemented by letters dated March 27 and April 23, 2003.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–641 in order to revise the method used to determine the P/T curves and because the continued use of the method specified by Appendix G to 10 CFR part 50, to develop low temperature overpressure protection system setpoints unnecessarily restricts the P/T operating window.

The underlying purpose of Appendix G, is to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. This is accomplished through regulations that, in part, specify fracture toughness requirements for ferritic materials of the RCPB. Pursuant to 10 CFR part 50, appendix G, it is required that P/T limits for the reactor coolant system (RCS) be at least as conservative as those obtained by applying the methodology of the ASME Code, Section XI, Appendix G. Current P/T limits produce operational constraints by limiting the P/T range available to the operator to heat up or cool down the plant. The operating window through which the operator heats up and cools down the RCS becomes more restrictive with continued reactor vessel service. Reducing this operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent low temperature overpressure protection system actuation due to pressure surges associated with normal plant evolutions, such as reactor coolant pump start and swapping operating charging pumps with the RCS in a water-solid condition. P/T limits for an increased service period of operation of 34 effective full-power years for McGuire, Unit Nos. 1 and 2, based on ASME Code, Section XI, Appendix G requirements, would significantly restrict the ability to perform plant heatup and cooldown, and would create an unnecessary burden to plant operations, and challenge control of plant evolutions required with the Over Pressure Protection feature enabled. Continued operation of McGuire, Unit Nos. 1 and 2, with P/T curves developed to satisfy ASME Code, Section XI, Appendix G, requirements without the relief provided by ASME Code Case N–641 would unnecessarily restrict the P/T operating window, especially at low temperature conditions. Use of the K_{IC} curve in determining the lower bound fracture toughness of RPV steels is more technically correct than use of the K_{IA} curve, since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The K_{IC} curve appropriately implements the use of static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. The staff has required use of the conservatism of the K_{IA} curve since 1974, when the curve was adopted by the ASME Code. This conservatism was initially necessary due to the limited knowledge of the fracture

toughness of RPV materials at that time. Since 1974, additional knowledge has been gained about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the K_{IA} curve greatly exceeds the margin of safety required, and that the K_{IC} curve is sufficiently conservative to protect the public health and safety from potential RPV failure. Application of ASME Code Case N–641 will provide results that are sufficiently conservative to ensure the integrity of the RCPB, while providing P/T curves and low temperature overpressure protection system setpoints that are not overly restrictive. Implementation of the proposed P/T curves and low temperature overpressure protection system setpoints, as allowed by ASME Code Case N–641, does not significantly reduce the margin of safety.

In the associated exemption, the NRC staff has determined that, pursuant to 10 CFR part 50, Section 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of ASME Code Case N–641.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the use of the alternative analysis method to support the revision of the RCS P/T limits.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any resources not previously considered in NUREG–0063, ''Final Environmental Statement Related to the Operation of William B. McGuire Nuclear Station, Units 1 and 2,'' April 1976 and the Addendum to NUREG–0063 issued in January 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on May 19, 2003, the staff consulted with the North Carolina State official, Mr. Johnny James of the Division of Environmental Health, Radiation Protection Section, North Carolina Department of Environment and Natural Resources, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 12, 2002, as supplemented by letters dated March 27 and April 23, 2003. Documents may be examined, and/or copied for a fee, a the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of May 2003.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13218 Filed 5–27–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR ENERGY COMMISSION

Sunshine Act Notice

Nuclear Regulatory Commission

DATES: Weeks of May 26, June 2, 9, 16, 23, 30, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 26, 2003

Wednesday, May 28, 2003

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopies (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2:45 p.m. Discussion of Management Issues (Closed—Ex. 2).

Thursday, May 29, 2003

9:30 a.m. Briefing on Status of Revisions to the Regulatory Framework for Steam Generator Tube Integrity (Public Meeting) (Contact: Louise Lund, 301–415–3248).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m. Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

Week of June 2, 2003—Tentative

Friday, June 6, 2003

10 a.m. Discussion of Security Issues (Closed—Ex. 1).

Week of June 9, 2003—Tentative

Wednesday, June 11, 2003

10:30 a.m. All Employees (Public Meeting).

1:30 p.m. All Employees (Public Meeting).

Week of June 16, 2003—Tentative

There are no meetings scheduled for the Week of June 16, 2003.

Week of June 23, 2003—Tentative

There are no meetings scheduled for the Week of June 23, 2003.

Week of June 30, 2003—Tentative

Tuesday, July 1, 2003

10 a.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Closed—Ex. 1).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message *dkw@nrc.gov.*

Dated: May 22, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–13370 Filed 5–23–03; 10:06 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–327]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on May 13, 2003 (68 FR 25663), in which the Commission noticed amendments issued since the previous publication of the Biweekly notice. This action is necessary to correct an erroneous Amendment number.

FOR FURTHER INFORMATION CONTACT: Michael L. Marshall, Jr., Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, telephone 301–415–2734, e-mail: *mxm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 25663, in the second column, under the heading that reads ''Tennessee Valley Authority, Docket No. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee,'' Amendment No.: 184 is corrected to read Amendment No.: 284.

Dated at Rockville, Maryland, this 20th day of May 2003.

For the Nuclear Regulatory Commission.

Michael L. Marshall, Jr.,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–13215 Filed 5–27–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form F–2, OMB Control No. 3235–0257, SEC File No. 270–250.

Form 18–K, OMB Control No. 3235–0120, SEC File No. 270–108.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Form F–2 is a registration statement used by foreign issuers to register securities pursuant to the Securities Act of 1933. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. Approximately 5 respondents file Form F–2 and it takes approximately 559 hours per response for a total burden of 2,795 hours. It is estimated that 25% of the total burden hours (699 reporting burden hours) is prepared by the company.

Form 18–K is an annual report form used by foreign governments and political subdivisions with securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. Approximately 40 respondents filed Form SB–1 during the last fiscal year at an estimated 8 hours per response for a total annual burden of 320 hours. It is estimated that 100% of the total burden is prepared by the company.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: May 15, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13200 Filed 5–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 17f–1; File No. 270–236; OMB Control No. 3235–0222.

Form N–17f–1; File No. 270–316; OMB Control No. 3235–0359.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

Rule 17f–1 OMB Control No.–3235–0222 is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that

any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in custody with the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that approximately 10 funds maintain their assets with a national securities exchange member.[1] The annual burden of the rule's requirements is estimated to be approximately 4.5 hours for each of these funds.[2] Commission staff estimates the total annual burden for all funds is 45 hours.

Form N–17f–1 OMB Control No—3235–0359 is entitled: ''Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges.'' Form N–17f–1 is the cover sheet for accountant examination certificates filed under rule 17f–1 of the Act. Rule 17f–1 requires the accountant's certificate of each examination be attached to form N–17f–1 and transmitted to the Commission promptly after each examination. The form facilitates the filing of the accountant's certificate, and increases the accessibility of the certificate to both Commission's staff and interested investors. The annual burden of the rule's requirements is estimated to be approximately 27 minutes for each of the 10 funds estimated to maintain their assets with a national securities exchange member.[3] The total annual burden for all funds therefore is estimated to be 4.5 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 and Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General written comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 16, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13201 Filed 5–27–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The Commission's records show that 10 funds filed Form N–17f–1 during calendar year 2002.

[2] The Commission staff estimates, based upon the experience of staff familiar with the information collection requirements of the rule, that each fund spends approximately 4.5 hours annually in complying with the rule's requirements: 4 hours of clerical time (1 hour to prepare the custodial contract for board review and to transmit the contract, and 1 hour each of the three times the fund transmits the accountant's certificate) and 0.5 hours for the board of directors to ratify the custodial contract.

[3] Commission staff estimates that it takes approximately nine minutes of clerical time to prepare each Form N–17f–1. This estimate is based on Commission staff members filling out the form. Each fund is required to file Form N–17f–1 three times annually, for an average hour burden per fund of 27 minutes.

DEPARTMENT OF STATE

[Public Notice 4376]

Bureau of Educational and Cultural Affairs (ECA/EC/ECD); 30-Day Notice of Proposed Information Collection: Form DS–3097, Annual Report by Sponsors of Exchange Visitor Programs; OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New collection.

Originating Office: Bureau of Educational and Cultural Affairs.

Title of Information Collection: Form DS–3097, Annual Report by Sponsors of Exchange Visitor Programs.

Frequency: annually.

Form Number: Form DS–3097.

Respondents: Designated program sponsors.

Estimated Number of Respondents: 1460 respondents.

Average Hours Per Response: one hour.

Total Estimated Burden: 1460 hours.

Public comments are being solicited to permit the agency to:

- 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 collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Mr. Stanley Colvin, 301 4th Street, SW., Room 734, Washington, DC 20547, or at (202) 401–9810. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: May 7, 2003.

Patricia S. Harrison,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–13266 Filed 5–27–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4377]

60-Day Notice of Proposed Information Collection: Irish Peace Process Cultural and Training Program (IPPCTP) Employer Information Collection; OMB Control Number 1405–0124

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Bureau of European and Eurasian Affairs—Office of United Kingdom, Benelux, and Ireland Affairs (EUR/UBI).

Title of Information Collection: Irish Peace Process Cultural and Training Program (IPPCTP) Employer and Participant Information Collection.

Frequency: On Occasion.

Form Number: N/A.

Respondents: Entities wishing to provide employment and individuals seeking visas to participate in the program.

Estimated Number of Respondents: 4,200.

Average Hours Per Response: (a) Prospective Employers: Up to 2 hours in providing employer background information and up to 1 hour in reporting on participants' work experience (for each participant hired by an employer); (b) Participants: up to 2 hours in providing background/resume information, a photograph, and tracking information. Where participation originates with an employer nomination, the increase of time required of an employer in providing employee-related information will be offset by a corresponding reduction in the time otherwise required of employees in providing the same information.

Total Estimated Burden: 12,400 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Christopher M. Krafft, Officer for Ireland and Northern Ireland Affairs, Bureau of European and Eurasian Affairs, Room 4513, U.S. Department of State, Washington, DC 20520, who may be reached on (202) 647–5674.

Dated: May 5, 2003.

Charles Allegrone,

Executive Director, Bureau of European and Eurasian Affairs, Department of State.

[FR Doc. 03–13267 Filed 5–27–03; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 4375]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures on an Iranian Entity, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The U.S Government has determined that a foreign entity has engaged in missile technology proliferation activities that require the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998. The U.S. Government has also determined that, pursuant to section 38 of the Arms Export Control Act and section 126.7 of the International Traffic in Arms Regulations, all licenses and other approvals for defense articles and defense services involving this entity are suspended, effective immediately. Notice is further given that it is the policy of the United States to deny licenses, other approvals, export and temporary imports of defense articles and defense services destined for this entity.

EFFECTIVE DATE: May 9,2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, ((202) 647–1142). On import ban issues, Rachelle Stern, Director, Policy Planning and Program Management, Office of Foreign Assets Control, Department of the Treasury, ((202) 622–2500). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, ((703) 516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on May 9, 2003, that the following person has engaged in proliferation activities that require the imposition of measures pursuant to sections 4(b), 4(c), and 4(d) of Executive Order 12938:

Shahid Hemmat Industrial Group (SHIG) (Iran)

Accordingly, pursuant to the provisions of Executive Order 12938, the following measures are imposed on this entity, its subunits, and successors for two years:

1. All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology, or services from this entity and shall terminate any existing contracts;

2. All departments and agencies of the United States Government shall not provide assistance to this entity, and shall not obligate further funds for such purposes;

3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by this entity, other than information or informational materials within the meaning of section 203(b)(3) of International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12938.

In addition, pursuant to section 126.7(a)(1) of the International Traffic in Arms Regulations, it is deemed that suspending the above-named entity from participating in any activities

subject to section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States. Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the above-named entity.

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for this entity.

Dated: May 19, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–13268 Filed 5–27–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4374]

Bureau of Nonproliferation; Imposition of Missile Proliferation Sanctions Against Entities in Moldova

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that entities in Moldova have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the ''Export Administration Act of 1979''); and Executive Order 12851 of June 11, 1993; a determination was made on May 9, 2003, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A)) and section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)) on the following entities:

1. Mikhail Pavlovich Vladov (Moldovan person).
2. Cuanta S.A. (Moldova) and its sub-units and successors.
3. Computer & Communicatii SRL (Moldova) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for exports to the entities described above of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of MTCR Annex equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(C) No new United States Government contracts relating to MTCR Annex equipment or technology involving the entities described above will be entered into for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12851 of June 11, 1993.

Dated: May 19, 2003.

John S. Wolf,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–13151 Filed 5–27–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 16, 2003

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15173.

Date Filed: May 13, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 300—Resolution 010o, PTC2 ME 0121 dated 16 May 2003, PTC2 EUR–ME 0161 dated 16 May 2003, PTC2 ME–AFR 0106 dated 16 May 2003, PTC23 ME–TC3 0176 dated 16 May 2003, Special Passenger Amending Resolution from Qatar r1–r7, Intended effective date: 22 May 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–13239 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Weight and Balance Control Program Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request for participation on industry advisory committee (IAC) formation.

SUMMARY: By this notice, the FAA announces the formation of an advisory committee to conduct a comprehensive review and rewrite of Advisory Circular (AC) 120–27C, Aircraft Weight and Balance Control, and other related guidance. The FAA will establish a Weight and Balance Control Program Aviation Rulemaking Committee (ARC) to conduct this review and provide advice and recommendations.

The FAA invites individuals interested in serving on this committee and/or associated work groups to request membership in accordance with this notice. The FAA will select members to provide a balance of viewpoints, interests, and expertise. Membership on the committee may be limited to facilitate discussions and to maintain a balance of interests.

In addition, the FAA invites interested individuals to submit specific, detailed written comments, or provide input on the affected advisory and guidance documents. These comments will be considered in the committee discussions and will assist in determining a method of compliance with regard to the weight and balance control program.

DATES: *Membership:* Individuals interested in participating on the committee or work group should submit a request on or before June 6, 2003. The FAA will notify all selected members and participants in writing in advance of the first meeting. Your request should provide the following information:

—Contact information (name, company and position, address, phone, facsimile, and e-mail)
—Segment(s) of the industry or organization/association you represent
—Experience, subject expertise, or other background information

The first meeting of the Weight and Balance Control Program ARC is scheduled for June 24 and 25, 2003 in Washington, DC. The committee will report its recommendations to the Associate Administrator for Regulation and Certification through the Director, flight Standards, no later than 6 months from the date of the first meeting. Work groups will be scheduled as determined by the steering committee and work group members to provide information and meet schedule requirements.

Comments: The FAA will consider all comments on this advisory and regulatory review filed on or before June 24, 2003. The FAA will consider comments filed later if it is possible to do so without incurring expense or delay.

ADDRESSES: *Membership:* Individuals requesting membership or participation on the Weight and Balance Control Program ARC and/or work groups should contact Darcy Reed, AFS–330, 800 Independence Ave., SW., Washington, DC 20591, telephone at (202) 267–9948, facsimile at (202) 267–5115, or by e-mail: *Darcy.D.Reed@FAA.GOV*, or contact Dennis Pratte, AFS–220, 800 Independence Ave., SW., Washington, DC, 20591, telephone at (202) 267–5488, facsimile at (202) 267–5229, or by e-mail: *Dennis.Pratte@FAA.GOV.*

Comments: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–001. You must identify docket number FAA–2003–XXXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

You may also submit and/or review comments about this public docket through the Internet at *http://dms.dot.gov/.* You may review the public docket containing comments to this proposed guidance in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. the Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address.

FOR FURTHER INFORMATION CONTACT: Darcy Reed, AFS–330, or Dennis Pratte, AFS–220, at the address above.

SUPPLEMENTARY INFORMATION: Additional information on the committee membership, dates , and other information may be obtained on the Flight Standards Web site under the heading ''Weight and Balance Control Program Aviation Rulemaking Committee'' at: *http://www.faa.gov/avr/afs/AvgARC/.*

Issued in Washington, DC on May 21, 2003.

David E. Cann,

Air Maintenance Division, Flight Standards Service.

[FR Doc. 03–13243 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new tasks for the Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

SUMMARY: This notice announces the new tasks assigned to and accepted by the ATSRAC.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Manager, Safety Management Branch, ANM—117, Executive Director of ATSRAC, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055; telephone (425) 227–2589; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Background

In response to the White House Commission on Aviation Safety and Security, the FAA formed the Aging Non-Structural Systems Study Team, to develop the FAA's approach to improving management of aging wire systems. To help fulfill the actions specified in the Aging Non-Structural Systems Plan, the FAA set up an Aging Transport Systems Rulemaking Advisory Committee (ATSRAC) to give recommendations on airplane system safety issues.

In 1998, the FAA assigned five tasks to the ATSRAC. These tasks included collecting data on aging wiring systems through airplane inspections, reviewing airplane manufacturers' service information, reviewing operators' maintenance programs, and providing the FAA with recommendations to enhance the safety of those systems. The FAA held a public meeting on January 20, 1999, to discuss the Committee's operations and their assigned tasks.

The ATSRAC found that problems associated with systems on aging airplanes are not entirely related to the degradation overtime of wire systems. The review of these systems also found inadequate installation and maintenance practices could lead to what is commonly referred to as an ''aging system'' problem. Therefore, the scope of the ATSRAC's work includes, not only age-related issues, but also involves improving the continued airworthiness of airplane systems (*i.e.*, wire systems).

The FAA accepted the ATSRAC recommendations from the first five tasks and subsequently assigned five additional tasks to get the Committee's help in implementing the safety enhancements from their earlier recommendations. The FAA is now considering the ATSRAC recommendations on the second set of tasks. These recommendations include rulemaking and other actions. Implementation of the ATSRAC recommendations is a major part of the FAA's Enhanced Airworthiness Program for Airplane Systems (EAPAS), a program that addresses the safety of wiring systems.

The FAA recognizes the knowledge and experience the ATSRAC provides. Because ATSRAC members represent a large cross-section of industry, they will supply the FAA with an invaluable resource of technical expertise in a variety of areas. Therefore, the FAA has assigned three new tasks to the ATSRAC to help carry out the EAPAS objectives.

This notice announces the new tasks, which the ATSRAC has accepted. These tasks will allow the FAA to get the Committee's continuing help to carry out their recommendations. ATSRAC has chosen to form harmonization working groups (HWG) to provide technical support to develop their recommendations on these tasks. A discussion of the new tasks and harmonization working groups (HWG) follows.

I. EAPAS Rulemaking Advisory HWG

To promote efficient rulemaking and compliance with this rulemaking, the FAA tasks ATSRAC to provide, when specifically sought by the FAA, recommendations about the issues discussed in items I–1 through I–3 of this section. The ATSRAC Executive Director will send each FAA task to the ATSRAC Chair to obtain the ATSRAC

members' decision on whether to accept the FAA's assigned task.

I–1. Alternatives to Rulemaking

The rulemaking process requires agencies to explore alternatives to rulemaking. Such alternatives may include taking voluntary (or nonmandated) action or taking no action. Under Task I–1, the FAA may request recommendations from the ATSRAC on how to carry out alternatives, which the FAA considers reasonable, to rulemaking. This would include providing an estimate of the resulting improvement to safety. The FAA may also request recommendations on how to measure implementation of the alternative actions and how the FAA can best support these actions.

I–2. Technical and Economic Data

Questions may arise during rulemaking where added technical and economic data are needed. This may include the need for such information to prepare responses to public comments on a proposed rule.

I–3. Disposition of Comments from an EAPAS Notice of Proposed Rulemaking (NPRM)

Under Task I–3, the FAA may request the ATSRAC's help in dispositioning any comments the FAA might receive in response to an NPRM. Such support may include the ATSRAC's review of the FAA's prepared disposition of comments.

II. Electrical Wiring Interconnection Systems (EWIS) Research and Development (R&D) Technology Transfer HWG

In the past, the FAA has provided quarterly reviews of their research and development program to the ATSRAC. These reviews have resulted in a useful exchange of information and in the formation of research partnerships and other cooperative research. As the EAPAS program continues, it would be helpful to have the ATSRAC explore FAA and other R&D products and results that may be valuable to the aviation industry. As appropriate, the FAA will seek the ATSRAC's help in—

- Developing strategies for technology transfer to the aviation community in a manner that optimizes their transfer and optimizes the benefits resulting from their transfer; and
- Achieving optimal compliance with existing and anticipated FAA electrical systems rules.

To achieve the two R&D objectives, the HWG would complete the following tasks:

II–1. Develop effective strategies to transfer and set up, in the aviation community, R&D products. This includes providing recommendations for the best way to carry out these goals (*e.g.*, through rulemaking, advisory circulars, or other means).

II–2. Review and screen FAA and other R&D products (*e.g.*, R&D prototypes), as appropriate, and devise strategies to further develop these products into commercially viable tools that support the two R&D objectives referenced in this section. Such strategies may include recommendations for added FAA research and development; however, the strategies should mainly address industry activity to achieve a desired end product.

II–3. Explore opportunities to promote cooperative efforts and partnerships valuable to achieving the two R&D objectives.

III. Small Transport Airplane Enhanced Wiring Inspection HWG

Criteria for upgrading and developing enhanced wiring inspection procedures should be developed for use by manufacturers of small transport airplanes. These criteria should be based on the results of previously conducted inspections and tests and recommendations from ATSRAC.

The tasks for this HWG are as follows:

III–1. Review existing small transport airplane manufacturers' wiring inspection procedures.

III–2. Identify and prepare, as necessary, criteria for upgrading and developing enhanced procedures for inspection, cleaning, reduction of combustible material (*e.g.*, lint and chemical contamination), reduction of potential ignition sources (*e.g.*, cracked wiring), and maintenance of the electrical wiring interconnection systems (EWIS) on small transport airplanes.

III–3. Develop and recommend compliance means to adopt the criteria referenced in III–2 and incorporate the enhanced wiring inspection procedures in operators' maintenance programs.

ATSRAC Acceptance of Tasks

ATSRAC has accepted Tasks I through III with an expected completion date of all tasks by January 2005. However, certain specific tasks may require an earlier completion date.

Working Group Activity

The working groups serve as staff to the ATSRAC to help the Committee in writing technical reports that will allow the FAA to complete actions related to the EAPAS program. Working group documents will be reviewed, deliberated, and approved by the ATSRAC. If the ATSRAC accepts the working group's documents, the Committee will forward them to the FAA as ATSRAC recommendations.

The working groups are expected to comply with the procedures adopted by the ATSRAC. As part of the procedures, the working groups are expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration by the ATSRAC, after setting-up the working groups and selecting members.

2. Give a detailed conceptual presentation of proposed recommendations before starting the work stated in item 3 of this section.

3. Draft a report and any other collateral documents the working group finds proper and send them to the ATSRAC for review and approval.

4. Provide a status report at each meeting of the ATSRAC.

Participation in the Working Group

Each of the working groups will be composed of experts with an interest in a particular task. Working group participants should be prepared to devote a significant portion of their time and resources to the ATSRAC task. A working group member need not be a representative or a member of the ATSRAC. Experts in the task area who want to become a member of one of the working groups should contact Charles Huber (*see* **FOR FURTHER INFORMATION CONTACT** section) and explain their interest in the task and the expertise they would bring to the working group. All requests to take part in the working groups must be received no later than June 27, 2003. The ATSRAC Chair, Executive Director, and the working group chair will review requests for membership and will advise individuals whether their requests can be accommodated.

The Secretary of Transportation has determined the formation and use of the ATSRAC are necessary and in the public interest as related to duties imposed on the FAA by law. Meetings of the ATSRAC will be open to the public. Meetings of the individual working groups will not be open to the public, except for individuals selected as working group members. No public announcement of working group meetings will be made.

Issued in Washington, DC, on May 20, 2003.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 03–13244 Filed 5–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of Application Packages for the 2004 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available from the IRS at this time. The deadline for submitting an application package to the IRS for the 2004 Tax Counseling for the Elderly (TCE) Program is August 1, 2003.

ADDRESSES: Application Packages may be requested by contacting: Internal Revenue Service, 5000 Ellin Road, Lanham, MD, 20706, Attention: Program Manager, Tax Counseling for the Elderly Program, W:CAR:SPEC:FO:GA, Building C–7, Room 185. Applications can also be submitted electronically through the IRS E-grants System by logging on to *www.egrants.irs.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Lynn Tyler, W:CAR:SPEC:FO:GA, Building C–7, Room 185, Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706. The non-toll-free telephone number is (202) 283–0189.

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year.

Cooperative agreements will be entered into based upon competition among eligible agencies and organizations. Because applications are being solicited before the FY 2004 budget has been approved, cooperative agreements will be entered into subject to appropriation of funds. Once funded, sponsoring agencies and organizations will receive a grant from the IRS for administrative expenses and to reimburse volunteers for expenses incurred in training and in providing tax return assistance. The Tax Counseling for the Elderly (TCE) Program is referenced in the Catalog of Federal Domestic Assistance in §21.006.

Dated: May 8, 2003.

Dianna L. Gunter,

Chief, Oversight and Analysis.

[FR Doc. 03–13277 Filed 5–27–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 102

Wednesday, May 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0054 and OAR–2002–0055, FRL–7459–9]

RIN 2060–A167 and 2060–A168

National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

Correction

In rule document 03–5739 beginning on page 26690 in the issue of Friday, May 16, 2003, make the following corrections:

§63.8395 [Corrected]

On page 26723, in the first column, in §63.8395(b), in the last line ''May 16, 2003'' should read ''May 16, 2006''.

§63.8545 [Corrected]

On page 26739, in the third column, in §63.8545(b), in the last line ''May 16, 2003'' should read ''May 16, 2006''.

[FR Doc. C3–5739 Filed 5–27–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
May 28, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0002—FRL–7462–2]

RIN 2060–AH02

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for wood building products surface coating operations. The final standards establish emission limitations, operating limits, and work practice requirements for all major sources that apply a surface coating to a wood building product to reduce certain organics listed as hazardous air pollutants (HAP) in section 112 of the Clean Air Act (CAA). These standards implement section 112(d) of the CAA by requiring all major sources to meet the HAP emission standards reflecting the application of the maximum achievable control technology (MACT).

Wood building products surface coating operations emit several HAP, including xylenes, toluene, ethyl benzene, ethylene glycol monobutyl ether (EGBE), other glycol ethers, methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), methanol, styrene, and formaldehyde. We do not have the type of current detailed data on each of the facilities covered by the final rule and the people living around the facilities that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the final rule will reduce emissions and subsequent exposures. The final rule will reduce HAP emissions by approximately 4,400 megagrams per year (Mg/yr) (4,900 tons per year (tpy)) or by 63 percent from baseline.

EFFECTIVE DATE: May 28, 2003. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of May 28, 2003.

ADDRESSES: *Docket.* Docket ID No. OAR–2003–0002 (formerly Docket No. A–97–52) is located at the EPA Docket Center, EPA West, U.S. EPA (6102T), 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20460.

Background Information Document. A background information document (BID) for the promulgated NESHAP may be obtained from the docket; the U.S. EPA Library (C267–01), Research Triangle Park, NC 27711, telephone (919) 541–2777; or from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487–4650. Refer to ''National Emission Standards for Hazardous Air Pollutants (NESHAP) for Wood Building Products (Surface Coating) Background Information for Final Standards' (EPA–453/R–03–003). The promulgation BID contains a summary of changes made to the standards since proposal, public comments made on the proposed standards, and EPA responses to the comments.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Dail, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–2363; facsimile number (919) 541–5689; electronic mail (e-mail) address *dail.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The source category, which is divided into the five subcategories listed in Table 1 of this preamble, includes sources that apply coatings to wood building products. In general, these sources are covered under the North American Industrial Classification System (NAICS) codes listed in Table 1. However, sources classified under other NAICS codes may be subject to the final rule. Not all sources classified under the NAICS codes in Table 1 will be subject to the final rule because some of the classifications cover products outside the scope of the NESHAP for wood building products.

TABLE 1.—SUBCATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE FINAL RULE

Subcategory	NAICS	Examples of regulated entities include those sources that apply a surface coating to . . .
Exterior Siding and Primed Doorskins	321211, 321219, 321999 [a]	Panel siding, trimboard, lap siding, trim associated with siding, and primed doorskins.
Flooring	321918, 321999 [a]	Solid wood flooring, engineered wood flooring, and laminated flooring.
Interior Wall Paneling and Tileboard	321211, 321999 [a]	Interior wall paneling or tileboard.
Other Interior Panels	321211, 321212, 321219, 321999 [a]	Panels used for purposes other than interior wall paneling, such as perforated panels.
Doors, Windows, and Miscellaneous	321911, 321918, 321999 [a]	Doors, finished doorskins, finished exterior siding, windows, and other miscellaneous wood products (including moulding and millwork).

[a] The subcategory of the NAICS code depends on the final end use of the product.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding subcategories and entities likely to be regulated by this action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in § 63.4681 of the final rule.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2003–0002 (formerly Docket No. A–97–52). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, EPA West, Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center 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) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/edocket/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. 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. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 28, 2003. Under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in reading the preamble to the final rule.

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria did we use in the development of NESHAP?
II. What changes and clarifications have we made for the final standards?
A. Applicability
B. Overlap with other NESHAP
C. Subcategories
D. MACT Limits
E. Test Methods
F. Cost and Economic Assumptions and Impacts
G. Compliance Procedures
H. Control Device Operating Limit Requirements
I. Startup, Shutdown, and Malfunction (SSM)
J. Recordkeeping and Reporting
III. What are the final standards?
A. What is the source category?
B. What is the affected source?
C. What are the emission limits, operating limits, and work practice standards?
D. What are the testing and initial compliance requirements?
E. What are the continuous compliance requirements?
F. What are the notification, recordkeeping, and reporting requirements?
IV. What are the environmental, energy, cost, and economic impacts?
A. What are the air impacts?
B. What are the non-air health, environmental, and energy impacts?
C. What are the cost and economic impacts?
V. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Flatwood Paneling (Surface Coating) category of major sources was listed on July, 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. The name of the source category was subsequently changed to Wood Building Products (Surface Coating) on November 18, 1999 (64 FR 63025) to reflect more accurately the types of surface coating operations currently used in the industry. Major sources of HAP are those that emit or have the potential to emit equal to or greater than 9.1 Mg/yr (10 tpy) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP.

B. What Criteria Did We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new or reconstructed and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new or reconstructed sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new or reconstructed sources, but they cannot be less stringent than the average emission limit achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

II. What Changes and Clarifications Have We Made for the Final Standards?

In response to the public comments received on the proposed standards, we made several changes for the final rule. The substantive comments, our responses, and associated rule edits are summarized in the following sections. A more detailed summary can be found in the Summary of Public Comments and Responses document, which is available from several sources (see **ADDRESSES** section).

A. Applicability

Several commenters requested a clarification of zero-HAP coatings, thinners, and cleaning solvents. They cited the Occupational Safety and Health Administration (OSHA) *de minimis* level for reporting HAP-containing materials as greater than 1

percent for noncarcinogens or greater than 0.1 percent for carcinogens. The use of this *de minimis* level for HAP reporting was implied because the data used to set the MACT floor was submitted under the same guidelines. Accordingly, language has been included in the final preamble and rule to clarify that coatings with HAP contents below 1 percent for noncarcinogens and 0.1 percent for carcinogens are considered to be zero-HAP materials.

Although affected sources are not required to report detailed HAP content information on these zero-HAP materials, inclusion of these materials could be beneficial to meeting the applicable rolling 12-month emission limit(s). Coatings that contain no HAP usually contain some amount of solid material that will help to lower the organic HAP emission rate for the 12-month compliance period.

Several commenters requested specific exclusions for products or coatings that may have been included in the MACT floor determination but do not fit into the wood building products surface coating source category. Specifically, commenters cited coatings called tempering oils (such as linseed, tall, tung, soy, otaseka, and other drying oils or mixtures of such oils) which would be regulated as part of the proposed plywood and composite wood products NESHAP (68 FR 1275, January 9, 2003). In response to these comments, we excluded drying or tempering oils from the final rule. Please refer to § 68.4681(c)(1) of the final rule which lists processes that will most likely be covered by the proposed plywood and composite wood products NESHAP.

Some commenters referred to specific products that they believed should not be subject to the requirements of the wood building products surface coating source category. These included asphalt-coated fiberboard and cellulosic ceiling tiles. Commenters asserted that neither product is coated with HAP-containing materials and that regulating such products would be burdensome for recordkeeping purposes.

We further evaluated the types of coatings and processes used to make asphalt-coated fiberboard, also called ''builders board'' or ''insulation board,'' and found that only a few facilities in the United States make these products, with varying manufacturing and coating processes. With regards to the coatings used on fiberboard products, the asphalt material can be included as part of the emulsion used in the fiberboard forming or manufacturing process, or the asphalt (mixed with mineral spirits) can be applied to the fiberboard substrate. Depending on the company and the process, the coating can be applied before the final dryer or after the final dryer with the product allowed to air dry, usually outdoors on racks.

Ceiling tiles are usually coated using slurries of titanium dioxide and various clays. Although non-HAP wetting agents or defoamers are occasionally added, there are no organic solvents used. These coatings cure by drying and not by chemical reaction and are considered durable only for dry, non-contact indoor exposure.

Because of the small number of facilities coating these products and the fact that most of the coatings associated with these types of products are applied during the substrate forming process (*e.g.*, to the wet mat being formed) or prior to the final substrate drying operation, fiberboard coating operations (including those used in the manufacture of asphalt-coated fiberboard and ceiling tiles) would be covered under the proposed plywood and composite wood products NESHAP. For this reason, these products will not be subject to the final rule for the surface coating of wood building products.

Several commenters requested more research concerning the low-coating usage cutoff, suggesting that the cutoff should be higher. The low-usage cutoff was based on the total annual coating usage of the smallest facility in the MACT floor database. All facilities in the database have annual coating usages above 4,170 liters (1,100 gallons). Available data indicate that the coating application processes and control technologies being considered are appropriate for all sources with at least this level of coatings usage. Considering that the surveyed sources in the database included a cross section of various companies, products, and locations, we do not believe that collecting additional data would raise this cutoff. Therefore, no changes have been made to the low-coating usage cutoff.

While we cannot justify raising the low usage amount or establishing low usage cutoffs for individual subcategories, additional language has been included in the final rule to exempt sources that are not commercial manufacturers of wood building products. The final rule is intended to apply only to commercial manufacturers, which are the types of facilities represented in our database.

Several commenters requested exemptions for sources that laminate paper or vinyl to composite wood products. Although we agree with the commenters that HAP emissions from wood laminating processes are typically low at the present time, an exclusion is not justified because future coating technologies could increase HAP emissions. To further clarify applicability, laminates applied prior to pressing of the substrate would be covered by the proposed plywood and composite wood products NESHAP, and the laminates applied after pressing of the substrate are covered by the wood building products (surface coating) NESHAP.

Commenters stated that the proposed definition of ''wood building product'' excludes the majority of the wooden windows and doors manufactured due to the weight characteristic. In response, we have written the definition of ''wood building product'' to exclude the weight of glass components. A wood building product is now defined as any product that contains more than 50 percent by weight wood or wood fiber, excluding the weight of glass components, and is used in the construction, either interior or exterior, of a residential, commercial, or institutional building.

As a result of comments received, the application of the rule to antifungal coatings was evaluated. Because these coatings can be applied during many different stages of production, we have clarified the applicability of the final rule to these coatings. Antifungal coatings will be covered by the wood building products surface coating NESHAP if they are applied after the substrate manufacturing process.

Several commenters requested that the final rule be written such that the HAP limits apply only to HAP that are released to the atmosphere, recognizing that some HAP in the coatings are not emitted (*i.e.*, styrene, dibutylphthalate, ethyleneimines (aziridines), and Bis 2-ethylhexyl phthalate (DEHP)). The data collection activities and subsequent MACT floor determinations were made using the assumption that all volatile organic HAP are emitted, *i.e.*, organic HAP content of the coatings is equivalent to HAP emitted.

We realize that in a few cases, such as the four compounds identified by the commenters, our assumption is not totally accurate because a small fraction of the total HAP may be tied up in the coating. However, we believe that the 12-month rolling average emission limits provide an adequate time frame for such special coatings to be used and averaged in with the other coatings and still meet the emission limits.

Due to these reasons, we do not believe special compliance alternatives are warranted for a few compounds used in some coatings. Affected sources can use alternative test procedures to

demonstrate a lower HAP emissions value for a particular coating.

B. Overlap With Other NESHAP

Many commenters were concerned about the large potential for the wood building products surface coating source category to overlap with other NESHAP, specifically the promulgated wood furniture manufacturing NESHAP (60 FR 62930, December 7, 1995) and the proposed miscellaneous metal parts and products coating NESHAP (67 FR 52780, August 13, 2002). Two commenters wanted some way to consolidate all coating operations in order to be subject to only one NESHAP. One of these two commenters stated that 97 percent of the coatings used by his company, a window manufacturing facility, are applied to metal (aluminum) windows, and the remaining 3 percent of the coatings are applied to wood components of the windows. The second commenter said that 95 percent of the coatings used by his facility are applied to wood furniture components, and the remaining 5 percent of the coatings are applied to interior panels.

In response to these comments, we have included a provision to the applicability section of the final rule. This new language states that an affected source that could be subject to more than one coating NESHAP, and that has one type of surface coating operation that accounts for at least 95 percent of the total (annual) coating usage at the source, has the option of complying with the requirements of the predominant coating rule (including all applicable emissions limitations, operating limits, and work practice requirements) for all coating operations that would be subject to a NESHAP.

We are allowing the small amount of coating (less than 5 percent of the total usage) to be regulated at the same level(s) as the majority (at least 95 percent) of coating usage to simplify applicability determinations and recordkeeping and reporting for those sources. With this applicability provision, the two sources described above would be allowed to comply with the emission limits for the proposed miscellaneous metal parts NESHAP and the promulgated wood furniture manufacturing NESHAP, respectively, for all of their coating operations.

According to our data, very few sources will be able to take advantage of this predominant activity option. For this reason, we expect any emissions increase that could occur (where the emission limits in the predominant NESHAP are less stringent than the limits in the other applicable NESHAP) to be very small.

C. Subcategories

Several commenters requested additional guidance on the correct classification of moulding and trim. Originally, mouldings were classified according to the final use of the moulding. Commenters stated that the same moulding or trim could go around windows and doors, be used as baseboards, as trim between ceilings and walls, or as chair railing. To eliminate the classification of different types of moulding and trim into different subcategories, we have included all moulding and trim in one subcategory. However, this classification still excludes moulding and trim associated with wood cabinets and other types of wood furniture (which are subject to the promulgated wood furniture manufacturing NESHAP, subpart JJ). This change also involved the renaming of two subcategories. The proposed ''windows and doors'' subcategory has become the ''doors, windows, and miscellaneous'' subcategory and will include all moulding, trim, millwork, and miscellaneous products that do not fit in the other subcategories. The proposed ''exterior siding, doorskins, and miscellaneous'' subcategory has become the ''exterior siding and primed doorskins'' subcategory. As a result, the MACT floor emission limits were recalculated and are included in the final rule.

Several commenters were concerned with overlap among subcategories. The commenters described scenarios where facilities are coating multiple products, but did not provide data or specifics on any known facilities. Issues related to coating requirements for various products were considered when we developed the five subcategories and served as the basis for many of those decisions. According to our database, there are no facilities that are potentially subject to more than one subcategory emission limit. Because subcategories were created to accommodate unique differences in performance criteria that indicated a need for different HAP contents (based on the information provided by the various industry segments in the database), we believe it is not appropriate to combine operations under separate subcategories. Therefore, we are not allowing a source to choose one emission limit based on the amount of coating used in a predominant subcategory and apply that same limit to another subcategory.

Several commenters requested additional or reorganized subcategories to simplify enforcement. We do not agree with the commenters and believe the subcategorization scheme adopted for this source category is appropriate and complete. All subcategories were evaluated with respect to product performance requirements, associated coating usage, organic HAP emissions, coating application equipment, and control device applicability. Each subcategory showed technical differences within one or more of these criteria. For additional information, see Docket A–97–52.

Several commenters requested reevaluation of the MACT floors due to the addition of new products such as topcoated doorskins. These products require coatings with a higher level of HAP content or more layers of coatings than products used in the MACT analysis. Although separating these types of topcoated or finished doorskins from the ''exterior siding and primed doorskins'' subcategory could cause sources that coat doorskins to comply with two separate emission limits, we agree that the additional layers of coatings required for finished doorskins are likely to have higher HAP emissions than primed doorskins. We also agree that finished doorskins have more demanding and stringent performance requirements than primed-only doorskins. In response, we have included finished doorskins in the ''doors, windows, and miscellaneous'' subcategory where the exterior climate performance requirements associated with all doors and windows have been accounted for with the higher emission limits.

Several commenters also requested subcategories related to color coatings due to the increased use of these coatings since the MACT analysis was begun. Because the commenters offered no explanation for the differences between color and clear coatings, we can only consider the fact that business decisions were made to add color coatings. This alone is not a compelling technical reason to subcategorize differently or to change the MACT floors. The data used to determine subcategories and the applicable MACT floor level of control were the best information available to EPA at the time. Production is updated continuously for various reasons, and changing the MACT floor determination based on constantly changing conditions would not be appropriate.

D. MACT Limits

Several commenters disagreed with the zero HAP emission limits that were established for the NESHAP. Specifically, the commenters felt that the MACT limits should contain at least two significant figures to account for the

presence of a small amount of HAP in what we have described as non-HAP coatings. To address these concerns and to clarify that the MACT limits are not absolute zero for some new sources, the final rule includes a change in the metric units from kilogram HAP/liter solids to grams HAP/liter solids where the value is rounded to the nearest integer.

Several commenters argued that metric units should not be used to demonstrate compliance. The use of metric units instead of English units is based on Federal government policy (the Metric Conversion Act of 1975 as amended by the Omnibus Trade and Competitiveness Act of 1988). While metric units are included, compliance is not required through metric units because the MACT floor determination used English units. Accordingly, we have included language stating that compliance can be demonstrated using either English or metric units.

E. Test Methods

One commenter noticed that some ASTM test methods have been updated. The listed test methods have been updated and incorporated by reference in the final rule.

Several commenters asked for clarification on using methods specified by the NESHAP for determining certain qualities of the coatings, thinners, and cleaning materials. As a result, we included provisions in the final rule that owners or operators are allowed to submit an alternative technique if the test methods specified in the final rule are insufficient to determine the specified qualities. For mass fraction of organic HAP, the final rule has been written to allow resolution of any discrepancies between the test methods for determining the mass fraction of organic HAP versus formulation data through consultation with the regulatory compliance authority.

Many commenters also expressed confusion regarding the use of Method 24 as an alternative to Method 311. According to the commenters, Method 24 requires that the water content of the coating be determined and subtracted from the total volatile content. This determination contains greater variability than the limit in the final rule for existing and new sources that fall into the ''other interior panels'' and the ''exterior siding and primed doorskins'' subcategories and new sources that fall into the ''interior panels and tileboard'' subcategory. Therefore, the final rule includes the provision that Method 24 will not be used for those coatings with a water content that would result in an effective detection limit greater than the applicable emission limit.

Two commenters disagreed with the use of a helium gas pycnometer to determine the volume fraction of coating solids (which is required by ASTM D 6093). Section 63.4741(b) of the proposal provided two options for determining the volume fraction of coating solids (nonvolatiles) for each coating: (1) Use of either of the two referenced ASTM methods (D2697–86 (Reapproved 1998) or D6093–97), or (2) use of information from the supplier or manufacturer of the material. In response to the commenters' concerns, a third option has been included in the final rule that allows the amount of coating solids to be calculated using the total volatile matter content of the coating and the average density of the volatile matter in the coating. If these values cannot be determined using one of the specified methods, the owner or operator may submit an alternative technique for determining their values for approval by the Administrator.

Several commenters asked that the final rule clearly specify whether compliance demonstration calculations are to be rounded or truncated to the number of decimal places specified in the emission limit. The commenters recommended that results be truncated to three digits after the decimal.

In response, language has been included in the final rule that specifies that compliance is demonstrated by rounding the rolling 12-month emission rate (to two decimal places for English units and the nearest integer for metric units), and not by rounding the individual numbers used to determine the rolling 12-month rolling emission rate.

F. Cost and Economic Assumptions and Impacts

Due to changes in the MACT floor emission limits for the ''other interior panels'' subcategory and changes to the number of estimated affected sources in the ''exterior siding and primed doorskins'' and ''doors, windows, and miscellaneous'' subcategories, the overall industry cost impacts have changed to $22.5 million.

G. Compliance Procedures

Several commenters noted a discrepancy between the proposed § 63.4692(b)(ii) and (iii). Section 63.4692(b)(ii) reduces the data to block averages, but § 63.4692(b)(iii) maintains the 3-hour average combustion temperature at or above the limit. We made corresponding changes to Table 3 to Subpart QQQQ to Part 63 to read, ''maintain the 3-hour block average'' wherever warranted.

Several commenters disagreed with the omission of control devices other than thermal oxidation. The commenters recommended that provisions for biofilters and other innovative technologies be added to compliance Option 3. Compliance Option 3 does not preclude the use of biofilters or other control technologies. You may submit your request for any innovative control technology to the Administrator for approval. Plans for monitoring and recordkeeping requirements should be submitted along with such proposals.

Based on the type and level of HAP emissions at most wood building product surface coating operations, we do not consider biofilters as a likely control technology to be applied to such emission sources. Therefore, specific operating limits and compliance procedures for biofilters have not been included in the final rule. However, the proposed plywood and composite wood products rule (68 FR 1275, January 9, 2003) does include specific operating limits and compliance procedures for biofilters, and these can be used as examples when submitting your request for an alternative control technology.

H. Control Device Operating Limit Requirements

Several commenters stated that the proposed rule does not specify how to account for equipment start ups, shut downs or malfunctions in the calculation of the 3-hour averages used to determine compliance with operating limits for add-on control devices. The commenters suggested that the rule specify that the operating data collected when the control device is ''not receiving emissions'' not be included in the 3-hour average calculations. We have included language in the final rule to exclude monitoring data from the 3-hour average calculation that was generated during periods when the control device was not receiving emissions.

Several commenters disagreed with the requirement for periodically adjusting the air-to-fuel ratio for catalytic oxidizers. The commenters stated that adding this requirement to the inspection and maintenance plan has no performance benefit. The purpose of the inspection and maintenance plan is to assure that the catalytic oxidizer operates at the conditions that will achieve or exceed the emission destruction efficiency for the control device demonstrated by the performance test. Based on our review, we concluded that a requirement for

periodic adjustment of the air-to-fuel ratio is not needed to assure compliance of a catalytic oxidizer. We have written the final rule to exclude the requirement for periodically adjusting the air-to-fuel ratio in the inspection and maintenance plan.

Several commenters stated that the catalyst test procedures should be worked out between the facility and the catalyst test provider, not the manufacturer or supplier as specified in the inspection and maintenance plan requirements. We agree that the catalyst test providers should be consulted. The catalyst test provider will test the catalyst after the performance test to determine any catalyst degradation that may have occurred in the period after the performance testing. Although this is not required for compliance, it may be beneficial to test the catalyst at the time of the performance test to determine a baseline for future catalyst testing.

I. Startup, Shutdown, and Malfunction (SSM)

One commenter stated that bypass lines are often used in situations that are not considered malfunctions. In certain situations, operation of the control device is not always necessary to meet the emission limit. This situation can occur on a coating line that is used for coating operations covered by different compliance options conducted at different times. If the coatings used on one product comply with the applicable emission limit (*e.g.* compliant coatings option), the source may prefer to bypass the control device to lower annual expenses associated with operating the air pollution control system. This situation is not a malfunction and would not be addressed in the source's SSM plan.

The final rule explicitly states that requirements for the use of bypass lines apply during periods that ''controlled'' coating operations are being conducted. The language assures continuous compliance with the applicable emission limit at those sources electing to use Option 3 to comply with the emission limit using a capture and control device system that is equipped with a bypass line.

J. Recordkeeping and Reporting

Several commenters requested fewer recordkeeping and calculation requirements for coatings that have no HAP content. We agree that it is not necessary from the perspective of implementing and enforcing the final rule to require an owner or operator to perform all of the compliance calculation, recordkeeping, and reporting requirements specified in the final rule where the result will always be zero organic HAP per liter or gallon of coating solids.

For such zero-HAP materials, we have included a provision in § 63.4741(a)(1)(i) and (a)(4) of the final rule specifying that if the mass fraction of organic HAP in a coating is zero, as determined according to § 63.4741(a), then the source is not required to determine the volume fraction of coating solids and density or to calculate the organic HAP content. The following notification, reporting, and recordkeeping sections of the final rule were written to fully incorporate this provision: §§ 63.4710(c)(8)(i), 63.4720(a)(5)(ii), and 63.4730(c), (c)(2), (f), and (g).

III. What Are the Final Standards?

A. What Is the Source Category?

The final rule applies to you if you own or operate a commercial wood building products surface coating source that uses at least 4,170 liters (1,100 gallons) of coatings per year and is a major source, is located at a major source, or is part of a major source of HAP emissions, whether or not you manufacture the wood building product substrate. Surface coating operations alone are not required to be major sources of HAP emissions in order for the rule to apply. As long as some part of the total source causes it to be a major source (*e.g.*, the wood substrate manufacturing process), the surface coating operations would be subject to the final rule.

We have defined a wood building products surface coating source as any source engaged in the finishing or laminating of a wood building product. A wood building product is any product that contains more than 50 percent by weight wood or wood fiber, excluding the weight of glass components, and is used in the construction, either interior or exterior, of a residential, commercial, or institutional building. As explained later, we have established five subcategories in the wood building products surface coating source category: (1) Exterior siding and primed doorskins; (2) flooring; (3) interior wall paneling and tileboard; (4) other interior panels; and (5) doors, windows, and miscellaneous (see Table 1 of this preamble).

The final NESHAP requirements do not apply to the manufacture or application of surface coatings to prefabricated/premanufactured or mobile/modular homes. You are also not subject to the final rule if your wood building products surface coating operations are located at an area source. An area source of HAP is any source that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through the permitting authority.

The source category does not include research or laboratory facilities; janitorial, building, and facility construction or maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category does not include noncommercial coating operations or coating applications using handheld nonrefillable aerosol containers.

If an affected source has surface coating operations subject to the requirements of another NESHAP that account for at least 95 percent of the total (annual) coating usage for the source, the requirements, including all applicable emission limitations, operating limits, and work practices, of the predominant NESHAP can be applied to all coating operations that are subject to a NESHAP.

B. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The final rule defines the affected source as the collection of all operations associated with the surface coating of wood building products. These operations include preparation of a coating for application (*e.g.*, mixing with thinners); surface preparation of the wood building products; coating application, curing, and drying equipment; equipment cleaning; and storage, transfer, and handling of coatings, thinners, cleaning materials, and waste materials.

C. What Are the Emission Limits, Operating Limits, and Work Practice Standards?

Emission Limits. The final rule limits organic HAP emissions from each new or reconstructed affected source using the emission limits in Table 2 of this preamble. The emission limits for each existing affected source are given in Table 3 of this preamble. Affected sources may comply with the emission limits using either English or metric units. These limits are based on five subcategories that group similar operations and types of coatings. The final rule allows several compliance options to achieve the emission limits. You could comply by applying materials (coatings, thinners, and cleaning materials) that meet the

emission limits, either individually or collectively. You could also use a capture system and add-on control device to meet the emission limits, or you could comply by using a combination of these approaches.

TABLE 2.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

For any affected source applying coating to . . .	The organic HAP emission limit you must meet, in grams (g) HAP/liter solids (pounds (1b) HAP/gallon solids), is:
Exterior siding and primed doorskins.	0 (0.00)
Flooring	0 (0.00)
Interior wall paneling or tileboard.	5 (0.04)
Other interior panels	0 (0.00)
Doors, windows, and miscellaneous.	57 (0.48)

TABLE 3.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

For any affected source applying coating to . . .	The organic HAP emission limit you must meet, in g HAP/liter solids (lb HAP/gallon coating solids), is:
Exterior siding and primed doorskins.	7 (0.06)
Flooring	94 (0.78)
Interior wall paneling or tileboard	183 (1.53)
Other interior panels	20 (0.17)
Doors, windows, and miscellaneous.	231 (1.93)

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the operating limits apply to you. These limits are site-specific parameter limits you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures (PTE), you must establish average volumetric flow rates or duct static pressure limits for each capture device (or enclosure) in each capture system. For capture systems that are PTE, you must establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you must monitor the combustion temperature. For catalytic oxidizers, you must monitor the temperature immediately before and after the catalyst bed, or you must monitor the temperature before the catalyst bed and implement a site-specific inspection and maintenance plan for the catalytic oxidizer. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you must monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers, you must monitor the outlet gas temperature from the condenser. For concentrators, you must monitor the temperature of the desorption concentrate stream and the pressure drop of the dilute stream across the concentrator.

All site-specific parameter limits that you establish must reflect operation of the capture system and control devices during a performance test that demonstrates achievement of the emission limit during representative operating conditions.

Work Practice Standards. If you use an emission capture system and control device for compliance, you must develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coatings, thinners, cleaning materials, and waste materials. The work practice plan must include steps to ensure that, at a minimum, all organic HAP coatings, thinners, cleaning materials, and waste materials are stored in closed containers; spills of organic HAP coatings, thinners, cleaning materials, and waste materials are minimized; organic HAP coatings, thinners, cleaning materials, and waste materials are conveyed from one location to another in closed containers or pipes; mixing vessels that contain organic HAP coatings and other materials are closed except when adding to, removing, or mixing the contents; and emissions of organic HAP are minimized during cleaning of storage, mixing, and conveying equipment.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan could be used to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you must develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of SSM of the capture system and control device.

The General Provisions (40 CFR part 63, subpart A) also apply to you as indicated in the final rule. The General Provisions codify certain procedures and criteria for all 40 CFR part 63 NESHAP. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The final rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the final rule, all of the applicable General Provisions requirements apply to you.

D. What Are the Testing and Initial Compliance Requirements?

New or reconstructed affected sources must be in compliance upon initial startup of the affected source or by May 28, 2003, whichever is later. Existing affected sources must be in compliance with the final standards no later than May 29, 2006.

Compliance with the emission limits is based on a rolling 12-month organic HAP emission rate that is determined each month. Each 12-month period is a compliance period. The initial compliance period, therefore, is the 12-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following 12 months. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being ''in compliance'' means that the owner or operator of the affected source meets the requirements to achieve the emission limitations during the initial compliance period. At the end of the initial compliance period, the owner or operator must use the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the applicable limits and other requirements, it is out of compliance for the entire initial compliance period.

Emission Limits. There are several options for complying with the emission limits, and the testing and initial compliance requirements vary

accordingly. You may use different compliance options for different coating operations within the affected source and also for the same coating operation at different times.

Option 1: Compliance based on compliant materials. If you demonstrate compliance based on the use of compliant materials, you must determine the mass of organic HAP in each coating, thinner, and cleaning material used and the volume fraction of coating solids in each coating used each month during the compliance period. You must demonstrate that the organic HAP content of each coating meets the applicable emission limit, and that you use no thinners or cleaning materials that contain organic HAP.

To determine the mass fraction of organic HAP in coatings, thinners, and cleaning materials and the volume fraction of coating solids, you may either rely on manufacturer's data or on test results using the test methods listed below. You may use alternative test methods provided you get EPA approval in accordance with the General Provisions in 40 CFR 63.7(f).

- For mass fraction of organic HAP, use Method 311 of 40 CFR part 63, appendix A. If there are discrepancies between the methods for determining the mass fraction of organic HAP, they must be resolved through consultation with the regulatory compliance authority.
- The promulgated rule allows you to use non-aqueous volatile matter as a surrogate for organic HAP, which includes all organic HAP plus all other organic compounds, and excluding water. If you choose this option, then you must use Method 24 of 40 CFR part 60, appendix A.
- For volume fraction of coating solids, use one of these options: (1) Use either of the two referenced ASTM methods (D2697–86, 1998, or D6093–97); or (2) calculate using the total volatile matter content of the coating and the average density of the volatile matter in the coating. If the mass fraction of organic HAP in a coating is zero, as determined through test results or manufacturer's formulation data, then the source is not required to determine the volume fraction of coating solids and density or to calculate the organic HAP content.

To demonstrate initial compliance based on the material used, you must demonstrate that the organic HAP content of each coating meets the applicable emission limit, and that you use no organic HAP thinners or cleaning materials.

Option 2: Compliance based on the emission rate without add-on controls. If you demonstrate compliance based on the emission rate without add-on controls option, you must determine the mass fraction of organic HAP in all coatings, thinners, and cleaning materials and the volume fraction of coating solids used each month during the compliance period. You would use the same methods as described above for Option 1. You would also do the following.

- Determine the quantity of each coating, thinner, and cleaning material used.
- Calculate the total mass of organic HAP in all materials and total volume of coating solids used each month. You may subtract the total mass of organic HAP contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the total mass of organic HAP emissions and total volume of coating solids for the compliance period by adding together all the monthly values for mass of organic HAP and for volume of coating solids for the 12 months in the compliance period.
- Calculate the ratio of the total mass of organic HAP for the materials used to the total volume of coating solids used for the compliance period.
- Record the calculations and results and include them in your Notification of Compliance Status.

Option 3: Compliance based on the emission rate with add-on controls. If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct a liquid-liquid material balance, you must meet the following testing and compliance requirements.

- Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed by the compliance date for existing sources and no later than 180 days after the compliance date for new or reconstructed affected sources.
- Determine the mass fraction of organic HAP in each material and the volume fraction of coating solids for each coating used each month of the compliance period.
- Calculate the total mass of organic HAP in all materials and total volume of coating solids used each month in the coating operation or group of coating operations. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the organic HAP emission reductions for the controlled coating operations using the capture and control efficiencies determined during the performance test and the total mass of organic HAP in materials used in controlled coating operations.
- Calculate the total mass of organic HAP emissions and total volume of coating solids for the compliance period by adding together all monthly values for mass of organic HAP and for volume of coating solids for the 12 months in the compliance period.
- Calculate the ratio of the total mass of organic HAP emissions to the total volume of coating solids used during the compliance period.
- Record the calculations and results and include them in the Notification of Compliance Status.

If you use a capture system and add-on control device, other than a solvent recovery system for which you conduct liquid-liquid material balances, you must determine both the efficiency of the capture system and the destruction or removal efficiency of the control device. To determine the capture efficiency, you must either verify the presence of a PTE using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure); or use one of the protocols in § 63.4765 of the final rule to measure capture efficiency. If you have a PTE and all the materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, then you must assume 100 percent capture.

To determine the destruction or removal efficiency of the control device, you must conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting at least 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

- Method 1 or 1A for selection of the sampling sites.
- Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.
- Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.
- Method 4 to determine stack moisture.
- Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, may be used.

If you use a solvent recovery system, you could determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial

performance test. If you use the material balance alternative, you must measure the amount of all materials used in the coating operations served by the solvent recovery system during each month of the compliance period and determine the volatile matter contained in these materials. You must measure the amount of volatile matter recovered by the solvent recovery system each month of the compliance period. Then you must compare the amount recovered for the 12-month compliance period to the amount used to determine the overall control efficiency, and apply this efficiency to the ratio of organic HAP to coating solids for the materials used. You must record the calculations and results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you must establish operating limits as part of the initial performance test of a capture system and control device, other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test that demonstrated compliance with the emission limits.

The final rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You must install, calibrate, maintain, and continuously operate all monitoring equipment according to the manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.4768 of the final rule. If you use control devices other than those identified in the final rule, you must submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal oxidizer, you must continuously monitor the appropriate temperature and record it at least every 15 minutes. The temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test and, for each consecutive 3-hour period, the average temperature would have to be at or above this limit.

If you use a catalytic oxidizer, you may choose from two methods to determine operating limits. In the first method, you must continuously monitor the temperature immediately before and after the catalyst bed and record it at least every 15 minutes. The operating limits would be the average temperature before the catalyst bed and the average temperature difference across the catalyst bed during the performance test and, for each 3-hour period, the average temperature and the average temperature difference would have to be at or above these limits. In the alternative method, you must continuously monitor the temperature immediately before the catalyst bed and record it at least every 15 minutes. The operating limit would be the average temperature before the catalyst bed during the performance test and, for each 3-hour period, the average temperature would have to be at or above these limits. As part of the alternative method, you must also develop and implement an inspection and maintenance plan for your catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you must monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser, you must monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test and, for each consecutive 3-hour period, the average temperature would have to be at or below this limit.

If you use a concentrator, you must monitor the desorption concentrate stream gas temperature and the pressure drop of the dilute stream across the concentrator. The operating limits would be the desorption concentrate gas stream temperature (to be met as a minimum) and the dilute stream pressure drop (not to be exceeded).

For each capture system that is not a PTE, you must establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a PTE, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practices. If you use the emission rate with add-on controls option, you must develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. You must make the plan available for inspection if the Administrator requests to see it. We believe work practice standards are appropriate to further reduce emissions.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you must develop and operate according to a SSMP during periods of SSM of the capture system and control device.

E. What Are the Continuous Compliance Requirements?

Emission Limits.

Option 1: Compliance based on compliant materials. If you demonstrate compliance with the emission limits based on compliant materials, you must demonstrate continuous compliance if, for each 12-month compliance period, the organic HAP content of each coating used does not exceed the applicable emission limit and you use no thinner or cleaning material that contains organic HAP. You must follow the same procedures for determining compliance that you used for the initial compliance period.

Option 2: Compliance based on the emission rate without add-on controls. If you demonstrate compliance with this option, you must demonstrate continuous compliance if, for each 12-month compliance period, the rolling 12-month emission rate is less than or equal to the applicable emission limit. You must follow the same procedures for calculating the rolling 12-month emission rate that you used for the initial compliance period.

Option 3: Compliance based on the emission rate with add-on controls. For each coating operation on which you use a capture system and control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, the continuous parameter monitoring results for each month would affect your compliance determination. If the monitoring results indicate no deviations from the operating limits and bypass line requirements, you would assume the capture system and control device are

achieving the same percentage destruction or removal efficiency as they did during the most recent performance test when compliance was demonstrated. You would then apply this percentage reduction to the total mass of organic HAP in materials used in controlled coating operations to determine the rolling 12-month emission rate for those operations. If there were any deviations from the operating limits during the month or any bypasses of the control device, you must account for them in the calculation of the monthly emissions by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation. Then, you would determine the rolling 12-month emission rate by dividing the total mass of organic HAP emissions by the total volume of coating solids used during the 12-month compliance period. Every month, you must calculate the emission rate for the previous 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you must use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions. Then, you must determine the 12-month organic HAP emission rate in the same manner as described above.

Operating Limits. If you use an emission capture system and control device, the final rule requires you to achieve, on a continuous basis, the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture and control system that is equipped with a bypass line, you must demonstrate that organic HAP emissions collected by the capture system are being routed to the control device at all times while controlled coating operations are being conducted. This demonstration is accomplished by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

If the bypass monitoring procedures indicate that emissions are not routed to the control device, you have deviated from the emission limits.

Work Practices. If you use the emission rate with add-on controls option, you must implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the aforementioned sources, then your existing plan may be used to satisfy the requirement for a work practice plan.

If you use a capture system and control device for compliance, you must operate according to your SSMP during periods of SSM of the capture system and control device.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the final rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notifications. If the final rule applies to you, you must send a notification to the EPA Regional Office in the region where your source is located, and to your State agency, within 120 days after the date of initial startup or September 25, 2003, whichever is later. The report notifies us and your State agency that you have constructed a new source, reconstructed an existing source, or you have an existing source that is subject to the final rule. Thus, it allows you and the permitting authority to plan for compliance activities. You will also need to send a notification of planned construction or reconstruction of a source that would be subject to the final rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you must conduct a performance test. The performance test must be no later than 180 days after initial startup or November 24, 2003, whichever is later for a new or reconstructed affected source and no later than the compliance date for an existing affected source (May 29, 2006). You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions for the NESHAP.

Notification of Compliance Status. You must send us a Notification of Compliance Status within 30 days after the end of the initial compliance period. Your compliance procedures would depend on which compliance option you choose. In the notification, you must certify whether the affected source has complied with the promulgated standards, identify the option(s) you used to demonstrate initial compliance, and provide calculations supporting the compliance demonstration.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification would also include the measured range of each monitored parameter and the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You must keep records of reported information and all other information necessary to document compliance with the promulgated rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep

records of the organic HAP content, volatile matter content, coating solids content, and quantity of the coatings, thinners, and cleaning materials used during each compliance period.

If you demonstrate compliance by using a capture system and control device, you must keep records of the following:

- All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards;
- All results of performance tests and parameter monitoring;
- All information necessary to demonstrate conformance with the requirements for minimizing emissions from mixing, storage, and handling operations for coatings, thinners, and cleaning materials;
- All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed;
- The occurrence and duration of each SSM of the emission capture system and control device;
- Actions taken during SSM that are different from the procedures specified in the affected source's SSMP; and
- Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The final rule requires you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, must be recorded and also reported. A deviation is any instance when any requirement or obligation established by the final rule is not met, including but not limited to the emission limits, operating limits, and work practice standards.

If you use a capture system and control device to reduce organic HAP emissions, you must make your SSMP available upon request for inspection by the Administrator. The plan will stay in your records for the life of the affected source or until the affected source is no longer subject to the promulgated standards. If you revise the plan, you must keep the previous superceded versions on record for 5 years following the revision.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you must submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you must include them in the report as follows:

- Report each deviation from the emission limits.
- Report each deviation from the work practice standards if you use an emission capture system and control device.
- If you use an emission capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere during a controlled coating operation.
- Report other specific information on the periods of time and details of deviations that occurred.

You must include in each semiannual report an identification of the compliance option(s) you used and of time periods when you changed to another option.

Other Reports. You must submit reports for periods of SSM of the capture system and control device. If the procedures you follow during any SSM are inconsistent with your plan, you must report those procedures with your semiannual reports in addition to immediate reports required by § 63.10(d)(5)(ii) of the NESHAP General Provisions.

IV. What Are the Environmental, Energy, Cost, and Economic Impacts?

A. What Are the Air Impacts?

The final rule will reduce nationwide organic HAP emissions from existing major sources by approximately 4,400 Mg/yr (4,900 tpy). This represents a reduction of 63 percent from the baseline organic HAP emissions of 7,000 Mg/yr (7,800 tpy).

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low- or no-organic-HAP content coatings, thinners, and cleaning materials at existing sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. Also, there would be no significant change in the amount of materials used or the amount of waste produced.

C. What Are the Cost and Economic Impacts?

Total annual cost of compliance for the estimated 215 existing major sources was projected to be $22.5 million. Due to consolidation throughout the industry, there is not expected to be any net growth within the wood building products surface coating industry during the next 5 years. Therefore, there are no projected impacts for new sources.

We performed an economic impact assessment (EIA) to provide an estimate of the facility and market impacts of the final rule as well as the social costs. In general, we expect the economic impacts of the promulgated standards to be minimal, with expected price increases for affected wood building products surface coating facilities of only 0.04 percent.

For affected sources, the median profit margin will remain unchanged, with small entities being slightly more affected by the final rule. The median profit margin for small entities is expected to decrease from 2.8 percent to 2.7 percent while the median profit margin for large entities is expected to decrease from 3.1 percent to 3.0 percent. Therefore, we do not expect an adverse economic impact on the industry as a whole.

The distribution of costs across wood building products surface coating facilities is slanted toward the lower impact levels with many facilities incurring costs related only to annually recurring monitoring, recordkeeping, and reporting, and for only a few sources that choose to use their existing add-on controls, initial performance testing and parameter monitoring. The EIA indicates that these regulatory costs are expected to represent only 0.2 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closure because of the promulgated standards. For more information, refer to the ''Economic Impact Analysis for the Wood Building Products NESHAP'' in the docket.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory

action'' as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.''

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2034.02) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division (MD–2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The final rule requires record maintenance of all coatings, thinners, and cleaning materials data and calculations used to demonstrate compliance. This information includes the volume of coatings and other materials used during each compliance period, mass fraction of organic HAP, density, and, for coatings only, volume fraction of coating solids (as applicable).

If an add-on control device is used, records will be kept of the capture efficiency of the capture device, destruction or removal efficiency of the control device, and the monitored operating parameters. In addition, records will be kept of each calculation of the affected sourcewide emissions for each compliance period and all data, calculations, test results, and other supporting information.

The monitoring, recordkeeping, and reporting burden for this collection (averaged over the first 3 years after the effective date of the final rule) is estimated to be approximately 2,200 labor hours per year at a total annual cost of $128,000. For sources assumed to use existing add-on control devices, this estimate includes a one-time performance test and report (with repeat tests where needed) and a one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed. For all sources, this estimate includes training, reading the regulation, and recordkeeping. There are no capital/startup costs associated with the monitoring requirements.

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 purpose of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has a maximum of 500 employees according to Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. We have conducted an assessment of the standards on small businesses within the wood building products industries. Based on SBA size definitions for the affected industries (NAICS 321211—Hardwood Veneer and Plywood Manufacturing, NAICS 321212—Softwood Veneer and Plywood Manufacturing, NAICS 321219—Reconstituted Wood Product Manufacturing, NAICS 321911—Wood Window and Door Manufacturing, NAICS 321918—Other Millwork (including Flooring), NAICS 321999—All Other Miscellaneous Wood Product Manufacturing) and reported sales and employment data, EPA's survey identified four out of the 42 known facilities (four out of the 17 known companies) as being owned by small businesses that will be affected by the final rule. Small businesses own 10 percent of the facilities and 24 percent of the companies within the source category that will be affected by the final rule and are expected to incur 10 percent of the total industry compliance costs of $22.5 million. There are no small firms with compliance costs equal to or greater than 1 percent of their sales. The EPA believes the sample of firms included in this small entity analysis is representative of the small firms that may be affected by the promulgated rule.

The EPA also notes that, while economies of scale will require individual small firms to pay a somewhat higher proportion of revenues than large firms for compliance, the burden on most small firms is quite low nevertheless. The median compliance cost is well below 1 percent of sales for both small and large firms affected by the promulgated standards (0.18 percent and 0.02 percent of sales for small and large firms, respectively). For more information, please consult the report, ''Economic Impact Analysis for the

Wood Building Products NESHAP,'' (Docket ID No. OAR–2003–0002, formerly Docket No. A–97–52).

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule on small entities, consistent with our obligations under the CAA. Along with soliciting input from small entities during the data-gathering phase of the rulemaking, three separate small business outreach activities were conducted. First, the Western States Air Resources Council was contacted about small business participation in a meeting held on October 12, 1999. (For more information, see the docket.) The second activity was a random screening of approximately 250 affected companies within the wood building products surface coating industry. Internet searches led to a list of ten possible affected small entities. These small entities were then invited to join a small business panel to assist in the development of the wood building products (surface coating) NESHAP. The third outreach program was conducted through SCOPe, which is a cooperative agreement between the EPA and the National Association of Schools of Public Affairs and Administration. Meetings are facilitated by local public affairs and administration faculty and are used to inform small entities of pending regulations. The informal meetings allow potentially affected facilities to voice concerns which are then communicated to the EPA prior to the rulemaking. According to outreach in Georgia, Oregon, North Carolina, and Pennsylvania, small entities are aware of low- or no-HAP coatings that have the potential to reduce HAP emissions. Many of the small entities currently use low- or no-HAP coatings and agree that they are often less expensive than higher-HAP options, do not affect the quality of the final product, and the choices are becoming more widespread. Therefore, small entities will not be adversely affected by the use of low- or no-HAP coatings.

Another aspect of the small business outreach was the participation in meetings that focus on impacts on small entities. The EPA representatives for the wood building products (surface coating) NESHAP have attended conferences and trade association meetings that have included small entities. By attending conferences sponsored by the Center for Advanced Wood Processing, the Laminating Materials Association, and RadTech International North America, and being involved in coatings-related industry and trade association meetings, information about the wood building products NESHAP has been shared with other communities concerned with impacts on small entities.

We believe these actions will significantly reduce the compliance burden for small entities, thereby mitigating potential impacts and preventing any duplication of effort. In addition, the final rule contains compliance options which give small entities flexibility in choosing the most cost effective and least burdensome alternative for their operations. For example, a facility could purchase and use low- or no-HAP coatings, thinners, and cleaning materials (*i.e.,* pollution prevention) that meet the standards rather than being required to purchase add-on control systems. The low- or no-HAP option can be demonstrated with minimum burden by using already-maintained purchase and usage records. No testing of materials is required, as the facility owners could show that their coatings meet the emission limits by providing formulation data supplied by the manufacturer. Furthermore, the final rule includes the minimum monitoring, recordkeeping, and reporting requirements needed for enforcement and compliance assurance.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year nor does the final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected sources are owned or operated by State governments. Thus, the requirements of section 6 of the Executive Order do not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure

''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The final rule does not have tribal implications, as specified in Executive Order 13175, because tribal governments do not own or operate any sources subject to the amendments. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113, (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This rulemaking involves technical standards. The EPA cites the following standards in this final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A-F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A-F, and 311. The search and review results have been documented and are available in the docket (Docket ID No. OAR–2003–0002, formerly Docket No. A–97–52) of the final rule.

The three VCS were identified as acceptable alternatives to EPA test methods for the purposes of the rule.

The VCS ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ANSI/ASME PTC 19.10–1981, Part 10, is an acceptable alternative to Method 3B.

The two VCS, ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' and ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' are cited in this rule as acceptable alternatives to EPA Method 24 for measuring volume of solids in coatings. Currently, Method 24 does not have a procedure for determining the volume of solids in coatings. These standards fill a void in EPA Method 24 which directs that volume solids content be calculated from the coating manufacturer's formulation. The final rule does allow for the use of the volume solids content values calculated from the coating manufacturer's formulation; however, test results (if available) will take precedence if the test results do not agree with the calculated values.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93, are already incorporated by reference (IBR) in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–90 for measuring the density of individual coating components, such as organic solvents.

Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS 9–94 are IBR in EPA Method 311.

In addition to the VCS we are using in the final rule, the search for emissions measurement procedures identified 14 other VCS. We determined that 11 of these 14 standards identified for measuring emissions of the HAP or surrogate subject to emission standards in the final rule were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards. (See Docket ID No. OAR–2003–0002, formerly Docket No. A–97–52, for further information on the methods.)

Sections 63.4730, 63.4741, 63.4761, 63.4765, 63.4766, and Table 3 to promulgated subpart QQQQ lists the EPA testing methods included in the final rule. Under § 63.8 of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final 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**. The final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). The rule will be effective May 28, 2003.

List of Subjects in 40 CFR Part 63

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

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of

Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.14 is amended by revising paragraphs (b)(24) and (25) and (i)(3) to read as follows:

§ 63.14 Incorporations by reference

* * * * *

(b) * * *

(24) ASTM D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings,'' IBR approved for §§ 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

(25) ASTM D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer,'' IBR approved for §§ 63.4141(b)(1), 63.4741(b)(1), 63.4941(b)(1), and 63.5160(c).

* * * * *

(i) * * *

(3) ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for §§ 63.865(b), 63.3360(e)(1)(iii), 63.4166(a)(3), 63.4766(a)(3), 63.4965(a)(3), 63.5160(d)(1)(iii), 63.9307(c)(2), and 63.9323(a)(3).

* * * * *

■ 3. Part 63 is amended by adding subpart QQQQ to read as follows:

Subpart QQQQ—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

Sec.

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Subpart QQQQ—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

What This Subpart Covers

§ 63.4680 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for wood building products surface coating sources. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4681 Am I subject to this subpart?

(a) Except as provided in paragraphs (c) and (d) of this section, the source category to which this subpart applies is surface coating of wood building products, which means the application of coatings using, for example, roll coaters or curtain coaters in the finishing or laminating of any wood building product that contains more than 50 percent by weight wood or wood fiber excluding the weight of any glass components, and is used in the construction, either interior or exterior, of a residential, commercial, or institutional building. The wood building products source category includes the subcategories listed in paragraphs (a)(1) through (5) of this section.

(1) *Doors, windows, and miscellaneous.* The doors, windows, and miscellaneous subcategory includes doors, windows, finished doorskins, and door and window components such as millwork, moulding, or trim, and other miscellaneous wood building products including, but not limited to, all moulding and trim, shingles, and shutters.

(2) *Flooring.* The flooring subcategory includes solid wood flooring, engineered wood flooring, and wood laminate flooring.

(3) *Interior wall paneling and tileboard.* The interior wall paneling and tileboard subcategory includes interior wall paneling products. Tileboard is a premium interior wall paneling product.

(4) *Other interior panels.* The other interior panel subcategory includes panels that are sold for uses other than interior wall paneling, such as coated particleboard, hardboard, and perforated panels.

(5) *Exterior siding and primed doorskins.* The exterior siding and primed doorskins subcategory includes lap or panel siding, trimboard, and primed doorskins. Doorskins that are coated with more than primer are included in the doors, windows, and miscellaneous subcategory.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.4682, that uses 4,170 liters (1,100 gallons) per year, or more, of coatings in the source category defined in paragraph (a) of this section and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating and other operations that meet the criteria of paragraphs (c)(1) through (5) of this section.

(1) Surface coating in the processes identified in paragraphs (c)(1)(i) through (xi) of this section that are part of plywood and composite wood product manufacturing and would be subject to subpart DDDD of this part when promulgated:

(i) Edge seals applied to a reconstituted wood product or plywood.

(ii) Anti-skid coatings applied to reconstituted wood products.

(iii) Primers applied to waferboard or oriented strand board (OSB) siding at the site of manufacture of the waferboard or OSB siding.

(iv) Surface coating that occurs during the manufacture of fiberboard, including application of clay slurry, titanium dioxide, or asphalt coatings to fiberboard.

(v) Painting of company logo information on plywood or reconstituted wood products.

(vi) Application of trademarks and grade stamp to reconstituted wood products or plywood.

(vii) Application of nail lines to reconstituted wood products.

(viii) Synthetic patches, wood patches, and wood putty applied to plywood.

(ix) Application of concrete forming and other drying or tempering oils to wood building products.

(x) Veneer composing.

(xi) Application of shelving edge fillers to reconstituted wood products.

(2) Surface coating of wood furniture subject to subpart JJ of this part, including finishing, gluing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components. The surface coating of millwork and trim associated with cabinet manufacturing is also subject to subpart JJ of this part and not to this subpart.

(3) Surface coating that occurs during the manufacture of prefabricated homes and mobile/modular homes.

(4) Surface coating that occurs at research or laboratory facilities; janitorial, building, and facility construction or maintenance operations; or hobby shops that are operated for personal rather than for commercial purposes. The source category also does not include non-commercial coating operations or coating applications using handheld nonrefillable aerosol containers.

(5) Wood treatment or fire retardant operations located at wood building products sources that involve impregnating the wood product with the wood treatment chemicals or fire retardant by using a retort or other pressure vessel.

(d) If you have an affected source with surface coating operations subject to the requirements of another subpart of this part that account for at least 95 percent of the total (annual) coating usage for the affected source, you may demonstrate compliance with the requirements, including all applicable emission limit(s), for that subpart for the entire affected source.

§ 63.4682 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source.

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of wood building products:

(1) All coating operations as defined in § 63.4781;

(2) All storage containers and mixing vessels in which coatings, thinners, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new affected source if its construction commenced after June 21, 2002, and the construction is of a completely new wood building products surface coating source where previously no wood building products surface coating source had existed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.4683 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4740, 63.4750, and 63.4760.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before May 28, 2003, the compliance date is May 28, 2003.

(2) If the initial startup of your new or reconstructed affected source occurs after May 28, 2003, the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after May 28, 2003.

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the compliance date is the date of initial startup of the affected source or May 28, 2003, whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after May 28, 2003, whichever is later.

(d) You must meet the notification requirements in § 63.4710 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4690 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere to no more than the applicable emission limit(s) in Table 1 to this subpart, determined according to the requirements in §§ 63.4741, 63.4751, or 63.4761.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere to no more than the applicable emission limit(s) in Table 2 to this subpart, determined according to the requirements in § 63.4741, § 63.4751, or § 63.4761.

(c) If the affected source applies coatings to products that are in different subcategories as described in § 63.4681(a), then you must demonstrate initial and continuous compliance by selecting one of the approaches described in paragraphs (c)(1) and (2) of this section.

(1) Conduct separate compliance demonstrations for each applicable subcategory emission limit and reflect these separate determinations in notifications, reports, and records required by §§ 63.4710, 63.4720, and 63.4730, respectively.

(2) Demonstrate compliance with the most stringent of the applicable subcategory emission limits.

§ 63.4691 What are my options for meeting the emission limits?

You must include all coatings, thinners, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.4690. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation or to multiple coating operations as a group or to the entire affected source. You may use different compliance options for different coating operations or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.4730(c), and you must report it in the next semiannual compliance report required in § 63.4720.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit(s) in § 63.4690, and that each thinner and each cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4740, 63.4741, and 63.4742 to demonstrate compliance with the emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit(s) in § 63.4690, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.4750, 63.4751, and 63.4752 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners, and cleaning materials used in the coating operation(s) and the emission reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit(s) in § 63.4690, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.4692, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j), and that you meet the work practice standards required in § 63.4693. You must meet all the requirements of §§ 63.4760 through 63.4768 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.4692 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4761(j), you must meet the operating limits specified in Table 3 to this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.4767. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in Table 3 to this subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4693 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners, and cleaning materials used in, and waste materials generated by, the coating operation(s); or you must meet an alternative standard as provided in paragraph (d) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented. You must make the plan available upon request for inspection by the Administrator.

(1) All organic-HAP coatings, thinners, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP coatings, thinners, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP coatings, thinners, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels that contain organic-HAP coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic-HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) If your affected source has an existing documented plan that incorporates steps taken to minimize emissions from the sources specified in paragraphs (b)(1) through (5) of this section, then your existing plan can be used to meet the requirement for a work

practice plan as specified in paragraph (b) of this section.

(d) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (U.S. EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4700 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.4691(a) and (b), must be in compliance with the applicable emission limit in § 63.4690 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.4691(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.4690 at all times, except during periods of startup, shutdown, and malfunction (SSM).

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4692 at all times, except during periods of SSM, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.4693 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date specified for your affected source in § 63.4683 and the date when the initial emission capture system and add-on control device performance tests have been completed, as specified in § 63.4760. This requirement does not apply to a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4761(j) in lieu of conducting performance tests.

(d) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3). The SSMP must address startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The SSMP must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.4701 What parts of the General Provisions apply to me?

Table 4 to this subpart indicates which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4710 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial Notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after May 28, 2003, whichever is later. For an existing affected source, you must submit the Initial Notification no later than 120 days after May 28, 2003.

(c) *Notification of Compliance Status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4740, § 63.4750, or § 63.4760 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4740, § 63.4750, or § 63.4760 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4691 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.4690, include all the calculations you used to determine the grams organic HAP emitted per liter of coating solids used (pounds (lb) organic HAP emitted per gallon of coating solids used). You do not need to submit information provided by the materials suppliers or manufacturers, or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material or a summary of the results of testing conducted according to § 63.4741(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner, and for one cleaning material.

(ii) Volume fraction of coating solids for one coating.

(iii) Density for one coating, one thinner, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4751.

(8) The calculation of grams organic HAP emitted per liter coating solids used (lb organic HAP emitted per gallon coating solids used) for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 2 of § 63.4741.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the

calculation of the total volume of coating solids used each month; and the calculation of the 12-month organic HAP emission rate, using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.4751.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4751; the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1, 1A through 1D, 2, 3, and 3A through 3C of § 63.4761, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4761; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4761.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system and add-on control device operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4693.

§ 63.4720 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4740, § 63.4750, or § 63.4760 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a semiannual compliance report pursuant to this section along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.4691 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.4691(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.4690, 63.4692, and 63.4693 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were

out-of-control during the reporting period.

(5) *Deviations: compliant material option.* If you used the compliant material option, and there was a deviation from the applicable emission limit in § 63.4690, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the emission limit, each thinner and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 2 of § 63.4741) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (*e.g.*, information provided by coating suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each coating, thinner, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (*e.g.*, information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4690, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4690.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must provide the calculations for Equations 1, 1A through 1C, 2, and 3 in § 63.4751; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4). You do not need to submit background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of SSM during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4690.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4751; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4761, and Equations 2, 3, and 3A through 3C of § 63.4761, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4761; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4761. You do not need to submit the background data supporting these calculations (*e.g.*, information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 3 to this subpart, date and time period of any bypass of the add-on control device, and whether each deviation occurred during a period of SSM or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 3 to this subpart, each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 3 to this subpart and bypasses of the add-on control device during the semiannual reporting period by identifying deviations due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *SSM reports.* If you used the emission rate with add-on controls option and you had an SSM during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your SSMP, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your SSMP, you must submit an immediate SSM report as described in paragraphs (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in

§ 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4730 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner, and cleaning material and the volume fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or volume fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations at which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 2 of § 63.4741.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1, 1A through 1C, and 2 of § 63.4751; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4); the calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.4751.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4751; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4751(e)(4).

(ii) The calculation of the total volume of coating solids used each month, using Equation 2 of § 63.4751.

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4761, and Equations 2, 3, and 3A through 3C of § 63.4761, as applicable.

(iv) The calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4761.

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.4761.

(d) A record of the name and volume of each coating, thinner, and cleaning material used during each compliance period.

(e) A record of the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each compliance period.

(f) A record of the volume fraction of coating solids for each coating used during each compliance period.

(g) A record of the density for each coating used during each compliance period; and, if you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each thinner and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.4751 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4751(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.4751; a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility; and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.4751.

(3) The methodology used in accordance with § 63.4751(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of SSM.

(2) The records in § 63.6(e)(3)(iii) through (v) related to SSM.

(3) The records required to show continuous compliance with each operating limit specified in Table 3 to this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4765(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4764 and 63.4765(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a*

building enclosure. Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4765(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.4766.

(i) Records of each add-on control device performance test conducted according to §§ 63.4764 and 63.4766.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4767 and to document compliance with the operating limits as specified in Table 3 to this subpart.

(8) A record of the work practice plan required by § 63.4693, and documentation that you are implementing the plan on a continuous basis.

§ 63.4731 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on-site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off-site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4740 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.4741. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.4741 and supporting documentation showing that during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.4690, and that you used no thinners or cleaning materials that contained organic HAP.

§ 63.4741 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.4690 and must use no thinner or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4692 and 63.4693, respectively. To demonstrate initial compliance with the emission limitations using the compliant material option, you must meet all the requirements of this section for the coating operation or group of coating operations using this option. Use the procedures in this section on each coating, thinner, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option. If the mass fraction of organic HAP of a coating equals zero, determined according to paragraph (a) of this section, and you use the compliant material option, you are not required to comply with paragraphs (b) and (c) of this section for that coating.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during the compliance period by using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test. If these values cannot be determined using Method 311, the owner or operator shall submit an alternative technique for determining their values for approval by the Administrator.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.379178412 truncates to 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP. (Note: Method 24 is not appropriate for those coatings with a water content that would result in an effective detection

limit greater than the applicable emission limit.)

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4), and at 1.0 percent by mass or more for other organic HAP compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence unless, after consultation, a regulated source could demonstrate to the satisfaction of the enforcement agency that the formulation data were correct.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 5 or Table 6 to this subpart. If you use the tables, you must use the values in Table 5 for all solvent blends that match Table 5 entries, and you may only use Table 6 if the solvent blends in the materials you use do not match any of the solvent blends in Table 5 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 (40 CFR part 63, appendix A) test indicate higher values than those listed on Table 5 or Table 6 to this subpart, the Method 311 results will take precedence.

(b) *Determine the volume fraction of coating solids for each coating.* You must determine the volume fraction of coating solids (liters of coating solids per liter of coating) for each coating used during the compliance period by one of the methods specified in paragraph (b)(1), (2), or (3) of this section.

(1) *ASTM Method D2697–86 (Reapproved 1998) or D6093–97.* You may use ASTM Method D2697–86 (Reapproved 1998), ''Standard Test Method for Volume Nonvolatile Matter in Clear or Pigmented Coatings' (incorporated by reference, see § 63.14), or D6093–97, ''Standard Test Method for Percent Volume Nonvolatile Matter in Clear or Pigmented Coatings Using a Helium Gas Pycnometer'' (incorporated by reference, see § 63.14), to determine the volume fraction of coating solids for each coating. Divide the nonvolatile volume percent obtained with the methods by 100 to calculate volume fraction of coating solids. If these values cannot be determined using these methods, the owner operator may submit an alternative technique for determining their values for approval by the Administrator.

(2) *Information from the supplier or manufacturer of the material.* You may obtain the volume fraction of coating solids for each coating from the supplier or manufacturer.

(3) *Calculation of volume fraction of coating solids.* If the volume fraction of coating solids cannot be determined using the options in paragraphs (b)(1) and (2) of this section, you must determine it using Equation 1 of this section:

$$V_s = 1 - \left(\frac{m_{volatiles}}{D_{avg}} \right) \qquad \text{(Eq. 1)}$$

Where:

V_s = Volume fraction of coating solids, liters coating solids per liter coating.

$m_{volatiles}$ = Total volatile matter content of the coating, including HAP, volatile organic compounds (VOC), water, and exempt compounds, determined according to Method 24 in appendix A of 40 CFR part 60, grams volatile matter per liter coating.

D_{avg} = Average density of volatile matter in the coating, grams volatile matter per liter volatile matter, determined from test results using ASTM Method D1475–90 information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–90 test results and other information sources, the test results will take precedence.

(c) *Determine the density of each coating.* Determine the density of each coating used during the compliance period from test results using ASTM Method D1475–90 or information from the supplier or manufacturer of the material. If there is disagreement between ASTM Method D1475–90 test results and the supplier's or manufacturer's information, the test results will take precedence.

(d) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, grams organic HAP per liter coating solids, of each coating used during the compliance period, using Equation 2 of this section:

$$H_c = \frac{(D_c)(W_c)}{V_s} \qquad \text{(Eq. 2)}$$

Where:

H_c = Organic HAP content of the coating, grams organic HAP per liter coating solids.

D_c = Density of coating, grams coating per liter coating, determined according to paragraph (c) of this section.

W_c = Mass fraction of organic HAP in the coating, grams organic HAP per gram coating, determined according to paragraph (a) of this section.

V_s = Volume fraction of coating solids, liter coating solids per liter coating, determined according to paragraph (b) of this section.

(e) *Compliance demonstration.* The organic HAP content for each coating used during the initial compliance period, determined using Equation 2 of this section, must be less than or equal to the applicable emission limit in § 63.4690; and each thinner and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.4730 and 63.4731. As part of the Notification of Compliance Status required in § 63.4710, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4690, and you used no thinners or cleaning materials that contained organic HAP, determined according to paragraph (a) of this section.

§ 63.4742 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content determined using Equation 2 of § 63.4741 exceeds the

applicable emission limit in § 63.4690; and use no thinner or cleaning material that contains organic HAP, determined according to § 63.4741(a). A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4740 is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(5).

(c) As part of each semiannual compliance report required by § 63.4720, you must identify the coating operation(s) for which you used the compliant material option. If there were no deviations from the emission limitations in § 63.4690, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coating for which the organic HAP content exceeded the applicable emission limit in § 63.4690, and you used no thinner or cleaning material that contained organic HAP, determined according to § 63.4741(a).

(d) You must maintain records as specified in §§ 63.4730 and 63.4731.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4750 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4751. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.4751 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4690.

§ 63.4751 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.4690. Any coating operation for which you use the emission rate without add-on controls option is not required to meet the operating limits or work practice standards required in §§ 63.4692 and 63.4693, respectively. You must meet all the requirements of this section to demonstrate initial compliance with the applicable emission limit in § 63.4690 for the coating operation(s). When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed onsite and reused in the coating operation(s) for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner, and cleaning material used during each month according to the requirements in § 63.4741(a).

(b) *Determine the volume fraction of coating solids for each coating.* Determine the volume fraction of coating solids for each coating used during each month according to the requirements in § 63.4741(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner, and cleaning material used during each month from test results using ASTM Method D1475–90, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–90 test results and such other information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (liters) of each coating, thinner, and cleaning material used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate it using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = Total mass of organic HAP emissions during the month, grams.

A = Total mass of organic HAP in the coatings used during the month, grams, as calculated in Equation 1A of this section.

B = Total mass of organic HAP in the thinners used during the month, grams, as calculated in Equation 1B of this section.

C = Total mass of organic HAP in the cleaning materials used during the month, grams, as calculated in Equation 1C of this section.

R_w = Total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, grams, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the mass of organic HAP in the coatings used during the month, using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = Total mass of organic HAP in the coatings used during the month, grams.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, grams coating per liter coating.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, grams organic HAP per gram coating.

m = Number of different coatings used during the month.

(2) Calculate the mass of organic HAP in the thinners used during the month, using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = Total mass of organic HAP in the thinners used during the month, grams.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, grams per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, grams organic HAP per gram thinner.

n = Number of different thinners used during the month.

(3) Calculate the mass of organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C = Total mass of organic HAP in the cleaning materials used during the month, grams.

$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = Density of cleaning material, k, grams per liter.

$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, grams organic HAP per gram material.

p = Number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(4)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations for which you use Equation 1 of this section and that will be treated or disposed of by a facility regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You may use any reasonable methodology to determine the amount of waste materials and the total mass of organic HAP they contain, and you must document your methodology as required in § 63.4730(h). To the extent that waste manifests include this information, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used which is the combined volume of coating solids for all the coatings used during each month, using Equation 2 of this section:

$$V_{st} = \sum_{i-1}^{m} \left(Vol_{c,i}\right)\left(V_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

V_{st} = Total volume of coating solids used during the month, liters.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$V_{s,i}$ = Volume fraction of coating solids for coating, i, liter solids per liter coating, determined according to § 63.4741(b).

m = Number of coatings used during the month.

(g) *Calculate the organic HAP emission rate.* Calculate the organic HAP emission rate for the 12-month compliance period, grams organic HAP per liter coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} V_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = Organic HAP emission rate for the 12-month compliance period, grams organic HAP per liter coating solids.

H_e = Total mass of organic HAP emissions, grams, from all materials used during month, y, as calculated by Equation 1 of this section.

V_{st} = Total volume of coating solids used during month, y, liters, as calculated by Equation 2 of this section.

y = Identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period, calculated using Equation 3 of this section, must be less than or equal to the applicable emission limit in § 63.4690. You must keep all records as required by §§ 63.4730 and 63.4731. As part of the Notification of Compliance Status required by § 63.4710, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4690, determined according to this section.

§ 63.4752 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, calculated using Equation 3 of § 63.4751, must be less than or equal to the applicable emission limit in § 63.4690. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4750 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4751(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4690, this is a deviation from the emission limitations for that compliance period and must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(6).

(c) As part of each semiannual compliance report required by § 63.4720, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4690, determined according to § 63.4751(a) through (g).

(d) You must maintain records as specified in §§ 63.4730 and 63.4731.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4760 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4683. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.4764, 63.4765, and 63.4766, and establish the operating limits required by § 63.4692 no later than 180 days after the applicable compliance date specified in § 63.4683. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4761(j), you must initiate the first material balance no later than 180 days after the applicable compliance date specified in § 63.4683.

(2) You must develop and begin implementing the work practice plan required by § 63.4693 no later than the compliance date specified in § 63.4683.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4761. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4764, 63.4765, and 63.4766; results of liquid-liquid material balances conducted according to § 63.4761(j); calculations according to § 63.4761 and supporting documentation showing that during the initial compliance period, the organic HAP emission rate was equal to or less than the emission limit in § 63.4690(a); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4768; and documentation of whether you developed and implemented the work practice plan required by § 63.4693.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4692 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph (a)(4) do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.4761(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4683. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4761(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4764, 63.4765, and 63.4766 and establish the operating limits required by § 63.4692 no later than the applicable compliance date specified in § 63.4683. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4761(j), you must initiate the first material balance no later than the compliance date specified in § 63.4683.

(2) You must develop and begin implementing the work practice plan required by § 63.4693 no later than the compliance date specified in § 63.4683.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4761. The initial compliance period begins on the applicable compliance date specified in § 63.4683 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and volume of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4764, 63.4765, and 63.4766; results of liquid-liquid material balances conducted according to § 63.4761(j); calculations according to § 63.4761 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the emission limit in § 63.4690(b); the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4768; and

documentation of whether you developed and implemented the work practice plan required by § 63.4693.

§ 63.4761 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.4690, 63.4692, and 63.4693. You must meet all the requirements of this section to demonstrate initial compliance with the emission limitations. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option. You do not need to redetermine the mass of organic HAP in coatings, thinners, or cleaning materials that have been reclaimed and reused in the coating operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.4760(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of § 63.4761(j), you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.4692, using the procedures specified in §§ 63.4767 and 63.4768.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.4693 during the initial compliance period, as specified in § 63.4730.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.4690.

(e) *Determine the mass fraction of organic HAP, density, volume used, and volume fraction of coating solids.* Follow the procedures specified in § 63.4751(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner, and cleaning material used during each month; and the volume fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4751, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balances.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.4763(c) or (d) occurs in the controlled coating operation, including a deviation during a period of SSM, you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_c = \left(A_c + B_c + C_c - H_{unc}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_c = Mass of organic HAP emission reduction for the controlled coating operation during the month, grams.

A_c = Total mass of organic HAP in the coatings used in the controlled coating operation during the month, grams.

B_c = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, grams, as calculated in Equation 1B of this section.

C_c = Total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, grams, as calculated in Equation 1C of this section.

H_{unc} = Total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.4763(c) and (d) that occurred during the month in the controlled coating operation, grams, as calculated in Equation 1D of this section.

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4764 and 63.4765 to measure and record capture efficiency.

DRE = Organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.4764 and 63.4766 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, grams, using Equation 1A of this section:

$$A_c = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A_c = Total mass of organic HAP in the coatings used in the controlled coating operation, grams.

$Vol_{c,i}$ = Total volume of coating, i, used during the month, liters.

$D_{c,i}$ = Density of coating, i, grams per liter.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, grams per gram.

m = Number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners used in the controlled coating operation, grams, using Equation 1B of this section:

$$B_c = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_c = Total mass of organic HAP in the thinners used in the controlled coating operation during the month, grams.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month, liters.

$D_{t,j}$ = Density of thinner, j, grams per liter.

$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, grams per gram.

n = Number of different thinners used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, grams, using Equation 1C of this section:

$$C_c = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C_c = Total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, grams.

$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month, liters.

$D_{s,k}$ = Density of cleaning material, k, grams per liter.

$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, grams per gram.

p = Number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners, and cleaning materials used in the controlled coating operation during deviations specified in § 63.4763(c) and (d), using Equation 1D of this section:

$$H_{unc} = \sum_{h=1}^{q} \left(Vol_h\right)\left(D_h\right)\left(W_h\right) \qquad \text{(Eq. 1D)}$$

Where:

H_{unc} = Total mass of organic HAP in the coatings, thinners, and cleaning materials used during all deviations specified in § 63.4763(c) and (d) that occurred during the month in the controlled coating operation, grams.

Vol_h = Total volume of coating, thinner, or cleaning material, h, used in the controlled coating operation during deviations, liters.

D_h = Density of coating, thinner, or cleaning material, h, grams per liter.

W_h = mass fraction of organic HAP in coating, thinner, or cleaning material, h, grams organic HAP per gram coating.

q = Number of different coatings, thinners, or cleaning materials.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ±2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, grams, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, grams volatile organic matter per gram coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will take precedence unless after consultation, a regulated source could demonstrate to the satisfaction of the enforcement agency that the formulation data were correct.

(4) Determine the density of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, grams per liter, according to § 63.4751(c).

(5) Measure the volume of each coating, thinner, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, liters.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_v = 100 \times \frac{M_{vr}}{\sum_{i=1}^{m}(Vol_i)(D_i)(WV_{c,i}) + \sum_{j=1}^{n}(Vol_j)(D_j)(WV_{t,j}) + \sum_{k=1}^{p}(Vol_k)(D_k)(WV_{s,k})} \qquad \text{(Eq. 2)}$$

Where:

R_v = Volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{vr} = Mass of volatile organic matter recovered by the solvent recovery system during the month, grams.

Vol_i = Volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_i = Density of coating, i, grams per liter.

$WV_{c,i}$ = Mass fraction of volatile organic matter for coating, i, grams volatile organic matter per gram coating.

Vol_j = Volume of thinner, j, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_j = Density of thinner, j, grams per liter.

$WV_{t,j}$ = Mass fraction of volatile organic matter for thinner, j, grams volatile organic matter per gram thinner.

Vol_k = Volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, liters.

D_k = Density of cleaning material, k, grams per liter.

$WV_{s,k}$ = Mass fraction of volatile organic matter for cleaning material, k, grams volatile organic matter per gram cleaning material.

m = Number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = Number of different thinners used in the coating operation controlled by the solvent recovery system during the month.

p = Number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section:

$$H_{CSR} = (A_{CSR} + B_{CSR} + C_{CSR})\left(\frac{R_v}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = Mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, grams.

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, grams, calculated using Equation 3A of this section.

B_{CSR} = Total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, grams, calculated using Equation 3B of this section.

C_{CSR} = Total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, grams, calculated using Equation 3C of this section.

R_V = Volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, grams, using Equation 3A of this section:

$$A_{CSR} = \sum_{i=1}^{m}(Vol_{c,i})(D_{c,i})(W_{c,i}) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = Total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, grams.

$Vol_{c,i}$ = Total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, liters.

$D_{c,i}$ = Density of coating, i, grams per liter.

$W_{c,i}$ = Mass fraction of organic HAP in coating, i, grams per gram.
m = Number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system, grams, using Equation 3B of this section:

$$B_{CSR} = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = Total mass of organic HAP in the thinners used in the coating operation controlled by the solvent recovery system during the month, grams.

$Vol_{t,j}$ = Total volume of thinner, j, used during the month in the coating operation controlled by the solvent recovery system, liters.
$D_{t,j}$ = Density of thinner, j, grams per liter.
$W_{t,j}$ = Mass fraction of organic HAP in thinner, j, grams per gram.
n = Number of different thinners used.

(iii) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, grams, using Equation 3C of this section.

$$C_{CSR} = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 3C)}$$

Where:

C_{CSR} = Total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, grams.
$Vol_{s,k}$ = Total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, liters.
$D_{s,k}$ = Density of cleaning material, k, grams per liter.
$W_{s,k}$ = Mass fraction of organic HAP in cleaning material, k, grams per gram.
p = Number of different cleaning materials used.

(k) *Calculate the total volume of coating solids used.* Determine the total volume of coating solids used, liters, which is the combined volume of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.4751.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, grams, during each month, using Equation 4 of this section.

$$H_{HAP} = H_e - \sum_{i=1}^{q} \left(H_{c,i}\right) - \sum_{j=1}^{r} \left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = Total mass of organic HAP emissions for the month, grams.
H_e = Total mass of organic HAP emissions before add-on controls from all the coatings, thinners, and cleaning materials used during the month, grams, determined according to paragraph (f) of this section.
$H_{c,i}$ = Total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, grams, from Equation 1 of this section.
$H_{CSR,j}$ = Total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, grams, from Equation 3 of this section.
q = Number of controlled coating operations not using a liquid-liquid material balance.
r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, grams organic HAP per liter coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} V_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = Organic HAP emission rate for the 12-month compliance period, grams organic HAP per liter coating solids.
$H_{HAP,y}$ = Organic HAP emission rate for month, y, determined according to Equation 4 of this section.
$V_{st,y}$ = Total volume of coating solids, liters, used during month, y, from Equation 2 of § 63.4751.
y = Identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, the organic HAP emission rate, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit in § 63.4690. You must keep all records as required by §§ 63.4730 and 63.4731. As part of the Notification of Compliance Status required by § 63.4710, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4690, and you achieved the operating limits required by § 63.4692

and the work practice standards required by § 63.4693.

§ 63.4762 [Reserved]

§ 63.4763 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.4690, the organic HAP emission rate for each compliance period, calculated using Equation 5 of § 63.4761, must be equal to or less than the applicable emission limit in § 63.4690. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4760 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4761 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4690, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4692 that applies to you, as specified in Table 3 to this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 3 to this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 3 to this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in § 63.4761(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation, as indicated in Equation 1 of § 63.4761.

(d) You must meet the requirements for bypass lines in § 63.4768(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when a controlled coating operation is running, this is a deviation that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7). For the purposes of completing the compliance calculations specified in § 63.4761(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation, as indicated in Equation 1 of § 63.4761.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4693. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4730(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4710(c)(6) and 63.4720(a)(7).

(f) As part of each semiannual compliance report required in § 63.4720, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4690, and you achieved the operating limits required by § 63.4692 and the work practice standards required by § 63.4693 during each compliance period.

(g) During periods of SSM of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the SSMP required by § 63.4700(d).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of SSM of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the SSMP. The Administrator will determine whether deviations that occur during a period you identify as an SSM are violations, according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4730 and 63.4731.

§ 63.4764 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4760 according to the requirements in § 63.7(e)(1) and under the conditions in this section unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of SSM, and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4765. You must conduct each performance test of an add-on control device according to the requirements in § 63.4766.

§ 63.4765 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4760.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners, and cleaning materials used in the coating operation are applied within the capture system; coating solvent flash-off and coating, curing, and drying occurs within the capture system; and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours in duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of production, which includes surface preparation activities and drying or curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners, and cleaning materials used in the coating operation during each capture efficiency test run.

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = Mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, grams.

TVH_i = Mass fraction of TVH in coating, thinner, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, grams TVH per gram material.

Vol_i = Total volume of coating, thinner, or cleaning material, i, used in the coating operation during the capture efficiency test run, liters.

D_i = Density of coating, thinner, or cleaning material, i, grams material per liter material.

n = Number of different coatings, thinners, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, grams, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = Total mass of TVH liquid input used in the coating operation during the capture efficiency test run, grams.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, grams, determined according to paragraph (c)(4) of this section.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as

flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, grams, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C of appendix M to 40 CFR part 51 measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct, and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, grams, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D of appendix M to 40 CFR part 51 if the enclosure is a temporary total enclosure.

(ii) Use Method 204E of appendix M to 40 CFR part 51 if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = Capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = Total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, grams, determined according to paragraph (d)(2) of this section.

$TVH_{uncaptured}$ = Total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, grams, determined according to paragraph (d)(3) of this section.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4766 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.4760. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B, the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]'' (incorporated by reference, see § 63.14).

(4) Use Method 4 of appendix A to 40 CFR part 60 to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60, as specified in paragraphs (b)(1) through (3) of this section. You must use the same method for both the inlet and outlet measurements.

(1) Use Method 25 of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is an oxidizer, and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A of appendix A to 40 CFR part 60 if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet of each device. For example, if one add-on control device is a concentrator with an outlet for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the

oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions.

$$M_f = Q_{sd} C_c (12)(41.6)\left(10^{-6}\right) \qquad \text{(Eq. 1)}$$

Where:

M_f = Total gaseous organic emissions mass flow rate, grams per hour (h).

C_c = Concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = Volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

41.6 = Conversion factor for molar volume, gram-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = 100 \times \frac{M_{fi} - M_{fo}}{M_{fi}} \qquad \text{(Eq. 2)}$$

Where:

DRE = Organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = Total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, grams/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, grams/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4767 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4760 and described in §§ 63.4764, 63.4765, and 63.4766, you must establish the operating limits required by § 63.4692 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4692.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature difference across the catalyst bed maintained during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer. (**Note:** For regenerative catalytic oxidizers, the inlet to the catalyst is defined as the general zone between the inlets to the catalyst beds located in the multiple regeneration towers; select either a monitoring location or multiple monitoring locations. If multiple monitoring locations are selected, either establish separate operating limits for each location or calculate an average of the multiple measurements and set a single operating limit.)

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (*i.e,* conversion efficiency) following the recommended procedures from the manufacturer, the catalyst supplier, or the catalyst test provider.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendation and conduct a new performance test to determine destruction efficiency according to § 63.4766.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded

during the regeneration cycle, and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrators.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4765(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 3 to this subpart.

(1) During the capture efficiency determination required by § 63.4760 and described in §§ 63.4764 and 63.4765, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4768 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during periods when the control device is not receiving emissions, monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (non-diverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened and there was a deviation from the applicable emission limitation, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4720.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, you must install a gas temperature monitor in the gas stream immediately before the catalyst bed, and if you established operating limits according to § 63.4767(b)(1) and (2), also install a gas temperature monitor in the gas stream immediately after the catalyst bed.

(i) If you establish operating limits according to § 63.4767(b)(1) and (2), then you must install the gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the catalyst bed to measure the temperature difference across the bed.

(ii) If you establish operating limits according to § 63.4767(b)(3) and (4), then you must install a gas temperature monitor upstream of the catalyst bed. The temperature monitor must be in the gas stream immediately before the catalyst bed to measure the temperature.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrators.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(i) through (vi) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of

0.0002 inch water, check gauge calibration quarterly and transducer calibration monthly.

(v) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vi) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4780 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the EPA, has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards under § 63.4693.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.4781 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive means any chemical substance that is applied for the purpose of bonding two surfaces together.

Block average is an average of data points collected over any specified, continuous 180-minute block of time (*e.g.*, a 3-hour block could be noon to 3 p.m., with a subsequent total of eight 3-hour blocks within a 24-hour period).

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or *capture system efficiency* means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings or cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application or to remove dried coating (surface preparation), to apply coating to a substrate (coating application) and to dry or cure the coating after application, or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with hand-held nonrefillable aerosol containers, touchup markers, or marking pens is not a coating operation for the purposes of this subpart.

Coating solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to any emission limit, or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during SSM, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Finished wood product means any wood building product to which a protective, decorative, or functional layer has been applied. Materials used include, but are not limited to, paints, stains, sealers, topcoats, basecoats, primers, enamels, inks, and adhesives.

Laminated wood product means any wood building product to which a protective, decorative, or functional layer has been bonded with an adhesive. Products that are produced by bonding layers to the substrate as a part of the substrate manufacturing process (prior

to pressing) are not considered laminated products under this subpart.

Manufacturer's formulation data means data on a material (such as a coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.4741. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as grams of organic HAP per gram of material.

Millwork means lumber that has been remanufactured into a wood building product or component such as door, window, and staircase part(s), or decorative trim.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per volume of coating solids for a coating calculated using Equation 2 of § 63.4741. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51, for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup, initial means the first time equipment is brought online in a source.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called ''depainting.''

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Tileboard means hardboard that meets the specifications for Class I given by the standard ANSI/AHA A135.4–1995 as approved by the American National Standards Institute. The standard specifies requirements and test methods for water absorption, thickness swelling, modulus of rupture, tensile strength, surface finish, dimensions, squareness, edge straightness, and moisture content for five classes of hardboard. Tileboard is also known as Class I hardboard or tempered hardboard.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Volume fraction of coating solids means the ratio of the volume of coating solids (also known as volume of nonvolatiles) to the volume of coating; liters of coating solids per liter of coating.

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

Wood building product means any product that contains more than 50 percent by weight wood or wood fiber, excluding the weight of any glass components, and is used in the construction, either interior or exterior, of a residential, commercial, or institutional building.

Tables to Subpart QQQQ of Part 63

TABLE 1 TO SUBPART QQQQ OF PART 63.—EMISSION LIMITS FOR NEW ORRECONSTRUCTED AFFECTED SOURCES

[You must comply with the emission limits that apply to your affected source in the following table as required by § 63.4690]

If the affected source applies coating to products in the following subcategory. . .	Then, the organic HAP emission limit for the affected source, in gramsHAP/liter solids (lb HAP/gal solids)[1,2] is:
1. Exterior siding and primed doorskins.	0 (0.00)
2. Flooring	0 (0.00)
3. Interior wall paneling or tileboard.	5 (0.04)
4. Other interior panels	0 (0.00)
5. Doors, windows, and miscellaneous.	57 (0.48)

[1] Determined as a rolling 12-month emission rate according to the requirements in § 63.4741, § 63.4751, or § 63.4761, as applicable.

[2] If the affected source applies coatings to products in more than one of the subcategories listed in the table, then you must determine the applicable emission limit according to § 63.4690(c).

TABLE 2 TO SUBPART QQQQ OF PART 63.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

[You must comply with the emission limits that apply to your affected source in the following table as required by § 63.4690]

If the affected source applies coating to products in the following subcategory. . .	Then, the organic HAP emission limit for the affected source, in gramsHAP/liter solids (lb HAP/gal solids)[1,2] is:
1. Exterior siding and primed doorskins.	7 (0.06)
2. Flooring	93 (0.78)
3. Interior wall paneling or tileboard.	183 (1.53)
4. Other interior panels	20 (0.17)
5. Doors, windows, and miscellaneous.	231 (1.93)

[1] Determined as a rolling 12-month emission rate according to the requirements in § 63.4741, § 63.4751, or § 63.4761, as applicable.

[2] If the affected source applies coatings to products in more than one of the subcategories listed in the table, then you must determine the applicable emission limit according to § 63.4690(c).

TABLE 3 TO SUBPART QQQQ OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

[If you are required to comply with operating limits by § 63.4692, you must comply with the applicable operating limits in the following table]

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4767(a).	i. Collecting the combustion temperature data according to § 63.4768(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature difference measured across the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4767(b); or	i. Collecting the temperature data according to § 63.4768(c); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block temperature difference across the catalyst bed at or above the temperature limit.
	b. Ensure that the inlet temperature of the catalyst bed in any 3-hour period does not fall below the temperature limit established according to § 63.4767(b)(2) and develop and implement an inspection and maintenance plan according to § 63.4767(b)(3) and (4).	i. Collecting the temperature data according to § 63.4768(c), reducing the data to 3-hour block averages, and maintaining the 3-hour average temperature at or above the temperature limit; and ii. Complying with the inspection and maintenance plan developed according to § 63.4767(b)(3) and (4).
3. Carbon absorber	a. The total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.4767(c).	i. Measuring the total regeneration desorbing gas (*e.g.,* steam or nitrogen) mass flow for each regeneration cycle according to § 63.4768(d); and ii. Maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. The temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.4767(c).	i. Measuring the temperature of the carbon bed, after completing each regeneration and any cooling cycle, according to § 63.4768(d); and ii. Operating and carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. Condenser	a. The average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.4767(d).	i. Collecting the condenser outlet (product side) gas temperature according to § 63.4768(e); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average gas temperature at the outlet at or below the temperature limit.
5. Emission capture system that is a PTE according to § 63.4765(a).	a. The direction of the air flow at all times must be into the enclosure; and either.	i. Collecting the direction of the air flow; and either the facial velocity of air through all natural draft openings according to § 63.4768(g)(1) or the pressure drop across the enclosure according to § 63.4768(g)(2); and ii. Maintaining the facial velocity of air flow through all natural draft openings or the pressure drop at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
	b. The average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or	i. See items 5.a.i and 5.a.ii.
	c. The pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	i. See items 5.a.i and 5.a.ii.
6. Emission capture system that is not a PTE according to § 63.4765(a).	a. The average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.4767(f).	i. Collecting the gas volumetric flow gas or duct static pressure for each capture device according to § 63.4768(g); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit
7. Concentrators, including zeolite wheels and rotary carbon absorbers.	The average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.4767(e); and	i. Collecting the temperature data according to § 63.4768(f); ii. Reducing the data to 3-hour block averages; and iii. Maintaining the 3-hour block average temperature at or above the temperature limit.

TABLE 3 TO SUBPART QQQQ OF PART 63.—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

[If you are required to comply with operating limits by § 63.4692, you must comply with the applicable operating limits in the following table]

For the following device . . .	You must meet the following operating limit . . .	And you must demonstrate continuous compliance with the operating limit by . . .
	b. The average pressure drop of the dilute stream across the concentrator in any 3-hour period must not exceed the limit established according to § 63.4767(e).	i. Collecting the pressure drop data according to § 63.4768(f); and ii. Reducing the pressure drop data to 3-hour block averages; and iii. Maintaining the 3-hour block average pressure drop at or below at the pressure drop limit.

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart QQQQ is also specified in § 63.4681.
§ 63.1(c)(1)	Applicability After Standard Established.	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart QQQQ.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4781.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction.	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.4683 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources.	Yes	§ 63.4683 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	SSMP	Yes	Only sources using an add-on control device to comply with the standard must complete SSMP.
§ 63.6(f)(1)	Compliance Except During SSM	Yes	Applies only to sources using an add-on control device to comply with the standard.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart QQQQ does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4764, 63.4765, and 63.4766.

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.7(a)(2)	Performance Test Requirements—Dates.	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. § 63.4760 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.4768.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart QQQQ does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard.Additional requirements for CMS operations and maintenance are specified in § 63.4768.
§ 63.8(c)(4)	CMSs	No	§ 63.4768 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart QQQQ does not have opacity for visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	§ 63.4768 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods Reporting.	No	§ 63.4720 requires reporting of CMS out-of-control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart QQQQ does not require the use of continuousemissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method.	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	§§ 63.4767 and 63.4768 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on controldevice performance tests at sourcesusing these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart QQQQ does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart QQQQ does require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	§ 63.4710 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements.	Yes	Additional requirements are specified in §§ 63.4730 and63.4731.
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to SSM Periods and CMS.	Yes	Requirements for SSM records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2)(vi)–(xi)		Yes.	

TABLE 4 TO SUBPART QQQQ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART QQQQ OF PART 63—Continued

[You must comply with the applicable General Provisions requirements according to the following table]

Citation	Subject	Applicable to subpart QQQQ	Explanation
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4720(a) (7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4720.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4720(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart QQQQ does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	SSM Reports	Yes	Applies only to add-on control devices at sources using these to comply with the standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart QQQQ does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports.	No	§ 63.4720(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart QQQQ does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares.	No	Subpart QQQQ does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes	Test Methods ANSI/ASME PTC 19.10–1981, Part 10, ASTM D2697–86 (Reapproved 1998), and ASTM D6093–97 (incorporated by reference, see § 63.14).
§ 63.15	Availability of Information/Confidentiality.	Yes.	

TABLE 5 TO SUBPART QQQQ OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene.
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene.
3. Hexane	110–54–3	0.5	n-hexane.
4. n-Hexane	110–54–3	1.0	n-hexane.
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene.
6. Aliphatic 140		0	None.
7. Aromatic 100		0.02	1% xylene, 1% cumene.
8. Aromatic 150		0.09	Naphthalene.
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene.
10. Aromatic solvent	64742–94–5	0.1	Naphthalene.
11. Exempt mineral spirits	8032–32–4	0	None.
12. Ligroines (VM & P)	8032–32–4	0	None.
13. Lactol spirits	64742–89–6	0.15	Toluene.
14. Low aromatic white spirit	64742–82–1	0	None.
15. Mineral spirits	64742–88–7	0.01	Xylenes.
16. Hydrotreated naphtha	64742–48–9	0	None.
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene.
18. Stoddard solvent	8052–41–3	0.01	Xylenes.
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes.
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene.
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene.

TABLE 5 TO SUBPART QQQQ OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

Solvent/solvent blend	CAS. No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl.

TABLE 6 TO SUBPART QQQQ OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

[You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data]

Solvent type	Average organic HAP mass fraction	Typical organic HAP, percent by mass
Aliphatic [b]	0.03	1% xylene, 1% toluene, and 1% ethylbenzene.
Aromatic [c]	0.06	4% xylene, 1% toluene, and 1% ethylbenzene.

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 5 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] *E.g.*, Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] *E.g.*, Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

[FR Doc. 03–5740 Filed 5–27–03; 8:45 am]

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Federal Register

Wednesday,
May 28, 2003

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, et al.

Federal Acquisition Regulation; FAR Part 27 Rewrite in Plain Language; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, 27, 52

[FAR Case 1999–402]

RIN 9000–AJ64

Federal Acquisition Regulation; FAR Part 27 Rewrite in Plain Language

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify, streamline, and update guidance and clauses on patents, data, and copyrights to provide a more logical presentation of this complex material.

DATES: Interested parties should submit comments in writing on or before July 28, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.1999–402@gsa.gov.*

Please submit comments only and cite FAR case 1999–402 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 1999–402.

SUPPLEMENTARY INFORMATION:

A. Background

The rule constitutes a rewrite of FAR Part 27 and its associated clauses in Part 52. Part 27 implements a number of statutes and executive orders pertaining to patents, data, and copyrights. The effort to rewrite FAR Part 27 was undertaken to make the various policies and procedures that implement these statutes and executive orders more succinct and understandable to the reader. In addition to numerous editorial and structural changes, some existing policies and procedures were clarified to eliminate potential confusion among responsible parties and make clearer the distinction between the rights and obligations of the contractor and the Government. While this FAR case was designed primarily to make the contents of FAR Part 27 easier to understand, as opposed to changing underlying policies, some substantive changes have also been made to reflect changes to the various laws covering the subject matter in FAR Part 27. A discussion of the proposed substantive changes and the associated rationale for these changes are provided below along with a description of the ''plain language'' changes that have been made.

The following more specifically summarizes the proposed changes:

1. *General.* We have identified and moved the prescriptive language for the solicitation provisions and contract clauses into discrete subsections. Additionally, an effort has been made to eliminate language in the text that duplicates existing clause language.

2. *Definitions.* A definition of ''commercial computer software'' was added to FAR Part 2 because this term is referenced in both Parts 12 and 27. A consistent definition for ''commercial computer software'' is needed to distinguish ''commercial computer software'' from ''restricted computer software,'' the distinction being that commercial computer software must have been sold commercially and restricted computer software may have not been so sold, leased, or licensed. The clause at 52.227–19 helps contracting officers because FAR 12.212 does not provide much guidance with respect to what is and what is not permissible in Government contracts. In particular, FAR Part 12 does not provide much guidance to contracting officers with respect to that which is consistent with Federal law and that which would normally satisfy Government needs. The clause at 52.227–19, if a contracting officer decides to insert it, ensures that the customary commercial license is consistent with Federal law and normally covers all the rights that the Government needs in commercial computer software.

A definition of ''United States,'' unique to part 27, was added at FAR 27.001.

3. FAR subpart 27.1 was rewritten to make it more succinct and to eliminate extraneous text. FAR 27.103, Policy, was deleted in its entirety because it merely stated the policies concerning patents, copyrights, and data that were in Part 27. An obsolete description of commercial items was removed from FAR 27.102 and replaced with the term ''commercial item,'' which is defined in Part 2.

4. FAR Subpart 27.2 was rewritten to better explain the purpose behind the use of the authorization and consent clause and its alternatives, the notification and assistance clause, the patent indemnity clause and its alternatives, and the patent royalty clause. Related sections were grouped together under section headings to more accurately reflect the specific subject matter and guidance presented to the contracting officer (*e.g.*, ''27.201, Patent and copyright infringement liability,'' currently under current sections 27.201 through 27.203).

Much of the general explanation of the Authorization and Consent clause in FAR 27.201 was extraneous and unnecessarily complicated given that the clause is required in the vast majority of contracts and the exceptions to the use of the clause are very clear. New clear and succinct guidance points out that the notice and assistance clause is to be used when the authorization and consent clause is used. This eliminated the need to repeat when the authorization and consent clause is used in the prescriptive language for the notice and assistance clause. The lengthy descriptions for use of the patent indemnity clause and its alternates have been eliminated. The text was amended by using the term, ''commercial item,'' and referencing the simplified acquisition procedures as an exclusion to the clause's use. This was done because the FAR clause at 52.212–4 has a patent indemnity provision in it and it greatly simplified the prescriptive language using common reference terms with which contracting officers are familiar.

In the new FAR section 27.202, Royalties, the coverage on refund of royalties was consolidated to one sentence to eliminate confusion resulting from mixing prescriptive language and explanatory text.

The new FAR section 27.203 replaces 27.207, and the title is changed from ''Classified contracts'' to ''Security requirements for patent applications containing classified subject matter.'' The new title more accurately addresses any patent application that may include classified subject matter, regardless of the classification of the contract.

5. FAR Subpart 27.3 is one of the more legally complex subparts in the FAR. Therefore, it was difficult to edit any portion of this subpart without substantively changing the meaning of the prescriptive language and/or procedures. This subpart primarily implements the Bayh-Dole Act (Act),

Title 35 U.S.C., Chapter 18. This Act has a long and involved history, which is why there are so many legal nuances to this subpart. A brief history of the distinction that the Act makes between small businesses/nonprofit organization and large for-profit business will put this in perspective. Initially, the Act was only made applicable to small business firms and nonprofit organizations. This was changed when President Reagan issued a Presidential memorandum and, later, an Executive order that made the Act applicable to all entities regardless of size. However, Congress later amended the Act to make only several of its sections applicable to large for-profit businesses. Accordingly, there is an inherent statutory distinction between small business/nonprofits and large for-profits. While this proposed rule maintains this distinction, many of the sections were retitled and alternate words were used to help clarify some of the misinterpretations of this subpart that have occurred in the past.

It should be emphasized that the Act makes the Department of Commerce responsible for issuing regulations concerning its implementation. Therefore, any changes to the FAR must conform to 37 CFR part 401.

Extraneous text at FAR 27.302(b)(1) was eliminated to simply state that pursuant to law, a contractor may elect to retain title to any subject invention. This is the main concept behind the Act; that is, to allow small businesses and nonprofits to commercialize subject inventions. Paragraphs (b)(2) through (b)(5) of FAR 27.302 were restructured in order to emphasize that the Government only acquires title to a subject invention in very limited circumstances.

FAR 27.303 was reorganized for clarity as follows:

• Language previously located at FAR 27.304–3, which was merely referenced in 27.303 pertaining to solicitations or contracts for construction work or architect-engineer services, was moved to 27.303(a)(2) for readability.

• The title of the clause at 52.227–11 was changed to provide a more accurate description of the clause content. Currently, the FAR clauses at 52.227–11 and 52.227–12 are titled ''Short Form'' and ''Long Form,'' respectively. While 52.227–11 may be a little shorter as it is currently written, it is still a sizable clause, so the distinction between short and long has never proved very helpful. Further, the term ''Retention'' was removed from the title of the clause at 52.227–11 and replaced with ''Ownership'', which is a more common term. Additionally, since the Department of Defense is apparently the only agency using the clause at 52.227–12, it was deleted from the FAR and will be moved to the Defense Federal Acquisition Regulation Supplement under a separate case.

• The clause prescriptive language throughout FAR 27.303(b) was amended to conform to FAR plain language convention.

• FAR 27.303(e)(1)(iv) was language taken in large part from 27.303(d).

• FAR 27.303(e)(2) was reorganized to more clearly describe the implementation procedures of 37 CFR part 401 that pertain to the exceptions in a contract with a small business concern or a nonprofit organization.

• FAR 27.303(e)(3) was more appropriately moved to 27.304–1(b)(2) because it is not prescriptive language.

FAR 27.304 was similarly reorganized for clarity as follows:

• The procedures for a small business/nonprofit organization to appeal an agency's exercise of the exceptions at FAR 27.303(c)(1)(i) through (c)(1)(iv) or of march-in rights were deleted in their entirety and replaced with a sentence referencing the Department of Commerce's regulations on the subject. Since these procedures are copied verbatim from the Commerce regulations, they did not need to be repeated. Moreover, agencies rarely exercise these rights and, accordingly, it was further felt that these procedures did not have to be included in the FAR.

• The additional requirements delineated at FAR 27.304–1(e) were deleted because they duplicated existing language at 27.303(b)(2) and (c)(3). However, the language pertaining to the contractor's responsibility for delivering confirmation of the right of the contracting officer to inspect and make copies of the patent application file at 27.304–1(e)(3) was retained and moved to 27.305.

In FAR 27.305, slightly different titles to the subsections were used to make them more accurately depict the subject matter. Also, 27.305–2 was deleted because it duplicated language already contained in the patent rights clause.

6. FAR Subpart 27.4 was changed to provide clarity and updated information as follows:

• In FAR 27.401, a definition of ''Computer data base'' was added to provide consistency throughout the rest of the part. As noted previously, a definition for ''Commercial computer software'' was added to FAR Part 2 because this term is used in Parts 12 and 27. The definition of ''Computer software'' was changed to provide a more meaningful and accurate definition of the term. The definition of this term is derived from the definition of the same term in the Department of Energy Acquisition Regulation (DEAR) (see 48 CFR 927.409). Further, the definition of ''Technical data'' was rewritten to comply with the definition of ''Technical data'' in 41 U.S.C. 403.

FAR 27.404 was subdivided into several subsections for better readability. 27.404–2(c)(3) was redrafted to expressly state that computer databases must be treated as technical data and not computer software. This accurately reflects the law in this area.

• The most significant change made in FAR Subpart 27.4 was made to, what is now designated, 27.404–3. Currently, the coverage of copyrighted works in the FAR is premised on law that has long been changed. Since under existing law, an original work of authorship is copyrighted as soon as it is put in a tangible media (*e.g.*, writing something down). Therefore, the use of the term, ''establish'' is inappropriate. Instead, the term ''assert'' was substituted to accurately reflect that a contractor already has a copyright in any data first produced under a contract. The use of the term ''assert,'' however, gives the Government the opportunity to provide permission before the contractor can act on its rights in the copyright, as is the current practice. This section was also redrafted to reflect the current practice of normally allowing contractors to assert their copyrights in data first produced under a contract. The information previously contained in paragraphs 27.404(f)(2)(ii) and (iii) was rewritten to reflect current law on notice/publication requirements for copyrights.

• The clause prescriptive language pertinent to use of the clause at 52.227–17, Rights in Data—Special Works, which was previously located within the text material at 52.405–1(c), (d), and (e), has been moved to 27.409.

• Section 27.405(c) was deleted. This language duplicates language in the clause.

7. FAR Subpart 27.6 was redesignated as 27.5, Foreign License and Technical Assistance Agreements, and was reduced to a single sentence. The remainder of the coverage of this part was addressed in the other parts.

8. FAR 52.227 clauses and provisions were largely redrafted to reflect ''plain language'' changes that may substantially improve clarity as follows:

• 52.227–11 and 52.227–13 will be addressed together because most of the changes were of a similar nature. The changes to the titles have already been discussed. The clause at FAR 52.227–11 was restructured to make the distinction between the rights and obligations of the contractor and the Government clearer.

While this looks like a substantial revision, it really only involves moving different paragraphs to places that fit the designated restructure. In new paragraph (c)(3), a distinction of different types of patent applications had to be made, *i.e.*, between provisional and nonprovisional patent applications, to accurately reflect current practices at the United States Patent and Trademark Office. As discussed previously, new paragraph (i) was substantially rewritten to eliminate the entire section on march-in rights, leaving only a reference to the provision of the Bayh-Dole Act that requires these rights. It was felt that this is sufficient because the rights of the Government stem directly from the statute and need not be reiterated in the clauses. Similarly, in the new paragraph (d)(2) of the clause at 52.227–13, much of the procedures to review a decision to revoke a license have been removed and the prescriptive language has been cited.

- Any changes to the clause at 52.227–14 conform to the prescriptive text changes at FAR Subpart 27.4, Rights in Data and Copyrights.
- Only ''plain language'' changes were made to the remaining clauses at 52.227–15, 52.227–17, 52.227–19, 52.227–20, and 52.227–21.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because while we have made changes in accordance with plain language guidelines, we have only made minimal substantive changes to the policies, procedures, and contract clauses pertaining to patents or the directions to agencies to develop coverage for rights in data and copyrights. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 19, 27, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–402), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. The current paperwork burden associated with FAR Subpart 27.3 (under OMB Control Number 9000–0095) will be modified to account for the reduction of burden associated with the removal of the clause at 52.227–12 from the FAR. We estimate a burden reduction of 13,689 hours (30 percent of the 45,630 total burden) associated with this clause. The burden hours associated with this clause will be added to OMB Control Number 0704–0369 under a separate case.

List of Subjects in 48 CFR Parts 2, 19, 27, and 52

Government procurement.

Dated: May 16, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 19, 27, and 52 as set forth below:

1. The authority citation for 48 CFR parts 2, 19, 27, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definitions ''Commercial computer software'' and ''Small business concern'', and by revising the definition ''United States'' to read as follows:

2.101 Definitions.

* * * * *

Commercial computer software means any computer program, computer data base, or documentation that has been sold, leased, or licensed to the general public.

* * * * *

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is ''not dominant in its field of operation'' when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

* * * * *

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in subpart 22.8, see the definition at 22.801.

(2) For use in subpart 22.10, see the definition at 22.1001.

(3) For use in part 25, see the definition at 25.003.

(4) For use in part 27, see the definition at 27.001.

(5) For use in subpart 47.4, see the definition at 47.401.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

3. Amend section 19.001 by removing the definition ''Small business concern.''

4. Revise part 27 to read as follows:

PART 27—PATENTS, DATA, AND COPYRIGHTS

Sec.
27.000 Scope of part.
27.001 Definition.

Subpart 27.1—General

27.101 Applicability.
27.102 General guidance.

Subpart 27.2—Patents

27.200 Scope of subpart.
27.201 Patent and copyright infringement liability.
27.201–1 General.
27.201–2 Contract clauses.
27.202 Royalties.
27.202–1 Reporting of royalties.
27.202–2 Notice of Government as a licensee.
27.202–3 Adjustment of royalties.
27.202–4 Refund of royalties.
27.202–5 Solicitation provisions and contract clause.
27.203 Security requirements for patent applications containing classified subject matter.
27.203–1 General.
27.203–2 Contract clause.
27.204 Patented technology under trade agreements.
27.204–1 Use of patented technology under the North American Free Trade Agreement.
27.204–2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

Subpart 27.3—Patent Rights Under Government Contracts

27.300 Scope of subpart.
27.301 Definitions.
27.302 Policy.
27.303 Contract clauses.
27.304 Procedures.
27.304–1 General.
27.304–2 Contracts placed by or for other Government agencies.
27.304–3 Subcontracts.
27.304–4 Appeals.
27.305 Administration of patent rights clauses.
27.305–1 Goals.
27.305–2 Administration by the Government.
27.305–3 Securing invention rights acquired by the Government.
27.305–4 Protection of invention disclosures.
27.306 Licensing background patent rights to third parties.

Subpart 27.4—Rights in Data and Copyrights

27.400 Scope of subpart.
27.401 Definitions.
27.402 Policy.
27.403 Data rights—General.
27.404 Basic rights in Data clause.
27.404–1 Unlimited rights data.
27.404–2 Limited rights data and restricted computer software.
27.404–3 Copyrighted works.
27.404–4 Contractor's release, publication, and use of data.
27.404–5 Unauthorized, omitted, or incorrect markings.
27.404–6 Inspection of data at the contractor's facility.
27.405 Other data rights provisions.
27.405–1 Special works.
27.405–2 Existing works.
27.405–3 Commercial computer software.
27.406 Acquisition of data.
27.406–1 General.
27.406–2 Additional data requirements.
27.406–3 Major system acquisition.
27.407 Rights to technical data in successful proposals.
27.408 Cosponsored research and development activities.
27.409 Solicitation provisions and contract clauses.

Subpart 27.5—Foreign License and Technical Assistance Agreements

27.501 General.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

27.000 Scope of part.

This part prescribes the policies, procedures, solicitation provisions, and contract clauses pertaining to patents, data, and copyrights.

27.001 Definition.

United States, as used in this part, means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, and the Northern Mariana Islands.

27.101 Applicability.

This part applies to all agencies. However, agencies are authorized to adopt alternate policies, procedures, solicitation provisions, and contract clauses to the extent necessary to meet the specific requirements of laws, executive orders, treaties, or international agreements. Any agency adopting alternate policies, procedures, solicitation provisions, and contract clauses should include them in the agency's published regulations.

27.102 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made under Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent. The Government may authorize and consent to the use of inventions in the performance of certain contracts, even though the inventions may be covered by U.S. patents.

(c) Generally, contractors providing commercial items should indemnify the Government against liability for the infringement of U.S. patents.

(d) The Government recognizes rights in data developed at private expense, and limits its demands for delivery of that data. When such data is delivered, the Government will acquire only those rights essential to its needs.

(e) Generally, the Government requires that contractors obtain permission from copyright owners before including copyrighted works, owned by others, in data to be delivered.

Subpart 27.2—Patents

27.200 Scope of subpart.

This subpart prescribes policies and procedures with respect to—

(a) Patent and copyright infringement liability;

(b) Royalties;

(c) Security requirements for patent applications containing classified subject matter; and

(d) Patented technology under trade agreements.

27.201 Patent and copyright infringement liability.

27.201–1 General.

(a) Pursuant to 28 U.S.C. 1498, the exclusive remedy for patent or copyright infringement by or on behalf of the Government is a suit for monetary damages against the Government in the Court of Federal Claims. There is no injunctive relief available, and there is no direct cause of action against a contractor that is infringing a patent or copyright on behalf of the Government (*e.g.*, while performing a contract).

(b) The Government may expressly authorize and consent to a contractor's use or manufacture of inventions covered by U.S. patents by inserting the clause at 52.227–1, Authorization and Consent.

(c) Because of the exclusive remedies granted in 28 U.S.C. 1498, the Government requires notice and assistance from its contractors regarding any claims for patent or copyright infringement by inserting the clause at 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement.

(d) The Government may require a contractor to reimburse it for liability for patent infringement arising out of a contract for commercial items by inserting the clause at FAR 52.227–3, Patent Indemnity.

27.201–2 Contract clauses.

(a)(1) Insert the clause at 52.227–1, Authorization and Consent, in solicitations and contracts except that use of the clause is—

(i) Optional when using simplified acquisition procedures; and

(ii) Prohibited when both complete performance and delivery are outside the United States.

(2) Use the clause with its Alternate I in all R&D solicitations and contracts for which the primary purpose is R&D work, except that this alternate shall not be used in construction and architect-engineer contracts unless the contract calls exclusively for R&D work.

(3) Use the clause with its Alternate II in solicitations and contracts for communication services with a common carrier and if services are unregulated and not priced by a tariff schedule set by a regulatory body.

(b) Insert the clause at 52.227–2, Notice and Assistance Regarding Patent and Copyright Infringement, in all solicitations and contracts that include the clause at 52.227–1, Authorization and Consent.

(c)(1) Insert the clause at 52.227–3, Patent Indemnity, in solicitations and contracts that may result in the delivery of commercial items, unless—

(i) The simplified acquisition procedures of Part 13 are used;

(ii) Part 12 procedures are used;

(iii) Both complete performance and delivery are outside the United States; or

(iv) The contracting officer determines after consultation with legal counsel that omission of the clause would be consistent with commercial practice.

(2) Use the clause with either its Alternate I (identification of excluded

items) or II (identification of included items) if—

(i) The contract also requires delivery of noncommercial items; or

(ii) The contracting officer determines after consultation with legal counsel that limitation of applicability of the clause would be consistent with commercial practice.

(3) Use the clause with its Alternate III if the solicitation or contract is for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body.

(d)(1) Insert the clause at 52.227–4, Patent Indemnity—Construction Contracts, in solicitations and contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. Do not insert the clause in contracts solely for architect-engineer services.

(2) If the contracting officer determines that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the clause with its Alternate I. Note that this exclusion is for items, as distinguished from identified patents (see paragraph (e) of this subsection).

(e) It may be in the Government's interest to exempt specific U.S. patents from the patent indemnity clause. Exclusion from indemnity of identified patents, as distinguished from items, is the prerogative of the agency head. Upon written approval of the agency head, the contracting officer may insert the clause at 52.227–5, Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause.

(f) If a patent indemnity clause is not prescribed, the contracting officer may include one in the solicitation and contract if it is in the Government's interest to do so.

(g) The contracting officer shall not include in any solicitation or contract any clause whereby the Government agrees to indemnity a contractor for patent infringement.

27.202 Royalties.

27.202–1 Reporting of royalties.

(a) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with Government patent rights, the solicitation provision at 52.227–6 requires prospective contractors to furnish royalty information. The contracting officer shall take appropriate action to reduce or eliminate excessive or improper royalties.

(b) If the response to a solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information to the office having cognizance of patent matters for the contracting activity. The cognizant office shall promptly advise the contracting officer of appropriate action.

(c) The contracting officer, when considering the approval of a subcontract, must require royalty information if it is required under the prime contract. The contracting officer shall forward the information to the office having cognizance of patent matters. However, the contracting officer need not delay consent while awaiting advice from the cognizant office.

(d) The contracting officer shall forward any royalty reports to the office having cognizance of patent matters for the contracting activity.

27.202–2 Notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of an existing license agreement and the contracting officer believes that the licensed patent will be applicable to a prospective contract, the Government should furnish the prospective offerors with—

(1) Notice of the license;

(2) The number of the patent; and

(3) The royalty rate cited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is the patent owner or a licensee under the patent. This information is necessary so that the Government may either—

(1) Evaluate an offeror's price by adding an amount equal to the royalty; or

(2) Negotiate a price reduction with an offeror when the offeror is licensed under the same patent at a lower royalty rate.

27.202–3 Adjustment of royalties.

(a) If at any time the contracting officer believes that any royalties paid, or to be paid, under a contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the contracting officer shall promptly report the facts to the office having cognizance of patent matters for the contracting activity concerned.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties—

(1) With respect to which the Government has a royalty-free license;

(2) At a rate in excess of the rate at which the Government is licensed; or

(3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer, in coordination with the cognizant office, shall demand a refund pursuant to any refund of royalties clause in the contract (see 27.202–4) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to 27.202–1, see 31.205–37. See also 31.109 regarding advance understandings on particular cost items, including royalties.

27.202–4 Refund of royalties.

The clause at 52.227–9, Refund of Royalties, establishes procedures to pay the contractor royalties under the contract and recover royalties not paid by the contractor when the royalties were included in the contractor's fixed price.

27.202–5 Solicitation provisions and contract clause.

(a)(1) Insert a solicitation provision substantially the same as the provision at 52.227–6, Royalty Information, in—

(i) Any solicitation that may result in a negotiated contract for which royalty information is desired and for which cost or pricing data are obtained under 15.403; or

(ii) Sealed bid solicitations only if the need for such information is approved at a level above the contracting officer as being necessary for proper protection of the Government's interests.

(2) If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

(b) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, insert in the solicitation a provision substantially the same as the provision at 52.227–7, Patents—Notice of Government Licensee. If the clause at 52.227–6 is not included in the solicitation, the contracting officer may require offerors to provide information sufficient to provide this notice to the other offerors.

(c) Insert the clause at 52.227–9, Refund of Royalties, in negotiated fixed-price solicitations and contracts when

royalties may be paid under the contract. If a fixed-price incentive contract is contemplated, change ''price'' to ''target cost and target profit'' wherever it appears in the clause. The clause may be used in cost-reimbursement contracts where agency approval of royalties is necessary to protect the Government's interests.

27.203 Security requirements for patent applications containing classified subject matter.

27.203–1 General.

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792, *et seq.* (Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt of a patent application under paragraph (a) or (b) of the clause at 52.227–10, Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. If the application contains classified subject matter, the contracting officer shall inform the contractor how to transmit the application to the United States Patent Office in accordance with procedures provided by legal counsel. If the material is classified ''Secret'' or higher, the contracting officer shall make every effort to notify the contractor within 30 days of the Government's determination, pursuant to paragraph (a) of the clause.

(c) Upon receipt of information furnished by the contractor under paragraph (d) of the clause at 52.227–10, the contracting officer shall promptly submit that information to legal counsel in order that the steps necessary to ensure the security of the application will be taken.

(d) The contracting officer shall act promptly on requests for approval of foreign filing under paragraph (c) of the clause at 52.227–10 in order to avoid the loss of valuable patent rights of the Government or the contractor.

27.203–2 Contract clause.

Insert the clause at 52.227–10, Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of the work reasonably might result in a patent application containing classified subject matter.

27.204 Patented technology under trade agreements.

27.204–1 Use of patented technology under the North American Free Trade Agreement.

(a) The requirements of this section apply to the use of technology covered by a valid patent when the patent holder is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or for public noncommercial use.

(c) Section 6 of Executive Order 12889, ''Implementation of the North American Free Trade Act,'' of December 27, 1993, waives the requirement to obtain advance authorization for an invention used or manufactured by or for the Federal Government. However, the patent owner shall be notified in advance whenever the agency or its contractor knows or has reasonable grounds to know, without making a patent search, that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license. In cases of national emergency or other circumstances of extreme urgency, this notification need not be made in advance, but must be made as soon as reasonably practicable.

(d) The contracting officer, in consultation with the office having cognizance of patent matters, shall ensure compliance with the notice requirements of NAFTA Article 1709(10) and Executive Order 12889. A contract award should not be suspended pending notification to the patent owner.

(e) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately owned patent.

(f) When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the term ''adequate remuneration.'' Executive Order 12889 equates ''remuneration'' to ''reasonable and entire compensation'' as used in 28 U.S.C. 1498, the statute that gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the Government.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

27.204–2 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization, including use by the Government.

Subpart 27.3—Patent Rights Under Government Contracts

27.300 Scope of subpart.

This subpart prescribes policies, procedures, solicitation provisions, and contract clauses pertaining to inventions made in the performance of work under a Government contract or subcontract for experimental, developmental, or research work. Agency policies, procedures, solicitation provisions, and contract clauses may be specified in agency supplemental regulations as permitted by law.

27.301 Definitions.

As used in this subpart—

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made, when used in relation to any invention, means the conception or first actual reduction to practice of the invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations,

available to the public on reasonable terms.

Subject invention means any invention of the contractor made in the performance of work under a Government contract; provided, that in the case of a variety of plant, the date of determination defined in 7 U.S.C. 2401(d) must also occur during the period of contract performance.

27.302 Policy.

(a) *Introduction.* In accordance with chapter 18 of title 35, U.S.C. (as implemented by 37 CFR part 401), Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, Facilitating Access to Science and Technology dated April 10, 1987, it is the policy and objective of the Government to—

(1) Use the patent system to promote the use of inventions arising from federally supported research or development;

(2) Encourage maximum participation of industry in federally supported research and development efforts;

(3) Ensure that these inventions are used in a manner to promote free competition and enterprise;

(4) Promote the commercialization and public availability of the inventions made in the United States by United States industry and labor;

(5) Ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and

(6) Minimize the costs of administering patent policies.

(b) *Contractor right to elect title.* (1) Generally, pursuant to 35 U.S.C. 202 and the Presidential memorandum and Executive order cited in paragraph (a) of this section, each contractor may, after required disclosure to the Government, elect to retain title to any subject invention.

(2) A contract may require the contractor to assign to the Government title to any subject invention—

(i) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government (see 27.303(c));

(ii) In exceptional circumstances, when an agency determines that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of chapter 18 of title 35, U.S.C. and the Presidential memorandum;

(iii) When a Government authority, that is authorized by statute or Executive order to conduct foreign intelligence or counterintelligence activities, determines that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities;

(iv) When the contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy (DoE) primarily dedicated to the Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under 35 U.S.C. 202(a)(iv) for agreements with small business concerns and nonprofit organizations are limited to inventions occurring under the above two programs; or

(v) Pursuant to statute or in accordance with agency regulations.

(3) When the Government has the right to acquire title to a subject invention, the contractor may, nevertheless, request greater rights to a subject invention (see 27.304–1(c)).

(4) Consistent with 37 CFR part 401, when a contract with a small business concern or nonprofit organization requires assignment of title to the Government based on the exceptional circumstances enumerated in paragraph (b)(2)(ii) of this section for reasons of national security, the contract shall still provide the contractor with the right to elect ownership to any subject invention that—

(i) Is not classified by the agency; or

(ii) Is not limited from dissemination by the DoE within 6 months from the date it is reported to the agency.

(5) Contracts in support of DoE's naval nuclear propulsion program are exempted from this paragraph (b).

(6) When a contract involves a series of separate task orders, an agency may apply the exceptions at paragraph (b)(2)(ii) or (iii) of this section to individual task orders.

(c) *Government license.* The Government shall have at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world. The Government may require additional sublicense rights in order to comply with treaties or other international agreements. In such case, the sublicense rights must be made a part of the contract (see 27.303).

(d) *Government right to receive title.* (1) In addition to the right to obtain title to subject inventions pursuant to paragraphs (b)(2)(i) through (b)(2)(v) of this section, the Government has the right to receive title to an invention—

(i) If the contractor has not disclosed the invention within the time specified in the clause; or

(ii) In any country where the contractor—

(A) Does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(B) Has not filed a patent application within the time specified in the clause;

(C) Decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; or

(D) No longer desires to retain title.

(2) For the purposes of this paragraph, filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election in the countries selected in the application(s).

(e) *Utilization reports.* The Government has the right to require periodic reporting on how any subject invention is being used by the contractor or its licensees or assignees. In accordance with 35 U.S.C. 202(c)(5) and 37 CFR part 401, agencies shall not disclose such utilization reports to persons outside the Government without permission of the contractor. Contractors should mark as confidential/proprietary any utilization report to help prevent inadvertent release outside the Government.

(f) *March-in rights.* (1) Pursuant to 35 U.S.C. 203, agencies have certain march-in rights that require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to responsible applicants upon terms that are reasonable under the circumstances. If the contractor, assignee or exclusive licensee of a subject invention refuses to grant such a license, the agency can grant the license itself. March-in rights may be exercised only if the agency determines that this action is necessary—

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in the field(s) of use;

(ii) To alleviate health or safety needs that are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and these requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) of this section has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its

agreement obtained pursuant to paragraph (g) of this section.

(2) The agency shall not exercise its march-in rights unless the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken. The agency shall provide the contractor an opportunity to dispute or appeal the proposed action in accordance with 27.304–1(g).

(g) *Preference for United States industry.* Unless provided otherwise in accordance with 27.304–1(f), contracts provide that no contractor that receives title to any subject invention and no assignee of the contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless that person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States (see 35 U.S.C. 204). However, in individual cases, the requirement for this agreement may be waived by the agency upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *Special conditions for nonprofit organizations' preference for small business concerns.* (1) Nonprofit organization contractors are expected to use reasonable efforts to attract small business licensees (see paragraph (j)(4) of the clause at 52.227–11, Patent Rights—Retention by the Contractor). What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market.

(2) Small business concerns that believe a nonprofit organization is not meeting its obligations under the clause may report the matter to the Secretary of Commerce. To the extent deemed appropriate, the Secretary of Commerce will undertake informal investigation of the matter and may discuss or negotiate with the nonprofit organization ways to improve its efforts to meet its obligations under the clause. However, in no event will the Secretary of Commerce intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. These investigations, discussions, and negotiations involving the Secretary of Commerce will be in coordination with other interested agencies, including the Small Business Administration. In the case of a contract for the operation of a Government-owned, contractor-operated research or production facility, the Secretary of Commerce will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

(i) *Minimum rights to contractor.* (1) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, paid-up license to that subject invention throughout the world. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses to the extent the contractor was legally obligated to do so at the time of contract award. The contracting officer shall approve any transfer of the contractor's licenses except when the transfer is to the successor of that part of the contractor's business to which the subject invention pertains.

(2) In response to a third party's proper application for an exclusive license, the contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention. The application shall be submitted in accordance with the applicable provisions in 37 CFR part 404 and agency licensing regulations. The contractor's license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the subject invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. (See the procedures at 27.304–1(f).)

(j) *Confidentiality of inventions.* Publishing information concerning an invention before a patent application is filed on a subject invention may create a bar to a valid patent. To avoid this bar, agencies may withhold information from the public that discloses any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) (see 35 U.S.C. 205 and 37 CFR part 401). Agencies may only withhold information concerning inventions for a reasonable time in order for a patent application to be filed. Once filed in any patent office, agencies are not required to release copies of any document that is a part of a patent application for those subject inventions.

27.303 Contract clauses.

(a)(1) Insert a patent rights clause in all solicitations and contracts for experimental, developmental, or research work as prescribed in this section.

(2) This section also applies to solicitations or contracts for construction work or architect-engineer services that include—

(i) Experimental, developmental, or research work;

(ii) Test and evaluation studies; or

(iii) The design of a Government facility that may involve novel structures, machines, products, materials, processes, or equipment (including construction equipment).

(3) The contracting officer shall not include a patent rights clause in solicitations or contracts for construction work or architect-engineer services that call for or can be expected to involve only ''standard types of construction.'' ''Standard types of construction'' are those involving previously developed equipment, methods, and processes and in which the distinctive features include only—

(i) Variations in size, shape, or capacity of conventional structures; or

(ii) Purely artistic or aesthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, whether or not they qualify for design patent protection.

(b)(1) Unless an alternative patent rights clause is used in accordance with paragraph (c), (d), or (e) of this section, insert the clause at 52.227–11, Patent Rights—Ownership by the Contractor.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify 52.227–11(e) or otherwise supplement the clause to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide the filing date, serial number, title, patent number, and issue date for any patent application filed on any subject invention in any country or, upon request, copies of any patent application so identified.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a co-inventor.

(3) Use the clause with its Alternate I if the Government must grant a foreign government a sublicense in subject inventions pursuant to a specified treaty or executive agreement. The contracting officer may modify Alternate I, if the agency head determines, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. When necessary to effectuate a treaty or agreement, Alternate I may be appropriately modified.

(4) Use the clause with its Alternate II in contracts that may be affected by existing or future treaties or agreements.

(5) Use the clause with its Alternate III in contracts with nonprofit organizations for the operation of a Government-owned facility.

(6) If the contract is for the operation of a Government-owned facility, the contracting officer may use the clause with its Alternate IV.

(c) Insert a patent rights clause in accordance with the procedures at 27.304–2 if the solicitation or contract is being placed on behalf of another Government agency.

(d) Insert a patent rights clause in accordance with agency procedures if the solicitation or contract is for DoD, DoE, or NASA, and the contractor is other than a small business concern or nonprofit organization.

(e)(1) Except as provided in paragraph (e)(2) of this section, and after compliance with the applicable procedures in 27.304–1(b), the contracting officer may insert the clause at 52.227–13, Patent Rights—Ownership by the Government, or a clause prescribed by agency supplemental regulations, if—

(i) The contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government;

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of title 35 of the United States Code;

(iii) A Government authority that is authorized by statute or Executive order to conduct foreign intelligence or counterintelligence activities determines that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities; or

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) If an agency exercises the exceptions at paragraph (e)(1)(ii) or (iii) of this section in a contract with a small business concern or a nonprofit organization, the contracting officer shall use the clause at 52.227–11 with only those modifications necessary to address the exceptional circumstances and shall include in the modified clause greater rights determinations procedures equivalent to those at 52.227–13(b)(2).

(3) When using the clause at 52.227–13, Patent Rights—Ownership by the Government, the contracting officer may supplement the clause to require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Provide the filing date, serial number, title, patent number, and issue date for any patent application filed on any subject invention in any country or, upon specific request, copies of any patent application so identified; and

(iv) Submit periodic reports on the utilization of a subject invention.

(4) Use the clause at 52.227–13 with its Alternate I if—

(i) The Government must grant a foreign government a sublicense in subject inventions pursuant to a treaty or executive agreement; or

(ii) The agency head determines, at contract award, that it would be in the national interest to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement. If other rights are necessary to effectuate any treaty or agreement, Alternate I may be appropriately modified.

(5) Use the clause at 52.227–13 with its Alternate II in the contract when necessary to effectuate an existing or future treaty or agreement.

27.304 Procedures.

27.304–1 General.

(a) *Status as small business concern or nonprofit organization.* If an agency has reason to question the size or nonprofit status of the prospective contractor, the agency may require the prospective contractor to furnish evidence of its status or file a protest in accordance with 13 CFR 121.1005.

(b) *Exceptions.* (1) Before using any of the exceptions under 27.303(e)(1) in a contract with a small business concern or a nonprofit organization and before using the exception of 27.303(e)(1)(ii) for any contractor, the agency shall follow the applicable procedures at 37 CFR part 401.

(2) A small business concern or nonprofit organization is entitled to an administrative review of the use of the exceptions at 27.303(e)(1)(i) through (e)(1)(iv) pursuant to agency procedures and 37 CFR part 401.

(c) *Greater rights determinations.* Whenever the contract contains the clause at 52.227–13, Patent Rights—Ownership by the Government, or a patent rights clause modified pursuant to 27.303(e)(2), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in the clause. The contracting officer may grant requests for greater rights if the contracting officer determines that the interests of the United States and the general public will be better served.

In making these determinations, the contracting officer shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally supported research and development.

(2) Ensuring that inventions are used in a manner to promote full and open competition and free enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(d) *Retention of rights by inventor.* If the contractor elects not to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraphs (d) (except paragraph (d)(1)(i)), (e)(4), (g), (h), and

(i) of the clause at 52.227–11, Patent Rights—Ownership by the Contractor.

(e) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a co-inventor of an invention made under a contract with a small business concern or nonprofit organization, the agency employing the co-inventor may transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of 35 U.S.C. 202–204.

(f) *Revocation or modification of contractor's minimum rights.* Before revoking or modifying the contractor's license in accordance with 27.302(i)(2), the contracting officer shall furnish the contractor a written notice of intention to revoke or modify the license. The agency shall allow the contractor at least 30 days (or another time as may be authorized for good cause by the contracting officer) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) *Exercise of march-in rights.* When exercising march-in rights, agencies must follow the procedures set forth in 37 CFR 401.6.

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, the clause at 52.227–11 provides that certain contractor actions require agency approval, as specified below. A contractor may not assign rights to a subject invention in the United States without the written approval of the agency, except when the assignment is made to an organization that has as one of its primary functions the management of inventions (provided that the assignee is subject to the same provisions as the contractor).

27.304–2 Contracts placed by or for other Government agencies.

The following procedures apply unless an interagency agreement provides otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify the patent rights clause to be used. The clause should be selected and modified, if necessary, in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (*e.g.,* because of statutory requirements, a deviation, or exceptional circumstances), the awarding agency shall use that clause rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the requesting agency, then include the requesting agency clause and no other patent rights clause in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable, then the contracting officer shall assure that the requesting agency clause applies only to that severable portion of the work and that the work for the awarding agency is subject to the appropriate patent rights clause.

(3) If the request states that a requesting agency clause is not required in any resulting contract, the awarding agency shall use the appropriate patent rights clause, if any.

(b) Any action requiring an agency determination, report, or deviation involved in the use of the requesting agency's clause is the responsibility of the requesting agency unless the agencies agree otherwise. However, the awarding agency may not alter the requesting agency's clause without prior approval of the requesting agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any invention disclosures or other reporting requirements of the specified clauses. Normally, the requesting agency is responsible for the administration of any subject inventions. This responsibility shall be established in advance of awarding any contracts.

27.304–3 Subcontracts.

(a) The policies and procedures in this subpart apply to all subcontracts at any tier.

(b) Whenever a prime contractor or a subcontractor considers including a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the clause, the contracting officer, in consultation with counsel, shall resolve the matter.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304–4 Appeals.

(a) The designated agency official shall provide the contractor with a written statement of the basis, including any relevant facts, for taking any of the following actions:

(1) A refusal to grant an extension to the invention disclosure period under paragraph (c)(4) of the clause at 52.227–11.

(2) A demand for a conveyance of title to the Government under 27.302(d)(1)(i) and (ii).

(3) A refusal to grant a waiver under 27.302(g), Preference for United States industry.

(4) A refusal to approve an assignment under 27.304–1(h).

(b) Each agency may establish and publish procedures under which any of these actions may be appealed. These appeal procedures should include administrative due process procedures and standards for fact-finding. The resolution of any appeal shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200–206 and 210.

(c) To the extent that any of the actions described in paragraph (a) of this section are subject to appeal under the Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraph (b).

27.305 Administration of patent rights clauses.

27.305–1 Goals.

(a) Contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in subject inventions are established;

(3) When patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of subject inventions is achieved.

(b) If a subject invention is made under a contract funded by more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

27.305–2 Administration by the Government.

(a) Agencies should establish and maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in 27.304–2 should be coordinated with the appropriate agency.

(b)(1) The contracting officer administering the contract (or other representative specifically designated in the contract for this purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause.

(i) For other than confirmatory instruments, if the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information. If the failure persists, the contracting officer shall take appropriate action to secure compliance.

(ii) If the contractor does not furnish confirmatory instruments within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed, the contracting officer shall request the contractor to supply the required documents.

(2) The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to legal counsel.

(c) Contracting activities should establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily toward contracts that are more likely to result in subject inventions significant in number or quality. These contracts include contracts of a research, developmental, or experimental nature; contracts of a large dollar amount; and any other contracts when there is reason to believe the contractor may not be complying with its contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel—

(1) To interview agency technical personnel to identify novel developments made in contracts;

(2) To review technical reports submitted by contractors with cognizant agency technical personnel;

(3) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(4) To have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If a contractor or subcontractor does not have a clear understanding of its obligations under the clause, or its procedures for complying with the clause are deficient, the contracting officer should explain to the contractor its obligations. The withholding of payments provision (if any) of the patent rights clause may be invoked if the contractor fails to meet the obligations required by the patents rights clause. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see 4.801(c)(3)).

27.305–3 Securing invention rights acquired by the Government.

(a) Agencies are responsible for implementing procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, the chain of title from the inventor to the Government must be clearly established. This is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patents applications. These instruments should be recorded in the U.S. Patent and Trademark Office (see Executive Order 9424, Establishing in the United States Patent Office a Register of Government Interests in Patents and Applications for Patents (February 18, 1944)).

27.305–4 Protection of invention disclosures.

(a) The Government will, to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of 52.227–11 or 52.227–13 for a reasonable time in order for patent applications to be filed. The Government will follow the policy in 27.302(j) regarding protection of confidentiality.

(b) The Government should also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a subject invention. This information includes any data delivered pursuant to contract requirements provided that the contractor notifies the agency as to the identity of the data and the subject invention to which it relates at the time of delivery of the data. This notification shall be provided to both the contracting officer and to any patent representative to which the invention is reported, if other than the contracting officer.

27.306 Licensing background patent rights to third parties.

(a) A contract with a small business concern or nonprofit organization shall not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless the agency head has approved and signed a written justification in accordance with paragraph (b) of this section. The agency head may not delegate this authority and may exercise the authority only if it is determined that the—

(1) Use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract; and

(2) Action is necessary to achieve the practical application of the subject invention or work object.

(b) Any determination will be on the record after an opportunity for a hearing, and the agency shall notify the contractor of the determination by certified or registered mail. The notification shall include a statement

that the contractor must bring any action for judicial review of the determination within 60 days after the notification.

Subpart 27.4—Rights in Data and Copyrights

27.400 Scope of subpart.

This subpart sets forth policies and procedures regarding rights in data and copyrights, and acquisition of data. The policy statement in 27.402 applies to all executive agencies. The remainder of the subpart applies to all executive agencies except the Department of Defense.

27.401 Definitions.

As used in this subpart—

Computer data base means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software means—

(1) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases or computer software documentation.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithm, process, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in a Limited Rights Notice.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications. Agencies may, however, adopt the following alternate definition: *Limited rights data* means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged (see 27.404–2(b)).

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer data bases and computer software documentation) relating to supplies procured by an agency. This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. Recorded information of a scientific or technical nature that is included in computer data bases is also technical data (41 U.S.C. 403(8)).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

27.402 Policy.

(a) To carry out their missions and programs, agencies acquire or obtain access to many kinds of data produced during or used in the performance of their contracts. Agencies require data to—

(1) Obtain competition among suppliers;

(2) Fulfill certain responsibilities for disseminating and publishing the results of their activities;

(3) Ensure appropriate utilization of the results of research, development, and demonstration activities, including the dissemination of technical information to foster subsequent technological developments;

(4) Meet other programmatic and statutory requirements; and

(5) Meet specialized acquisition needs and ensure logistics support.

(b) Contractors may have proprietary interests in data. In order to prevent the compromise of these interests, agencies must protect proprietary data from unauthorized use and disclosure. The protection of such data is also necessary to encourage qualified contractors to participate in and apply innovative concepts to Government programs. In light of these considerations, agencies must balance the Government's needs and the contractor's legitimate proprietary interests.

27.403 Data rights—General.

All contracts that require data to be produced, furnished, acquired, or used in meeting contract performance requirements must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, reproduction, and disclosure of that data. Data rights clauses do not specify the type, quantity or quality of data that is to be delivered, but only the respective rights of the Government and the contractor regarding the use, disclosure, or reproduction of the data. Accordingly, the contract shall specify the data to be delivered.

27.404 Basic rights in data clause.

This section describes the operation of the clause at 52.227–14, Rights in Data—General, and also the use of the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer software.

27.404–1 Unlimited rights data.

The Government acquires unlimited rights in the following data (except for copyrighted works as provided in 27.404–3):

(a) Data first produced in the performance of a contract (except to the extent the data constitute minor modifications to data that are limited rights data or restricted computer software).

(b) Form, fit, and function data delivered under contract.

(c) Data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under a contract.

(d) All other data delivered under the contract other than limited rights data or restricted computer software (see 27.404–2).

27.404–2 Limited rights data and restricted computer software.

(a) *General.* The basic clause at 52.227–14, Rights in Data—General, enables the contractor to protect qualifying limited rights data and restricted computer software by withholding the data from the Government and instead delivering form, fit, and function data.

(b) *Alternate definition of limited rights data.* For contracts that do not require the development, use, or delivery of items, components, or processes that are intended to be acquired by or for the Government, an agency may adopt the alternate definition of limited rights data set forth in Alternate I to the clause at 52.227–14. The alternate definition does not require that the data pertain to items, components, or processes developed at private expense; but rather that the data were developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(c) *Protection of limited rights data specified for delivery.* (1) The clause at 52.227–14 with its Alternate II enables the Government to require delivery of limited rights data rather than allow the contractor to withhold the data. To obtain delivery, the contract may identify and specify data to be delivered, or the contracting officer may require, by written request during contract performance, the delivery of data that has been withheld or identified to be withheld under paragraph (g)(1) of the clause. In addition, the contract may specifically identify data that are not to be delivered under Alternate II or which, if delivered, will be delivered with limited rights. The limited rights obtained by the Government are set forth in the Limited Rights Notice contained in paragraph (g)(3) of Alternate II of the clause. Agencies shall not, without permission of the contractor, use limited rights data for purposes of manufacture or disclose the data outside the Government except as set forth in the Notice. Any disclosure by the Government shall be subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes that may be adopted by an agency in its supplement and added to the Limited Rights Notice of paragraph (g)(3) of Alternate II of the clause:

(i) Use (except for manufacture) by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part.

(iv) Emergency repair or overhaul work.

(v) Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation, or for emergency repair or overhaul work by the foreign government.

(2) The provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, helps the contracting officer to determine whether the clause at 52.227–14 should be used with its Alternate II. This provision requests that an offeror state whether limited rights data are likely to be delivered. Where limited rights data are expected to be delivered, Alternate II shall be used. Where negotiations are based on an unsolicited proposal, the need for Alternate II of the clause at 52.227-14 should be addressed during negotiations or discussions, and if Alternate II was not included initially, it may be added by modification, if needed, during contract performance.

(3) If data that would otherwise qualify as limited rights data is delivered as a computer data base, the data shall be treated as limited rights data, rather than restricted computer software, for the purposes of paragraph (g) of the clause at 52.227–14.

(d) *Protection of restricted computer software specified for delivery.* (1) Alternate III of the clause at 52.227–14 enables the Government to require delivery of restricted computer software rather than allow the contractor to withhold such restricted computer software. To obtain delivery of restricted computer software, the contracting officer shall—

(i) Identify and specify the deliverable computer software in the contract; or

(ii) Require by written request during contract performance, the delivery of computer software that has been withheld or identified to be withheld under paragraph (g)(1) of the clause.

(2) In considering whether to use Alternate III, contracting officers should note that, unlike other data, computer software is also an end item in itself. Thus, the contracting officer shall use Alternate III if delivery of restricted computer software is required to meet agency needs.

(3) Unless otherwise agreed (see paragraph (d)(4) of this subsection), the restricted rights obtained by the Government are set forth in the Restricted Rights Notice contained in paragraph (g)(4) of Alternate III of the clause at 52.227–14. Such restricted computer software will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with a backup computer if any computer for which it was acquired becomes inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;

(v) Disclosed to and reproduced for use by support service contractors, subject to the same restriction under which the Government acquired the software;

(vi) Used or copied for use in or transferred to a replacement computer; and

(vii) Used in accordance with paragraphs (d)(3)(i) through (v) of this subsection, without disclosure prohibitions, if the computer software is copyrighted computer software.

(4) The restricted rights set forth in paragraph (d)(3) of this section are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause at 52.227–14. However, the contracting officer may specify different rights in the contract, consistent with the purposes and needs for which the software is to be acquired. For example, the contracting officer should consider any networking needs or any requirements for use of the computer software from remote terminals. Also, in addressing such needs, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and data bases. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause at 52.227–14 shall be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(5) The provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software,

helps the contracting officer determine whether to use the clause at 52.227–14 with its Alternate III. This provision requests that an offeror state whether restricted computer software is likely to be delivered under the contract. In addition, the need for Alternate III should be addressed during negotiations or discussions with an offeror, particularly where negotiations are based on an unsolicited proposal. However, if Alternate III is not used initially, it may be added by modification, if needed, during contract performance.

27.404–3 Copyrighted works.

(a) *Data first produced in the performance of a contract.* (1) Generally, the contractor must obtain permission of the contracting officer prior to asserting rights in any copyrighted work containing data first produced in the performance of a contract. However, contractors are normally authorized, without prior approval of the contracting officer, to assert copyright in technical or scientific articles based on or containing such data that is published in academic, technical or professional journals, symposia proceedings and similar works.

(2) The contractor must make a written request for permission to assert its copyright in works containing data first produced under the contract. In its request, the contractor should identify the data involved or furnish copies of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which the permission is requested. Generally, a contracting officer should grant the contractor's request when copyright protection will enhance the appropriate dissemination or use of the data unless the—

(i) Data consist of a report that represents the official views of the agency or that the agency is required by statute to prepare;

(ii) Data are intended primarily for internal use by the Government;

(iii) Data are of the type that the agency itself distributes to the public under an agency program;

(iv) Government determines that limitation on distribution of the data is in the national interest; or

(v) Government determines that the data should be disseminated without restriction.

(3) Alternate IV of the clause at 52.227–14 provides a substitute paragraph (c)(1) granting permission for contractors to assert copyright in any data first produced in the performance of the contract without the need for any further requests. Except for contracts for management or operation of Government facilities and contracts and subcontracts in support of programs being conducted at those facilities or where international agreements require otherwise, Alternate IV shall be used in all contracts for basic or applied research to be performed solely by colleges and universities. Alternate IV shall not be used in contracts with colleges and universities if a purpose of the contract is for development of computer software for distribution to the public (including use in solicitations) by or on behalf of the Government. In addition, Alternate IV may be used in other contracts if an agency determines that it is not necessary for a contractor to request further permission to assert copyright in data first produced in performance of the contract. The contracting officer may exclude any data, or items or categories of data, from the provisions of Alternate IV by expressly so providing in the contract or by adding a paragraph (d)(3) to the clause, consistent with 27.404–4(b).

(4) Pursuant to paragraph (c)(1) of the clause at 52.227–14, the contractor grants the Government a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all data (other than computer software) first produced in the performance of a contract. For computer software, the scope of the Government's license includes all of the above rights except the right to distribute to the public. Agencies may also obtain a license of different scope if the contracting officer determines, after consulting with legal counsel, such a license will substantially enhance the dissemination of any data first produced under the contract or if such a license is required to comply with international agreements. If an agency obtains a different license, the contractor must clearly state the scope of that license in a conspicuous place on the medium on which the data is recorded. For example, if the data is delivered as a report, the terms of the license shall be stated on the cover, or first page, of the report.

(5) The clause requires the contractor to affix the applicable copyright notices of 17 U.S.C. 401 or 402, and acknowledgment of Government sponsorship (including the contract number), to data when it asserts copyright in data. Failure to do so could result in such data being treated as unlimited rights data (see 27.404–5(b)).

(b) *Data not first produced in the performance of a contract.* (1) Contractors must not deliver any data that is not first produced under the contract without either—

(i) Acquiring for or granting to the Government a copyright license for the data; or

(ii) Obtaining permission from the contracting officer to do otherwise.

(2) The copyright license the Government acquires for such data will normally be of the same scope as discussed in paragraph (a)(4) of this subsection, and is set forth in paragraph (c)(2) of the clause at 52.227–14. However, agencies may obtain a license of different scope if the agency determines, after consultation with its legal counsel, that such different license will not be inconsistent with the purpose of acquiring the data. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the data when delivered to the Government. If the contractor delivers computer software not first produced under the contract, the contractor must grant the Government the license set forth in paragraph (g)(4) of Alternate III if included in the clause at 52.227–14, or a license agreed to in a collateral agreement made part of the contract.

27.404–4 Contractor's release, publication, and use of data.

(a) In contracts for basic or applied research with universities or colleges, agencies shall not place any restrictions on the conduct of or reporting on the results of unclassified basic or applied research, except as provided in applicable U.S. Statutes. However, agencies may restrict the release or disclosure of computer software that is or is intended to be developed to the point of practical application (including for agency distribution under established programs). This is not considered a restriction on the reporting of the results of basic or applied research. Agencies may also preclude a contractor from asserting copyright in any computer software for purposes of established agency distribution programs, or where required to accomplish the purpose for which the software is acquired.

(b) Except for the results of basic or applied research under contracts with universities or colleges, agencies may, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor's exercise of its rights in data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party. Any of

these restrictions shall be expressly included in the contract.

27.404–5 Unauthorized, omitted, or incorrect markings.

(a) *Unauthorized marking of data.* (1) The Government has, in accordance with paragraph (e) of the clause at 52.227–14, the right to either return data containing unauthorized markings or to cancel or ignore the markings.

(2) Agencies shall not cancel or ignore markings without making written inquiry of the contractor and affording the contractor at least 30 days to provide a written justification substantiating the propriety of the markings.

(i) If the contractor fails to respond or fails to provide a written justification substantiating the propriety of the markings within the time afforded, the Government may cancel or ignore the markings.

(ii) If the contractor provides a written justification substantiating the propriety of the markings, the contracting officer shall consider the justification.

(A) If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing.

(B) If the contracting officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the contractor will be furnished a written determination which becomes the final agency decision regarding the appropriateness of the markings, and the markings will be cancelled or ignored and the data will no longer be made subject to disclosure prohibitions, unless the contractor files suit within 90 days in a court of competent jurisdiction. The markings will not be cancelled or ignored until final resolution of the matter, either by the contracting officer's determination becoming the final agency decision or by final disposition of the matter by court decision if suit is filed.

(3) The foregoing procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request. In addition, the contractor may bring a claim, in accordance with the Disputes clause of the contract, that may arise as the result of the Government's action to remove or ignore any markings on data, unless the action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

(b) *Omitted or incorrect notices.* (1) Data delivered under a contract containing the clause without a limited rights notice or restricted rights notice, and without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of the data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may, within 6 months (or a longer period approved by the contracting officer for good cause shown), request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense. The contracting officer may permit adding appropriate notices if the contractor—

(i) Identifies the data for which a notice is to be added;

(ii) Demonstrates that the omission of the proposed notice was inadvertent;

(iii) Establishes that use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also—

(i) Permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

27.404–6 Inspection of data at the contractor's facility.

Contracting officers may obtain the right to inspect data at the contractor's facility by use of the clause at 52.227-14 with its Alternate V, which adds paragraph (j) to provide that right. Agencies may also adopt Alternate V for general use. The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause. Inspection may be made by the contracting officer or designee (including nongovernmental personnel under the same conditions as the contracting officer) for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of Alternate V. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

27.405 Other data rights provisions.

27.405–1 Special works.

(a) The clause at 52.227–17, Rights in Data—Special Works, is for use in contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's own use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(1) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(2) Histories of the respective agencies, departments, services, or units thereof;

(3) Surveys of Government establishments;

(4) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(5) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;

(6) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(7) Investigatory reports;

(8) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities or agency regulatory or enforcement activities; or

(9) The development of computer software programs, where the program—

(i) May give a commercial advantage; or

(ii) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

(b) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in

connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (c)(1)(ii) of the clause, which enables the Government to obtain assignment of copyright in any data first produced in the performance of the contract, may be deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(d) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause, may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(e) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as for production and distribution to the public of the works by other than a Federal agency), agencies are authorized to modify the clause for use in contracts, with rights in data provisions that meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

27.405–2 Existing works.

The clause at 52.227–18, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing works such as motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are means of exhibition or transmission, time, type of audience, and geographical location. However, if the contract requires that works of the type indicated in this paragraph are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), then see 27.405–1.

27.405–3 Commercial computer software.

(a)(1) When contracting other than from GSA's Multiple Award Schedule contracts for the acquisition of commercial computer software, no specific contract clause prescribed in this subpart need be used, but the contract shall specifically address the Government's rights to use, disclose, modify, distribute, and reproduce the software. Section 12.212 sets forth the guidance for the acquisition of commercial computer software and states that commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent the license is consistent with Federal law and otherwise satisfies the Government's needs. The clause at 52.227–19 may be used when there is any confusion as to whether the Government's needs are satisfied or whether a customary commercial license is consistent with Federal law. Additional or lesser rights may be negotiated using the guidance concerning restricted rights as set forth in 27.404–2(d), or the clause at 52.227–19, Commercial Computer Software License. If greater rights than the minimum rights identified in the clause at 52.227–19 are needed, or lesser rights are to be acquired, they must be negotiated and set forth in the contract. This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at 52.227–19 when used. Examples of greater rights may be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the media on which it is recorded, and all the necessary documentation.

(2) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, the contracting officer shall ensure that the agreement is consistent with paragraph (a)(1) of this subsection. The contracting officer should exercise caution in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause at 52.227–19 is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, reproduce or disclose the computer software are reconciled by that clause.

(3) If a prime contractor under a contract containing the clause at 52.227–14, Rights in Data—General, with paragraph (g)(4) of Alternate III in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to or for use on behalf of the Government, the contracting officer may approve any additions to, or limitations on, the restricted rights in the Restricted Rights Notice of paragraph (g)(4) in a collateral agreement incorporated in and made part of the contract.

(b)(1) Except for existing works pursuant to 27.405–2 or commercial computer software pursuant to 27.405–3, no clause contained in this subpart is required to be included in—

(i) Contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which these items are to be obtained unless reproduction rights are to be acquired; or

(ii) Other contracts that require only existing data (other than limited rights data) to be delivered and the data are available without disclosure prohibitions, unless reproduction rights to the data are to be obtained.

(2) If the reproduction rights to the data are to be obtained in any contract of the type described in paragraph (b)(1)(i) or (ii) of this section, the rights shall be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line database services in the same form as they are normally available to the general public.

27.406 Acquisition of data.

27.406–1 General.

(a) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(b) The contracting officer shall specify in the contract all known data

requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data. Further, and to the extent feasible, in major system acquisitions, the contracting officer shall set out data requirements as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may, consistent with paragraph (a) of this subsection, develop their own contract schedule provisions. Agency procedures may, among other things, provide for listing, specifying, identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(c) Data delivery requirements should normally not require that a contractor provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished with unlimited rights instead of the qualifying data, or the qualifying data may be furnished with limited rights or restricted rights if needed (see 27.404–2(c) and (d)). If greater rights are needed, they should be clearly set forth in the solicitation and the contractor fairly compensated for the greater rights.

27.406–2 Additional data requirements.

(a) In some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at contract award. The clause at 52.227–16, Additional Data Requirements, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of these contracts as the actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. If the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed $500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(b) Data may be ordered under the clause at 52.227–16 at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contracting officer may relieve the contractor of the retention requirements for specified data items at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the clause if the data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the clause by deleting the term ''or specifically used'' in paragraph (a) of the clause if delivery of the data is not necessary to meet the Government's requirements for data. Any data ordered under this clause will be subject to the clause at 52.227–14, Rights in Data—General (or other equivalent clause setting forth the respective rights of the Government and the contractor), in the contract. Data authorized to be withheld under such clause will not be required to be delivered under the clause at 52.227–16, except as provided in Alternate II or Alternate III, if included (see 27.404–2(c) and (d)).

(c) Absent an established program for dissemination of computer software, agencies should not order additional computer software under the clause at 52.227–16 for the sole purpose of disseminating or marketing the software to the public. In ordering software for internal purposes, the contracting officer shall consider, consistent with the Government's needs, not ordering particular source codes, algorithms, processes, formulas or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

27.406–3 Major system acquisition.

(a) The clause at 52.227–21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, implements 41 U.S.C. 418a(d). When using the clause at 52.227–21, the section of the contract specifying data delivery requirements (see 27.406–1(b)) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of the technical data, the contracting officer shall review the technical data and the contractor's declaration relating to it to assure that the data are complete, accurate, and comply with contract requirements. If the data are not complete, accurate, or compliant, the contracting officer should request the contractor to correct the deficiencies, and may withhold payment. Final payment shall not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(b) In a contract for, or in support of, a major system awarded by a civilian agency other than NASA or the U.S. Coast Guard, the following applies:

(1) The contracting officer shall require the delivery of any technical data relating to the major system, or supplies for the major system, that are to be developed exclusively with Federal funds if the delivery of the technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at 52.227–22, Major System—Minimum Rights, is used in addition to the clause at 52.227–14, Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Public Law 98–577 in technical data developed exclusively with Federal funds.

(2) Technical data, relating to a major system or supplies for a major system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the Government as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

27.407 Rights to technical data in successful proposals.

The clause at 52.227–23, Rights to Proposal Data (Technical), allows the Government to acquire unlimited rights to technical data in successful proposals. Pursuant to the clause, the prospective contractor is afforded the opportunity to specifically identify pages containing technical data to be excluded from the grant of unlimited rights. This exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in Subpart 15.2 or 15.6 (or agency supplements) relating to proposal

information (*e.g.*, will be used for evaluation purposes only). If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to acquiring the data with limited rights, if they so qualify, in accordance with 27.404–2(c).

27.408 Cosponsored research and development activities.

(a) In contracts involving cosponsored research and development that require the contractor to make substantial contributions of funds or resources (*e.g.*, by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of, or acquire less than unlimited rights to, any data developed and delivered under the contract. Agencies may regulate the use of this authority in their supplements. Lesser rights shall, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to requiring the contractor to directly license others if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in 27.402. As a guide, a clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (*i.e.*, Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. A clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, this type of clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies that will be available, in any event, to the public for their direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding for the contract) and so identified in the contract, any resulting data may be treated under this clause as limited rights data or restricted computer software in accordance with 27.404–2(c) or (d), as applicable; or if this treatment is inconsistent with the purpose of the contract, rights to the data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

27.409 Solicitation provisions and contract clauses.

(a) Generally, a contract should contain only one data rights clause. However, where more than one is needed, the contract should distinguish the portion of contract performance to which each pertains.

(b)(1) Insert the clause at 52.227–14, Rights in Data— General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 27.405–1, although in these cases insert the clause at 52.227–14, Rights in Data—General, and make it applicable to data other than special works, as appropriate (see paragraph (e) of this section);

(ii) For the acquisition of existing data works, as described in 27.405–2 (see paragraphs (f) and (g) of this section);

(iii) A small business innovation research contract (see paragraph (h) of this section);

(iv) To be performed outside the United States (see paragraph (i)(1) of this section);

(v) For architect-engineer services or construction work (see paragraph (i)(2) of this section);

(vi) For the management, operation, design, or construction of a Government-owned facility to perform research, development, or production work (see paragraph (i)(3) of this section); or

(vii) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized (see 27.408).

(2) If an agency determines, in accordance with 27.404–2(b), to adopt the alternate definition of ''Limited Rights Data'' in paragraph (a) of the clause, use the clause with its Alternate I.

(3) If a contracting officer determines, in accordance with 27.404–2(c), that it is necessary to obtain limited rights data, use the clause with its Alternate II. The contracting officer shall complete paragraph (g)(3) to include the purposes, if any, for which limited rights data are to be disclosed outside the Government.

(4) In accordance with 27.404–2(d), if a contracting officer determines it is necessary to obtain restricted computer software, use the clause with its Alternate III. Any greater or lesser rights regarding the use, reproduction, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(4) of Alternate III of the clause shall be specified in the contract and the notice modified accordingly.

(5) Use the clause with its Alternate IV in contracts for basic or applied research (other than those for the management or operation of Government facilities or where international agreements require otherwise) to be performed solely by universities and colleges. The clause may be used with its Alternate IV in other contracts if, in accordance with 27.404–3(a), an agency determines to grant permission for the contractor to establish claim to copyright subsisting in all data first produced without further request being made by the contractor. When Alternate IV is used, the contract may exclude items or categories of data from the permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(3) to the clause (see 27.404–4).

(6) In accordance with 27.404–6, if the Government needs the right to inspect certain data at a contractor's facility, use the clause with its Alternate V.

(c) In accordance with 27.404–2(c)(2) and 27.404–2(d)(5), if the contracting officer desires to have an offeror state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, insert the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227–14, Rights in Data—General. The contractor's response may provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III.

(d) Insert the clause at 52.227–16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract (see 27.406–2). This clause may also be used in other contracts when considered appropriate. For example, if the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed $500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(e) In accordance with 27.405–1, insert the clause at 52.227–17, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 27.405–1.

(1) Insert the clause if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance.

(3) Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(4) The clause may be modified in accordance with paragraphs (c) through (e) of 27.405–1.

(f) Insert the clause at 52.227–18, Rights in Data— Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 27.405–2. The contract may set forth limitations consistent with the purposes for which the work is being acquired. While no specific clause of this subpart is required to be included in contracts solely for the acquisition, without disclosure prohibitions, of books, publications, and similar items in the exact form in which the items exist prior to the request for purchase (*i.e.*, the off-the-shelf purchase of such items), or in other contracts where only existing data available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired, the contract shall include terms addressing such rights. (See 27.405–3(b).)

(g) In accordance with 27.405–3(a), when contracting (other than from GSA's Multiple Award Schedule contracts) for the acquisition of commercial computer software, the contracting officer may insert the clause at 52.227–19, Commercial Computer Software License, in the solicitation and contract. In any event, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 27.405–3(a).

(h) If the contract is a Small Business Innovation Research (SBIR) contract, insert the clause at 52.227–20, Rights in Data—SBIR Program, in all Phase I and Phase II contracts awarded under the Small Business Innovation Research Program established pursuant to 15 U.S.C. 638.

(i) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts—

(1) To be performed outside the United States;

(2) For architect-engineer services and construction work (may prescribe the clause at 52.227–17, Rights in Data—Special Works); or

(3) For management, operation, design, or construction of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(j) In accordance with 27.406–3(a), insert the clause at 52.227–21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, in contracts for major systems acquisitions or for support of major systems acquisitions. This requirement includes contracts for detailed design, development, or production of a major system and contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property that may be replaced during the service life of the system, including spare parts. When used, this clause requires that the technical data to which it applies be specified in the contract (see 27.406–3(a)).

(k) In accordance with 27.406–3(b), in the case of civilian agencies other than NASA and the U.S. Coast Guard, insert the clause at 52.227–22, Major System—Minimum Rights, in contracts for major systems or contracts in support of major systems.

(l) In accordance with 27.407, if a contracting officer desires to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based, insert the clause at 52.227–23, Rights to Proposed Data (Technical). Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, the contracting officer shall follow section 27.404 to assure that the rights are appropriately addressed.

Subpart 27.5—Foreign License and Technical Assistance Agreements

27.501 General.

Agencies shall provide necessary policy and procedures regarding foreign technical assistance agreements and license agreements involving intellectual property, including avoiding unnecessary royalty charges.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES.

5. Amend section 52.227–1 by revising the introductory text of the clause and the introductory text of Alternates I and II to read as follows:

52.227–1 Authorization and Consent.

As prescribed in 27.201–2(a)(1), insert the following clause:

* * * * *

Alternate I (Apr 1984). As prescribed in 27.201–2(a)(2), substitute the following paragraph (a) for paragraph (a) of the basic clause:

* * * * *

Alternate II (Apr 1984). As prescribed in 27.201–2(a)(3), substitute the following paragraph (a) for paragraph (a) of the basic clause:

* * * * *

52.227–2 [Amended]

6. In section 52.227–2, amend the introductory text of the clause by removing ''at 27.202–2'' and adding ''in 27.201–2(b)'' in its place.

7. Amend section 52.227–3 by revising the introductory text of the clause and the introductory text of Alternates I, II, and III to read as follows:

52.227–3 Patent Indemnity.

As prescribed in 27.201–2(c)(1), insert the following clause:

* * * * *

Alternate I (Apr 1984). As prescribed in 27.201–2(c)(2), add the following paragraph (c) to the basic clause:

* * * * *

Alternate II (Apr 1984). As prescribed in 27.201–2(c)(2), add the following paragraph (c) to the basic clause:

* * * * *

Alternate III (July 1995). As prescribed in 27.201–2(c)(3), add the following paragraph to the basic clause:

* * * * *

8. Amend section 52.227–4 by revising the introductory paragraph of the clause; and Alternate I to read as follows:

52.227–4 Patent Indemnity—Construction Contracts.

As prescribed in 27.201–2(d)(1), insert the following clause:

* * * * *

Alternate I (Date). As prescribed in 27.201–2(d)(2), designate the first paragraph of the basic clause as paragraph (a) and add the following paragraph (b) to the basic clause:

(b) This patent indemnification shall not apply to the following items:

[*Contracting Officer list the items to be excluded.*]

52.227–5 [Amended]

9. In section 52.227–5, amend the introductory paragraph of the clause by removing '' at 27.203–6'' and adding ''in 27.201–2(e)'' in its place.

10. Amend section 52.227–6 by revising the introductory paragraphs of the provision and Alternate I to read as follows:

52.227–6 Royalty Information.

As prescribed in 27.202–5(a)(1), insert the following provision:

* * * * *

Alternate I (Apr 1984). As prescribed in 27.202–5(a)(2), substitute the following for the introductory portion of paragraph (a) of the basic provision:

* * * * *

52.227–7 [Amended]

11. In section 52.227–7, amend the introductory paragraph of the provision by removing ''at 27.204–3(c)'' and adding ''in 27.202–5(b)'' in its place.

12. Amend section 52.227–9 by revising the introductory paragraph of the clause to read as follows:

52.227–9 Refund of Royalties.

As prescribed in 27.202–5(c), insert the following clause:

* * * * *

52.227–10 [Amended]

13. In section 52.227–10, amend the introductory paragraph of the clause by removing ''at 27.207–2'' and adding ''in 27.203–2'' in its place.

14. Revise section 52.227–11 and its section heading to read as follows:

52.227–11 Patent Rights—Ownership by the Contractor.

As prescribed in 27.303(b)(1), insert the following clause:

Patent Rights—Ownership by the Contractor (Date)

(a) As used in this clause—

Invention means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant that is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made, when used in relation to any invention, means the conception or first actual reduction to practice of the invention.

Nonprofit organization means a university or other institution of higher education, or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

Practical application means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the contractor made in the performance of work under this contract; provided that in the case of a variety of plant, the date of determination defined in 7 U.S.C. 2401(d), must also occur during the period of contract performance.

(b) *Contractor's Rights*—(1) *Ownership.* The Contractor may elect to retain ownership throughout the world of each subject invention in accordance with the provisions of this clause.

(2) *License.* (i) The Contractor shall retain a nonexclusive paid-up license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(ii) The Contractor's domestic license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(iii) Before revoking or modifying the license, the agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with 37 CFR part 404 and agency regulations, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(c) *Contractor's obligations.* (1) The Contractor shall disclose in writing each subject invention to the contracting officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (*i.e.*, sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the agency within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of

that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the filing of the patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(d) *Government's rights*—(1) *Ownership.* The Contractor shall convey to the agency, on written request, title to any subject invention—

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country.

(iii) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License.* If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest.* (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Convey title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection for that subject invention in any country.

(2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the agency of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent application and any patent issuing thereon covering a subject invention, the following statement: ''This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention.''

(f) *Subcontracts.* (1) The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization. The subcontractor retains all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by FAR Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (i) of this clause.

(g) *Reporting on utilization of subject inventions.* The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (i) of this clause. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without permission of the Contractor.

(h) *Preference for United States industry.* Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(i) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(j) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it shall—

(1) Not assign rights to a subject invention in the United States without the approval of the agency, except where an assignment is made to an organization which has as one of its primary functions the management of inventions, provided that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (j)(4) of this clause.

(k) *Communications.* [*Complete according to agency instructions.*]

(End of clause)

Alternate I (Date). As prescribed in 27.303(b)(3), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements: _____*

[* *Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.*]

Alternate II (Date). As prescribed in 27.303(b)(4), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of the contract and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

Alternate III (Date). As prescribed in 27.303(b)(5), substitute the following paragraph (j)(3) in place of paragraph (j)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75 percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

Alternate IV (Date). As prescribed in 27.303(b)(6), include the following paragraph (e)(5) in paragraph (e) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

52.227–12 [Reserved]

15. Remove and reserve section 52.227–12.

16. Revise sections 52.227–13 through 52.227–17 to read as follows:

52.227–13 Patent Rights—Ownership by the Government.

As prescribed in 27.303(e), insert the following clause:

Patent Rights—Ownership by the Government (Date)

(a) *Definitions.* As used in this clause—

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Made, when used in relation to any invention, means the conception or first actual reduction to practice of the invention.

Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

Subject invention means any invention of the Contractor made in the performance of work under this contract; provided, that in the case of a variety of plant, the date of determination defined in 7 U.S.C. 2401(d) must also occur during the period of contract performance.

(b) *Ownership*—(1) *Assignment to the Government.* The Contractor shall assign to the Government title throughout the world to each subject invention, except to the extent that rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license provided in paragraph (d) of this clause. The request for greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the subject invention pursuant to paragraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause, and to the reservations and conditions deemed to be appropriate by the agency.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the agency an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.* (1) Regarding each subject invention to which the Contractor retains ownership, the Contractor agrees as follows:

(i) The Federal Government will have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(ii) The agency has the right, pursuant to 35 U.S.C. 203 and 210(c) and in accordance with the procedures set forth in 37 CFR 401.6, to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Contractor, assignee, or exclusive licensee refuses the request, the agency has the right to grant the license itself if the agency determines that this action is necessary—

(A) Because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in the field of use;

(B) To alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) To meet requirements for public use specified by Federal regulations and these requirements are not reasonably satisfied by the Contractor, assignee, or licensee; or

(D) Because the agreement required by paragraph (i)—Preference for United States industry—of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of this agreement.

(iii) Upon request, the Contractor shall submit periodic reports no more frequently than annually on the utilization, or efforts to obtain utilization, of a subject invention by the Contractor or its licensees or assignees. These reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, or its licensees, or assignees to be privileged and confidential and is so marked, the agency, to the extent

permitted by law, will not disclose such information to persons outside the Government.

(iv) When licensing a subject invention, the Contractor shall—

(A) Ensure that no royalties are charged on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government;

(B) Refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government;

(C) Provide for this refund in any instrument transferring rights in the subject invention to any party.

(v) When transferring rights in a subject invention, the Contractor shall provide for the Government's rights set forth in paragraphs (c)(1)(i) through (c)(1)(iv) of this clause.

(2) Nothing contained in paragraph (c) of this clause shall be deemed to grant to the Government rights in any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable, nonexclusive, paid-up license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to any of its domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the subject invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in accordance with the procedures in FAR 27.302(i)(2) and 27.304–1(f).

(3) When the Government elects not to apply for a patent in any foreign country, the Contractor retains rights in that foreign country to apply for a patent, subject to the Government's rights in paragraph (c)(1) of this clause.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to educate its employees in order to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters. These procedures shall include the maintenance of laboratory notebooks for equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show the procedures for identifying and disclosing subject inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of these procedures for evaluation and for a determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale (*i.e.,* sale or offer for sale), public use, or publication of the subject invention known to the Contractor. The disclosure shall identify the contract under which the subject invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale, or public use of the subject invention and whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or a longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are none) and that the procedures required by paragraph (e)(1) of this clause have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were none, and listing all subcontracts at any tier containing a patent rights clause or stating that there were none.

(4) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (e)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) Subject to FAR 27.302(i), the Contractor agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (e)(1) and (e)(4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) The Contractor shall disclose to the agency, for the determination of ownership rights, any unreported invention that the Contracting Officer believes may be a subject invention.

(3) Any examination of records under paragraph (f) of this clause will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment.* (*This paragraph does not apply to subcontracts.*) (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) The Contracting Officer will withhold the reserve or balance until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Contracting Officer will not make final payment under this contract before the Contractor delivers to the Contracting Officer, as required by this clause, all disclosures of subject inventions, an acceptable final report, and all due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized. The Contracting Officer will not withhold any amount under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the agency upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

(End of clause)

Alternate I (Date). As prescribed in 27.304–1(e)(4), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____

[**Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.*]

Alternate II (Date). As prescribed in 27.304–1(e)(5), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of this contract, and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under treaties or international agreements with respect to subject inventions made after the date of the amendment.

52.227–14 Rights in Data—General.

As prescribed in 27.409(b)(1), insert the following clause with any appropriate alternates:

Rights in Data—General (Date)

(a) *Definitions.* As used in this clause—

Computer data base means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software means—

(1) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases or computer software documentation.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software, it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithm, process, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) of Alternate II if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and is confidential or privileged, or is copyrighted computer software, including minor modifications of such computer software.

Restricted rights means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(4) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of computer software.

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer data bases and computer software documentation) relating to supplies procured by an agency. This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. Recorded information of a scientific or technical nature that is included in computer data bases is also technical data.

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is

required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(3) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal export control or national security laws or regulations;

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings:

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.* (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer data base for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3)–(4) [Reserved]

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (Date). As prescribed in 27.409(b)(2), substitute the following definition for *Limited rights data* in paragraph (a) of the basic clause:

Limited rights data means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (Date). As prescribed in 27.409(b)(3), insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or

the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following ''Limited Rights Notice'' to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (Date)

(a) These data are submitted with limited rights under Government Contract No. ____ (and subcontract ____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [*Agencies may list additional purposes as set forth in 27.40–2(c)(1) or if none, so state.*]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (Date). As prescribed in 27.409(b)(4), insert the following paragraph (g)(4) in the basic clause:

(g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following ''Restricted Rights Notice'' to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (Date)

(a) This computer software is submitted with restricted rights under Government Contract No. ____ (and subcontract ____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which such computers may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (b)(4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used in lieu thereof:

Restricted Rights Notice Short Form (Date)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (Date). As prescribed in 27.409(b)(5), substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright*—(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (Date). As prescribed in 27.409(b)(6), add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

52.227–15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(c), insert the following provision:

Representation of Limited Rights Data and Restricted Computer Software (Date)

(a) This solicitation sets forth the Government's known delivery requirements for data (as defined in the clause at 52.227–14, Rights in Data—General). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227–16, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227–14 included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data instead. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) By completing the remainder of this paragraph, the offeror represents that it has reviewed the requirements for the delivery of technical data or computer software and states [*offeror check appropriate block*]—

( ) None of the data proposed for fulfilling the data delivery requirements qualifies as limited rights data or restricted computer software; or

( ) Data proposed for fulfilling the data delivery requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

(c) Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of the data should a contract be awarded to the offeror.

(End of provision)

52.227–16 Additional Data Requirements.

As prescribed in 27.409(d), insert the following clause:

Additional Data Requirements (Date)

(a) In addition to the data (as defined in the clause at 52.227–14, Rights in Data—General, or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

(End of clause)

52.227–17 Rights in Data—Special Works.

As prescribed in 27.409(e), insert the following clause:

Rights in Data—Special Works (DATE)

(a) *Definitions.* As used in this clause—

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright—(1) Data first produced in the performance of this contract.* (i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the assignment of, the copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

52.227–18 [Amended]

17. Amend section 52.227–18 by removing from the introductory paragraph of the clause ''27.409(j)'' and adding ''27.409(f)'' in its place.

18. Revise section 52.227–19 and the section heading to read as follows:

52.227–19 Commercial Computer Software License.

As prescribed in 27.409(g), insert the following clause:

Commercial Computer Software License (Date)

(a) Notwithstanding any contrary provisions contained in the Contractor's standard commercial license or lease agreement, the contractor agrees that the Government will have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with Federal laws and the Federal Acquisition Regulation.

(b)(1) The commercial computer software delivered under this contract may not be used, reproduced or disclosed by the Government except as provided in paragraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be—

(i) Used or copied for use with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the Contractor licenses it to the Government without disclosure restrictions. The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

Notice—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. _____:

(End of clause)

19. Amend section 52.227–20 as follows:

a. Revise the introductory paragraph and the date of the clause;

b. In paragraph (a), revise the introductory text and the definitions ''Computer software'' and ''Technical data''; remove '', as used in this clause,'' from the following definitions: ''Data'', ''Form, fit, and function data'', ''Limited rights data'', ''Restricted computer software'', ''SBIR data'', ''SBIR rights'', and ''Unlimited rights''; and remove the word ''formulae'' from the definition ''Form, fit, and function data'' and add ''formulas'' in its place; and

c. In paragraphs (b)(2)(iv) and (c)(2), remove the word ''subparagraph'' and add ''paragraph'' in its place.

The revised text reads as follows:

52.227–20 Rights in Data—SBIR Program.

As prescribed in 27.409(h), insert the following clause:

Rights in Data—SBIR Program (Date)

(a) *Definitions.* As used in this clause—

Computer software means—

(1) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(2) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases or computer software documentation.

* * * * *

Technical data means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer data bases and computer software documentation) relating to supplies procured by an agency. This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. Recorded information of a scientific or technical nature that is included in computer data bases is also technical data.

* * * * *

20. Revise section 52.227–21 to read as follows:

52.227–21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(j), insert the following clause:

Technical Data Declaration, Revision, and Withholding of Payment—Major Systems (Date)

(a) *Scope of declaration.* The Contractor shall provide, in accordance with 41 U.S.C. 418a (d)(7), the following declaration with respect to all technical data that relate to a major system and that are delivered or required to be delivered under this contract or that are delivered within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth in the contract. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (DATE)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government may, at any time during the period covered by this clause, direct correction of any deficiencies that are not in compliance with contract requirements. The corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also shall, at the request of the Contracting Officer, revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may withhold payment as a reserve up to an amount not exceeding $100,000 or 5 percent of the amount of this contract, whichever is less, if the Contractor fails to—

(i) Make timely delivery of the technical data;

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

(iii) Make the corrections required by paragraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) The Contracting Officer may withhold the reserve until the Contractor has complied with the direction or requests of the Contracting Officer or determines that the deficiencies relating to delivered data arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The withholding of any reserve under this clause, or the subsequent payment of the reserve, shall not be construed as a waiver of any Government rights.

(End of clause)

52.227–22 [Amended]

21. In section 52.227–22, amend the introductory paragraph by removing ''27.409(r)'' and adding ''27.409(k)'' in its place.

52.227–23 [Amended]

22. In section 52.227–23, amend the introductory paragraph by removing ''27.409(s)'' and adding ''27.409(l)'' in its place.

[FR Doc. 03–12891 Filed 5–27–03; 8:45 am]

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Wednesday,
May 28, 2003

Part IV

Securities and Exchange Commission

17 CFR Part 240

Improper Influence on Conduct of Audits; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 34–47890; IC–26050; FR–71; File No. S7–39–02]

RIN 3235–AI67

Improper Influence on Conduct of Audits

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by section 303 of the Sarbanes-Oxley Act of 2002, we are adopting rules to prohibit officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to coerce, manipulate, mislead, or fraudulently influence the auditor of the issuer's financial statements if that person knew or should have known that such action, if successful, could result in rendering the financial statements materially misleading.

EFFECTIVE DATE: June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Michael J. Kigin, Associate Chief Accountant, or Robert E. Burns, Chief Counsel, at (202) 942–4400, Office of the Chief Accountant, or David M. Estabrook, Associate Chief Accountant, at (202) 942–4510, Division of Enforcement, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are redesignating rule 13b2–2 of Regulation 13B–2 [1] as rule 13b2–2(a) and adding new rules 13b2–2(b) and (c).

I. Executive Summary

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the ''Act'') [2] was enacted. Section 303(a) of the Act states:

> It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

As mandated by the Act, the Commission is adopting rules to implement section 303(a).[3] The rules, in combination with the existing rules under Regulation 13B–2, are designed to ensure that management makes open and full disclosures to, and has honest discussions with, the auditor of the issuer's financial statements. These rules prohibit officers or directors of an issuer, or persons acting under their direction, from subverting the auditor's responsibilities to investors to conduct a diligent audit of the financial statements and to provide a true report of the auditor's findings.

II. Discussion of Final Rules

A. Introduction

The new rules supplement the rules currently in Regulation 13B–2, which address the falsification of books, records and accounts [4] and false or misleading statements, or omissions to make certain statements, to accountants.[5] New rule 13b2–2(b)(1) specifically prohibits officers and directors, and persons acting under their direction, from coercing, manipulating, misleading, or fraudulently influencing (collectively referred to herein as ''improperly influencing'') the auditor of the issuer's financial statements when the officer, director or other person knew or should have known that the action, if successful, could result in rendering the issuer's financial statements materially misleading.[6] New rule 13b2–2(b)(2) provides examples of actions that improperly influence an auditor that could result in ''rendering the issuer's financial statements materially misleading.'' This paragraph also clarifies that such actions should not occur at any time that the auditor is called upon to exercise professional judgment related to the issuer's financial statements. New rule 13b2–2(c) applies similar provisions to audits of investment companies' financial statements.

B. Discussion

Definition of ''issuer.'' In the proposing release, we noted that the definition of the term ''issuer'' in section 3 of the Securities Exchange Act of 1934 (''Exchange Act'') would apply to the term as used in the rule. This definition includes, with certain exceptions, any person who issues or proposes to issue securities.[7] One commenter noted that this definition would include all private issuers of securities and suggested that we use the definition of ''issuer'' in the Sarbanes-Oxley Act.[8] The definition in that Act

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[1] 17 CFR 240.13b2–1 *et seq.*

[2] Pub. L. 107–204, 116 Stat. 745 (2002).

[3] Section 303 of the Act states:

> (a) RULES TO PROHIBIT. It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.
>
> (b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.
>
> (c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.
>
> (d) DEADLINE FOR RULEMAKING.—The Commission shall—
>
> (1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and
>
> (2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

[4] 17 CFR 240.13b2–1 states that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act of 1934 (''Exchange Act''). Section 13(b)(2) of the Exchange Act states:

> Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall (A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. * * *

[5] 17 CFR 240.13b2–2 states that no director or officer of an issuer, in connection with an audit or examination of the issuer's financial statements or the preparation of any document or report to be filed with the Commission, directly or indirectly shall (a) make or cause to be made a materially false or misleading statement to an accountant or (b) omit to state, or cause another person to omit to state, any material fact necessary to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant. In redesignating Rule 13b2–2 as Rule 13b2–2(a), technical changes have been made to clarify that the rule addresses false or misleading statements made ''to an accountant in connection with'' an audit, review or preparation of any document or report required to be filed with the Commission.

[6] The rules were proposed in Release Nos. 34–46685; IC–25773; File No. S7–39–02 (October 18, 2002) [67 FR 65325] (''proposing release'').

[7] The new rules are included in Regulation 13B–2 under the Securities Exchange Act of 1934 (''Exchange Act''). Section 3(a)(8) of the Exchange Act, 15 U.S.C. 78c(a)(8), defines ''issuer'' as follows:

> The term ''issuer'' means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term ''issuer'' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except with respect to equipment-trust certificates or like securities, the term ''issuer'' means the person by whom the equipment or property is, or is to be, used.

[8] Letter from Paul B. Uhlenhop, dated November 8, 2002.

generally would limit application of the rule to issuers whose securities are registered with the Commission under section 12 of the Exchange Act, that are required to file reports with the Commission under section 15(d) of the Exchange Act, or that have filed registration statements with the Commission that have not yet become effective and have not been withdrawn.[9] We continue to believe that the definition of the term ''issuer'' in section 3 of the Exchange Act applies to the use of the term in the new rules.[10] The term ''issuer,'' as defined in the Exchange Act, has been used in Rule 13b2–2 since it was adopted in 1979,[11] and we believe that the amendments do not require a change in the meaning of the term. In addition, because the new rule specifically applies to improperly influencing auditors of issuers' financial statements ''that are required to be filed with the Commission,'' the commenter's concern that this definition would extend the scope of the rule to all private issuers of securities has been addressed. Accordingly, the term ''issuer'' in the new rule should be defined as stated in section 3 of the Exchange Act.

Definition of ''officer.'' New rule 13b2–2(b)(1) addresses activities by an officer or director of an issuer, or any other person acting under the direction of an officer or director.[12] The Commission has defined the term ''officer'' to include the company's ''president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.''[13] The term 'executive officer' includes an issuer's chief executive officer and other officers who perform policy-making functions for the issuer.[14]

Some commenters suggested that the term ''officer'' should include all those responsible for corporate governance matters[15] or who influence the preparation of an issuer's financial statements.[16] Commenters also suggested that the definition include an issuer's general counsel or chief legal officer.[17] We do not believe at this time that it is necessary to amend the existing definition of ''officer'' or ''executive officer,'' or to write a new definition specifically for Regulation 13B–2. The existing definitions cover, among others, those who set corporate governance policies and legal policies for an issuer. Should we note that members of management not encompassed by the existing definitions of ''officer'' and ''executive officer'' are engaging in the conduct addressed in the rule, we may revisit this issue.

Definition of ''under the direction.'' As noted above, new rule 13b2–2(b)(1) covers the activities of not only officers and directors of the issuer who engage in an attempt to misstate financial statements but also ''any other person acting under the direction thereof.'' Activities by such ''other persons'' currently may constitute violations of the anti-fraud or other provisions of the securities laws[18] or aiding or abetting[19] or causing[20] an issuer's violations of the securities laws. Section 303(a) and the new rule provide the Commission[21] with an additional means of addressing efforts by persons acting under the direction of an officer or director to improperly influence the audit process and the accuracy of the issuer's financial statements.

As noted in the proposing release, we interpret Congress' use of the term ''direction'' to encompass a broader category of behavior than ''supervision.''[22] In other words, someone may be ''acting under the direction'' of an officer or director even if they are not under the supervision or control of that officer or director. Such persons might include not only the issuer's employees but also, for example, customers, vendors or creditors who, under the direction of an officer or director, provide false or misleading confirmations or other false or misleading information to auditors, or who enter into ''side agreements'' that enable the issuer to mislead the auditor.[23] In appropriate circumstances, persons acting under the direction of officers and directors also may include not only lower level employees of the issuer[24] but also other partners or employees of the accounting firm (such as consultants or forensic accounting

[9] Section 2(a)(7) of the Act, which states:

The term ''issuer'' means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

[10] The Commission has broad rulemaking authority to prescribe illegal acts that contribute to the falsification of financial statements or the issuance of false or misleading audit reports. *See, e.g.,* sections 10, 10A and 23(a) of the Exchange Act, 15 U.S.C. 78j, 78j–1 and 78s(a). *See also* section 3(a) of the Sarbanes-Oxley Act of 2002, which states, ''The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.''

[11] Exchange Act Release No. 15570 (February 15, 1979) [44 FR 10970].

[12] The rule applies to foreign private issuers as well as domestic issuers. In applying the rule to foreign private issuers, the terms ''officer'' and ''director'' would indicate those performing equivalent functions under the local laws and corporate governance practices where the issuer is domiciled.

[13] Rule 3b–2 under the Exchange Act, 17 CFR 240.3b–2. A person may be an ''officer'' for purposes of Rule 3b–2 regardless of the person's title or the legal entity with which he or she is associated. For example, officers of wholly owned subsidiaries of public companies and promoters may be ''officers'' of public companies.

The definition of ''director'' under the Exchange Act has a similar functional and flexible nature. *See* section 3(a)(7) of the Exchange Act, 15 U.S.C. 78c(a)(7), which states, ''The term 'director' means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.''

[14] Rule 3b–7 under the Exchange Act, 17 CFR 240.3b–7, states, ''The term 'executive officer,' when used with reference to a registrant, means its president, vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.''

[15] Letter from the National Association of State Boards of Accountancy (''NASBA'') dated November 25, 2002.

[16] Letter from Transparency International—USA, dated November 8, 2002.

[17] Letters from PricewaterhouseCoopers LLP (''PwC'') dated November 25, 2002 and Transparency International—USA, dated November 8, 2002.

[18] *See, e.g.,* Section 10(b) of the Exchange Act, 15 U.S.C. 78j, and Rule 10b–5 thereunder, 17 CFR 240.10b–5.

[19] *See, e.g.,* section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

[20] *See, e.g.,* section 21C of the Exchange Act, 15 U.S.C. 78u–3.

[21] Section 303(b) of the Act states, ''The Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.''

[22] *See, e.g.,* Webster's Dictionary (9th edition), which defines ''direction'' to include not only guidance or supervision of action or conduct but also explicit instruction.

[23] *See, e.g., In the Matter of Ronald G. Davies,* Accounting and Auditing Enforcement Release No. (''AAER'') 1281 (June 29, 2000), which states, in part,

In early 1998, Davies learned information that should have alerted him to the fact that Hybrid's sales personnel had concealed the existence of the side letter from the Company's management and auditors. When Hybrid and its auditors, as part of the preparation of the Company's financial statements, sought confirmation that Ikon had received no right of return, Davies provided a misleading audit response to the Company. * * * Davies actions described above allowed Hybrid personnel to circumvent internal controls and make false statements to the Company's auditors, and caused Hybrid to make material misrepresentations and file inaccurate reports with the Commission. * * * Based on the foregoing, Davies caused violations of Sections 10(b), 13(a), 13(b)(5) of the Exchange Act and Rules 10b–5, 12b–20, 13a–13, 13b2–1, and 13b2–2 thereunder.

[24] *See, e.g., In the Matter of John K. Bradley,* AAER 1568 (June 5, 2002).

specialists retained by counsel for the issuer) and attorneys, securities professionals, or other advisers who, for example, pressure an auditor to limit the scope of the audit, to issue an unqualified report on the financial statements when such a report would be unwarranted,[25] to not object to an inappropriate accounting treatment, or not to withdraw an issued audit report on the issuer's financial statements. In the case of a registered investment company, persons acting under the direction of officers and directors of the investment company may include, among others, officers, directors, and employees of the investment company's investment adviser, sponsor, depositor, administrator, principal underwriter, custodian, transfer agent, or other service providers.[26]

Commenters on this discussion in the proposing release were divided. Some believe that some form of specific instruction or direction from an officer or director should be required before the rule should apply to ''other persons.'' [27] Others expressed the opposite view that no specific direction should be required,[28] that the conduct should be considered illegal whether or not the person was acting under the direction of an officer or director,[29] and that the rule should apply to anyone who lies to or misleads the auditor [30] and to all those who have responsibilities or activities relevant to the financial statements.[31] Still others suggested that we neither define the term ''under the direction'' nor provide examples.[32] As noted above, we continue to believe that ''direction'' encompasses a broader category of behavior than supervision, and may include the activities of third parties who participate in an effort to improperly influence the auditor when those third parties knew or should have known that the effect of their conduct would be to render an issuer's financial statements materially misleading.

Some commenters were concerned that including customers, vendors and creditors in the discussion of those persons who, in appropriate circumstances, might be considered to be acting under the direction of an officer or director would have a chilling effect on communications between those persons and the auditors.[33] Other commenters noted that this chilling effect would be enhanced by the Commission's position in the proposing release that negligently misleading the auditor was sufficient conduct to trigger application of the rule.[34] In particular, some commenters noted that a misleading legal analysis should violate the rule only if accompanied by fraudulent or ''bad'' intent on the part of the attorney providing the analysis.[35] These comments would appear to be based on the premise that in the past the Commission has not addressed the negligent communication of misleading information to auditors and that the new rule, therefore, would chill communications during the audit process and thereby lower the quality of the audit process. To the contrary, for many years we have initiated enforcement actions against those who, by negligently providing misleading confirmations to auditors, cause [36] an issuer to violate the financial reporting or books and records provisions of the Securities Exchange Act of 1934.[37] The new rule, by providing an additional means of addressing such conduct, should provide more credibility and integrity to the audit process. We believe that third parties providing information or analyses to an auditor should exercise reasonable attention and care in those communications.[38] A primary purpose for enactment of the Sarbanes-Oxley Act is the restoration of investor confidence in the integrity of financial reports, which will require the cooperation of all parties involved in the audit process. We do not intend to hold any party accountable for honest and reasonable mistakes or to sanction those who actively debate accounting or auditing issues. We do believe, however, that those third parties who, under the direction of an issuer's officers or directors, mislead or otherwise improperly influence auditors when they know or should know that their conduct could result in investors being provided with misleading financial statements or a misleading audit report, should be subject to sanction by the Commission.[39]

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[25] 'An 'unqualified opinion'' [or unqualified report] states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles.'' AICPA, Statement on Auditing Standards No. (''SAS'') 58, ''Reports on Audited Financial Statements,'' ¶ 10; Codification of Statements on Auditing Standards (''AU'') § 508.10.

[26] Some of these individuals also would be covered under provisions of the rule tailored to investment companies. *See* section II.C. of this release, *Issues Related to Investment Companies.*

[27] *See, e.g.,* letters from Sidley Austin Brown & Wood dated December 30, 2002, BDO Seidman LLP dated November 25, 2002, Plains All American Pipeline L.P. dated November 25, 2002, Dechert dated November 25, 2002, National Association of Real Estate Investment Trusts dated November 25, 2002, and Compass Bancshares, Inc. dated November 25, 2002.

[28] *See, e.g.,* letter from Transparency International—USA, dated November 8, 2002.

[29] *See, e.g.,* letter from America's Community Bankers dated November 25, 2002.

[30] *See, e.g.,* letter from the American Institute of Certified Public Accountants dated November 25, 2002.

[31] *See, e.g.,* letter from PwC dated November 25, 2002.

[32] *See, e.g.,* letters from the American Bar Association dated December 13, 2002 and The Business Roundtable dated November 29, 2002.

[33] *See, e.g.*, letters from Wells Fargo dated November 22, 2002, Dorsey & Whitney dated November 25, 2002, Deloitte & Touche dated November 27, 2002, Sidley Austin Brown & Wood dated December 30, 2002, America's Community Bankers dated November 25, 2002, and BDO Seidman LLP dated November 25, 2002.

[34] *See, e.g.*, letter from Ernst & Young LLP dated November 25, 2002.

[35] *See, e.g.*, letters from Wells Fargo dated November 22, 2002, American Bar Association dated December 13, 2002, America's Community Bankers dated November 25, 2002, National Association of Real Estate Investment Trusts dated November 25, 2002, Intel Corporation dated November 26, 2002, and Compass Bancshares, Inc. dated November 25, 2002.

[36] *KPMG LLP* v. *Securities and Exchange Commission,* 289 F. 3d 109, 126 (D.C. Cir. 2002), which states, ''We affirm the Commission's determination that negligence is an appropriate basis for violations underlying a Section 21C cease-and-desist order. * * *'' *See In the Matter of KPMG Peat Marwick LLP,* AAER 1360 (January 19, 2001), which states, ''We hold today that negligence is sufficient to establish ''causing'' liability under Exchange Act section 21C(a), at least in cases in which a person is alleged to ''cause'' a primary violation that does not require scienter. Therefore, if Peat Marwick acted at least negligently with respect to whether its conduct would contribute to PORTA's violations, Peat Marwick is liable under Section 21C(a) as a cause of those violations.''

[37] *See, e.g., In the Matter of Donald F. Marcus and In the Matter of Harry P. Adler, AAER 1715* (February 10, 2003); *SEC* v. *John F. Mortell, et al.*, AAER 1569 (June 5, 2002); *In the Matter of Ronald G. Davies,* AAER 1281 (June 29, 2000); and *In the Matter of Terry R. Kuntz and Richard J. Scheer,* AAER 720 (September 26, 1995), which states, in part,

Kuntz and Scheer knew or should have known that their conduct contributed to the fraudulent activities of Assix management. The September 13, 1991 letter supplied by Kuntz, coupled with the invoices provided by Scheer, assisted Assix in filing a materially false and misleading Annual Report and Quarterly Report with the Commission * * *.

Accordingly, Kuntz's conduct in providing the September 13, 1991 letter and Scheer's conduct in providing the invoices to the company caused Assix to violate Sections 10(b), 13(a) and 13(b) of the Exchange Act and Rules 10b–5, 12b–20, 13a–1, 13a–13 and 13b2–2 thereunder. By falsifying these documents, Kuntz and Scheer also caused Assix's violation of Rule 13b2–1 and Section 13(b)(2)(A). Further, Kuntz and Scheer also caused Assix's controller to violate 13b2–2 by providing materially false and misleading documents which were used by Assix's auditors * * *.

In this instance, Kuntz and Scheer subverted the audit process by creating false documents which assisted Assix in filing materially false and misleading statements, recording false revenue, and lying to its auditors. The Commission will not tolerate conduct by third party vendors such as that described herein, which poses a very real threat to the integrity of the disclosure process.

[38] *Id.*

[39] *See, e.g., In the Matter of Terry R. Kuntz and Richard J. Scheer,* AAER 720 (September 26, 1995), which states, in part, ''The Commission will not tolerate conduct by third party vendors * * *, which poses a very real threat to the integrity of the disclosure process.''

''*Fraudulently influence.*'' New rules 13b2–2(b)(1) and (c)(2) address certain actions ''to coerce, manipulate, mislead, or fraudulently influence'' the auditor of the issuer's financial statements. Much of the conduct addressed by the rules, particularly efforts to ''manipulate or mislead'' the auditor, generally would be subject to other provisions of the securities laws and the Commission's regulations, including the existing rules in Regulation 13B–2.[40] The new rules, however, would provide an additional means to address conduct to coerce, manipulate, mislead, or fraudulently influence an auditor during his or her examination or review of the issuer's financial statements, including conduct that did not succeed in affecting the audit or review.[41]

In the proposing release, we noted that in the rule the word ''fraudulently'' modifies influence but not coerce, manipulate or mislead. Several commenters suggested that the Commission should amend this interpretation and state that ''fraudulently'' modifies all four types of conduct.[42] Some commenters indicated that intent to materially mislead the auditor should be required[43] and others stated any attempt to purposely skew the issuer's disclosure should violate the rule.[44] One commenter noted that fraudulent intent should not be required for officers, directors or employees, but should be required for third parties such as vendors and customers.[45]

We have decided not to amend our view that the word ''fraudulently'' modifies only ''influence.'' To emphasize this point, we have reordered the words to place ''fraudulently influence'' at the end of the list instead of at the beginning.[46] The new rule, therefore, reads that no officer or director or person acting under his or her direction ''shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence'' any accountant engaged in the performance of an audit or review of an issuer's financial statements.

In the context of the new rule, the words ''coerce'' and ''manipulate'' imply compelling the auditor to act in a certain way through pressure, threats, trickery, intimidation or some other form of purposeful action,[47] and further modifiers are not necessary. Regarding the term ''mislead,'' pre-existing rule 13b2–2 for many years has prohibited officers and directors from directly or indirectly making or causing to be made materially misleading statements to auditors. Causing[48] misleading statements to be made to auditors has included, and will continue to include, an officer or director entering into an arrangement with a third party to send a misleading confirmation or to provide other misleading information or data to the auditor of the issuer's financial statements.[49] The new rule does not alter this approach. As noted above, a primary purpose for enactment of the Sarbanes-Oxley Act is the restoration of investor confidence in the integrity of financial reports. Such a purpose would not be served by imposing what would amount to a new scienter requirement on the pre-existing provision prohibiting officers and directors from causing misleading statements or omissions to be made to auditors.

Types of Conduct. As stated in the proposing release, types of conduct that the Commission believes could constitute improper influence (if the person engaged in that conduct knows or should know that the conduct, if successful, could result in rendering the issuer's financial statements materially misleading) include, but are not limited to, directly or indirectly:

- Offering or paying bribes or other financial incentives, including offering future employment or contracts for non-audit services,
- Providing an auditor with an inaccurate or misleading legal analysis,
- Threatening to cancel or canceling existing non-audit or audit engagements if the auditor objects to the issuer's accounting,
- Seeking to have a partner removed from the audit engagement because the partner objects to the issuer's accounting,
- Blackmailing, and
- Making physical threats.

The facts and circumstances of each case would be relevant to determining whether the conduct would violate the new rule.

Commenters had varied reactions to the illustrative list of the types of conduct that could be covered by the rule. Some commenters suggested that providing inaccurate or misleading information to internal auditors, as well as to independent auditors, should be deemed a violation of the rule.[50] While we believe that an officer or director, or person acting under the direction of an officer or director, providing misleading information to an internal auditor would be relevant to the status of the issuer's internal accounting controls or disclosure controls, it would not appear to be related to the purpose of section 303 of the Act and the new rule, which is to protect and enhance the independent audit function.[51]

Other commenters suggested that, due to other safeguards in the Act, we should delete from the illustrative list the actions of offering future employment with the issuer[52] and threatening to cancel audit or non-audit contracts for services.[53] These commenters indicated that section 206 of the Act, which requires a one-year ''cooling off'' period from the time certain officers of the issuer last participated as a partner or employee of

[40] *See, e.g., In the Matter of Donald F. Marcus* and In the Matter of Harry P. Adler, AAER 1715 (February 10, 2003); *SEC* v. *John F. Mortell, et al.*, AAER 1569 (June 5, 2002); *In the Matter of Ronald G. Davies,* AAER 1281 (June 29, 2000); and *In the Matter of Terry R. Kuntz and Richard J. Scheer,* AAER 720 (September 26, 1995).

[41] It is the act of coercing, manipulating, misleading, or fraudulently influencing the auditor, for the purpose of rendering misleading financial statements, that is unlawful. There is no requirement in section 303(a) of the Act that the purpose be achieved.

[42] *See, e.g.*, letters from Wells Fargo dated November 22, 2002, the American Bar Association dated December 13, 2002, Sidley Austin Brown & Wood dated December 20, 2002, BDO Seidman LLP dated November 25, 2002, and Dechert dated November 25, 2002.

[43] Letter from Dorsey & Whitney LLP dated November 25, 2002.

[44] Letter from Association for Investment Management and Research dated December 12, 2002.

[45] Letter from Ernst & Young dated November 25, 2002.

[46] *See* letter from Robert Waxman dated November 25, 2002.

[47] *See* letter from Dorsey & Whitney LLP dated November 25, 2002.

[48] *KPMG LLP* v. *Securities and Exchange Commission,* 289 F. 3d 109, 126 (D.C. Cir. 2002), which states, ''We affirm the Commission's determination that negligence is an appropriate basis for violations underlying a Section 21C cease-and-desist order* * *.'' *See In the Matter of KPMG Peat Marwick LLP,* AAER 1360 (January 19, 2001), which states, ''We hold today that negligence is sufficient to establish 'causing' liability under Exchange Act section 21C(a), at least in cases in which a person is alleged to 'cause' a primary violation that does not require scienter. Therefore, if Peat Marwick acted at least negligently with respect to whether its conduct would contribute to PORTA's violations, Peat Marwick is liable under Section 21C(a) as a cause of those violations.''

[49] *See, e.g., In the Matter of Donald F. Marcus* and *In the Matter of Harry P. Adler,* AAER 1715 (February 10, 2003); *SEC* v. *John F. Mortell, et al.*, AAER 1569 (June 5, 2002); *In the Matter of Ronald G. Davies,* AAER 1281 (June 29, 2000); and *In the Matter of Terry R. Kuntz and Richard J. Scheer,* AAER 720 (September 26, 1995).

[50] *See, e.g.*, letters from HarborView LLC dated October 29, 2002 and Council of Institutional Investors dated November 22, 2002.

[51] To the extent that the work of the internal auditor is used by the independent auditor in conducting an audit or review of the issuer's financial statements, however, misleading or inaccurate information provided to the internal auditor may be deemed to be provided to the independent auditor.

[52] *See, e.g.* letter from Deloitte & Touche dated November 27, 2002.

[53] *See, e.g.* letters from Deloitte & Touche dated November 27, 2002, European Commission dated November 25, 2002, and Ernst & Young dated November 25, 2002.

the accounting firm in an audit of the issuer's financial statements to the commencement of the audit,[54] provides sufficient protection against offering employment as a means of improperly influencing the auditor. Similarly, commenters indicated that the provisions in sections 201 and 202 requiring audit committee pre-approval of audit and non-audit services should be an adequate safeguard against the use of such services to improperly influence auditors.[55] Sections 201, 202 and 206, as well as the remainder of Title II of the Act, are designed to enhance the independence of auditors. We believe, however, services and employment opportunities that would not impair an auditor's independence nonetheless could provide financial incentives used to improperly influence or otherwise deter auditors from performing an appropriate audit. Accordingly, such actions continue to be possible mechanisms, assuming the other criteria in the rule are met, for violating the new rule.

Some commenters suggested qualifying other examples in the list. For example, commenters indicated that canceling or threatening to cancel an audit or non-audit engagement should be within the purview of the rule only if the action was taken because the auditor objects to the issuer's accounting.[56] One commenter expressed this notion in terms of a clear *quid pro quo* linking the offering of a contract for non-audit services with the intent to fraudulently influence the audit.[57] We acknowledge that there may be many legitimate reasons to replace individuals on an audit or review engagement, or to award or cancel audit or non-audit services. Such actions alone do not violate the new rule. When such actions, however, become the consideration used by an officer or director, or person acting under the direction of an officer or director, to improperly influence the auditor, and that person knew or should have known that the result of his or her conduct could be materially misleading financial statements, then the actions fall within the scope of the rule.

Still other commenters suggested adding to the list activities such as: knowingly providing to the auditor inadequate or misleading information that is key to the audit,[58] transferring managers or principals from the audit engagement,[59] and when predicated by an intent to defraud, verbal abuse, creating undue time pressure on the auditors, not providing information to auditors on a timely basis, and not being available to discuss matters with auditors on a timely basis.[60] In the appropriate circumstances and upon satisfaction of the criteria in the rule, each of these actions could result in improper influence on the auditor.

Finally, most commenters addressing the issue stated that the Commission should not place in the rule any examples of the types of conduct that might violate the rule,[61] and we have not done so.

Definition of ''independent public or certified public accountant.'' The new rule addresses the improper influence of ''any independent public or certified public accountant'' engaged in the performance of an audit or review of an issuer's financial statements.[62] Prior to the adoption of the Act, similar phrases commonly were used in the securities laws and the Commission's regulations to refer to the accountant providing audit and review services to a Commission registrant. Although the Act, in anticipation of accounting firms registering with the Public Company Accounting Oversight Board (the ''Board''),[63] changed several of these references,[64] such terms continue to appear in certain sections of the securities laws[65] and related schedules.[66] We believe that section 303 of the Act includes all accountants[67] engaged in auditing or reviewing an issuer's financial statements or issuing attestation reports[68] to be filed with the Commission. Once firms are registered with the Board, the term ''independent public or certified public accountant,'' as used in the new rule, would include registered public accounting firms[69] and persons associated with such a public accounting firm,[70] as defined in the Act. While some commenters expressed concern with the use of different definitions to describe the independent auditor,[71] they generally

[54] Section 206 of the Act adds section 10A(l) to the Exchange Act, which states:

It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.

[55] Section 201 of the Act prohibits the auditor of the issuer's financial statements from providing certain non-audit services for that issuer and permits other non-audit services to be performed only if the service is pre-approved by the issuer's audit committee. Section 202 of the Act describes the pre-approval process.

[56] *See, e.g.*, letter from America's Community Bankers dated November 25, 2002.

[57] Letter from KPMG LLP dated November 25, 2002.

[58] *See, e.g.* letter from Deloitte & Touche dated November 27, 2002.

[59] *See, e.g.*, letter from Robert Waxman dated November 25, 2002.

[60] Letter from BDO Seidman LLP dated November 25, 2002.

[61] *See, e.g.*, letters from America's Community Bankers dated November 25, 2002, Software Finance & Tax Executives Council dated November 25, 2002, New York State Bar Association dated November 25, 2002, KPMG LLP dated November 25, 2002, and the American Institute of Certified Public Accountants dated November 25, 2002.

[62] Section 303(a) uses the phrase ''independent public or certified accountant,'' which appears, for example, in items 25, 26 and 27 of Schedule A to the Securities Act of 1933. 15 U.S.C. 77aa(25), (26) and (27). Since the passage of the 1933 Act, however, the general reference to ''certified accountant'' has been replaced by ''certified public accountant.'' To avoid any possible confusion, we have used ''certified public accountant'' in the new rules.

[63] *See* section 102 of the Act, which provides that beginning 180 days after the Commission determines that the Board, as established by Title I of the Act, is appropriately organized and has the capacity to carry out and enforce the requirements of that title, it shall be unlawful for any person that is not a registered public accounting firm to prepare any audit report with respect to any issuer.

[64] *See, e.g.*, sections 205(b) and (c) of the Act.

[65] *See, e.g.*, section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and section 8(e) of the Securities Act of 1933 (the ''1933 Act''), 15 U.S.C. 77h(e).

[66] *See, e.g.*, items 25, 26 and 27 of Schedule A of the 1933 Act, 15 U.S.C. 77aa(25), (26) and (27).

[67] The rule would apply regardless of whether the accountant was a certified public accountant. For example, some states require accountants to have years of experience before being deemed to be a CPA. Efforts to mislead such an individual during his or her performance of audit procedures would fall within the rules. In addition, the term ''independent public or certified public accountant'' includes accountants in foreign countries who engage in auditing or reviewing an issuer's financial statements or issuing attestation reports to be filed with the Commission, regardless of the title or designation used in those countries.

[68] *See, e.g.*, section 404 of the Act, which mandates that the Commission prescribe rules that require (1) each annual report filed under sections 13(a) and 15(d) of the Exchange Act contain a management statement of responsibilities for, and assessment of the effectiveness of, the issuer's internal control structure and procedures for financial reporting, and (2) the auditor to attest to, and report on, the assessment made by management.

[69] Section 2(a)(12) of the Act defines ''registered public accounting firm'' to mean ''a public accounting firm registered with the Board in accordance with this Act.''

[70] Section 2(a)(9)(A) of the Act defines ''person associated with a public accounting firm'' (or with a ''registered public accounting firm'') to mean ''any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—(i) shares in the profits of, or receives compensation in any other form from, that firm, or (ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.'' The Board, in section 2(a)(9)(B) of the Act, is given limited authority to exempt persons performing only ministerial tasks.

[71] *See, e.g.*, letters from Independent Community Bankers of America dated November 25, 2002 and Robert Waxman dated November 25, 2002.

did not object to the use of the term in the new rule.[72]

''*Engaged in the performance of an audit.*'' New rules 13b2–2(b)(1) and (c)(2) track the language in section 303(a) of the Act regarding the improper influence of an accountant ''engaged in the performance of an audit'' of the issuer's financial statements. Both the Commission[73] and the accounting profession[74] have recognized that the need for an auditor to maintain an independent and unbiased attitude begins when the accountant is selected to perform audit or review services and continues until there is a formal or informal public notification that the professional relationship has ended.[75] To effectuate the intent of Congress, we believe the phrase ''engaged in the performance of an audit'' should be given a broad reading. We believe Congress intended that the phrase encompass the professional engagement period and any other time the auditor is called upon to make decisions or judgments regarding the issuer's financial statements, including during negotiations for retention of the auditor and subsequent to the professional engagement period when the auditor is considering whether to issue a consent on the use of prior years' audit reports. The new rules, therefore, would apply throughout the professional engagement and after the professional engagement has ended when the auditor is considering whether to consent to the use of, reissue, or withdraw prior audit reports. In limited circumstances, the new rules also may apply before the professional engagement period begins. For example, the new rules would apply if an officer, director, or person acting under the direction of an officer or director, offers to engage an accounting firm subject to a condition that could result in rendering the financial statements materially misleading, such as a condition that the firm issue an unqualified audit report on financial statements that do not conform with generally accepted accounting principles, or a condition that the firm limit the scope or performance of audit or review procedures in violation of generally accepted auditing standards.

Commenters generally agreed with this approach.[76] Some suggested that we define in the rule the phrase ''engaged in the performance of the audit.''[77] We believe, however, that the longer discussion in this release provides a better context to understand the meaning of the phrase.

''*Rendering financial statements materially misleading.*'' One of the criteria that must be met in order for the improper influence on the auditor by officers, directors, or persons acting under their direction to be actionable under the new rule is that the improper influence, if successful, could result in ''rendering [the issuer's] financial statements materially misleading.''[78] Because the financial statements are prepared by management and the auditor conducts an audit or review of those financial statements, the auditor would not directly ''render [the] financial statements materially misleading.'' Rather, the auditor might be improperly influenced to, among other things, issue an unwarranted report on the financial statements,[79] including suggesting or acquiescing in the use of inappropriate accounting treatments[80] or not proposing adjustments required for the financial statements to conform with generally accepted accounting principles.[81] An auditor also might be coerced, manipulated, misled, or fraudulently influenced not to perform audit or review procedures that, if performed, might divulge material misstatements in the financial statements. Other examples of activities that would fall within the rule would be for an officer, director, or person acting under an officer or director's direction, to improperly influence an auditor either not to withdraw a previously issued audit report when required by generally accepted auditing standards,[82] or not to communicate appropriate matters to the audit committee.[83] New rule 13b2–2(b)(2) makes it clear that subparagraph (b)(1) would apply in such circumstances. As noted, the rule is not limited to the audit of the annual financial statements, but would include, among other things, improperly influencing an auditor during a review of interim financial statements[84] or in connection with the issuance of a consent to the use of an auditor's report.[85] Conducting reviews of interim financial statements and issuing consents to use past audit reports are sufficiently connected to the audit process, and improper influences during those processes are sufficiently connected to the harms that the Act seeks to prevent, that they should be within the scope of the rule. The list of examples in the rule is only illustrative; other actions also could result in

[72] *See, e.g.*, letter from PwC dated November 25, 2002.

[73] Rule 2–01(f)(5)(ii) of Regulation S–X, 15 CFR 210.2–01(f)(5)(ii), which defines the ''professional engagement period'' to be: ''The period of the engagement to audit or review the audit client's financial statements or to prepare a report filed with the Commission,'' and states: ''(A) The professional engagement period begins when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures, whichever is earlier; and (B) The professional engagement period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client.''

[74] American Institute of Certified Public Accountants (''AICPA'') Code of Professional Conduct, ET § 101.02, which states:

The period of a professional engagement starts when the [AICPA] member begins to perform any professional engagement requiring independence for an enterprise, lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification of the termination of the professional relationship either by the member, by the enterprise, or by the issuance of a report, whichever is later. Accordingly, the professional engagement does not end with the issuance of a report and recommence with the signing of the following year's engagement.

[75] Changes in the principal auditor of an issuer's financial statements are reported under item 4 of Form 8–K, 17 CFR 249.308. *See also* item 304 of Regulation S–K, 17 CFR 229.304, and item 304 of Regulation S–B, 17 CFR 228.304.

[76] *See, e.g.,* letters from Deloitte & Touche dated November 27, 2002, Independent Community Bankers of America dated November 25, 2002, the American Institute of Certified Public Accountants dated November 25, 2002, and Ernst & Young LLP dated November 25, 2002.

[77] *See, e.g.,* letters from America's Community Bankers dated November 25, 2002 and PwC dated November 25, 2002.

[78] There is no such requirement for Rule 13b2–1 or Rule 13b2–2.

[79] *See* Report of the Committee on Banking, Housing, and Urban Affairs, To Accompany S. 2673, ''Public Company Accounting Reform and Investor Protection Act of 2002,'' 107th Cong., 2d Sess., (S.R. 107–205), at 26 (Comm. Print, July 3, 2002), which states that section 303 makes it unlawful for any officer or director of an issuer, or any person acting under the direction of an officer or director, to fraudulently influence, coerce, manipulate, or mislead the auditor of the issuer's financial statements ''for the purpose of rendering the *audit report* misleading.'' (Emphasis added.)

[80] For example, an auditor might be fraudulently influenced to allow an issuer to correct material misstatements over time, or not to restate prior period financial statements, in violation of generally accepted accounting principles.

[81] *See* section 401(a) of the Act, which, among other things, adds section 13(i) to the Exchange Act, which requires that financial statements prepared in accordance with (or reconciled to) generally accepted accounting principles and filed with the Commission reflect all material correcting adjustments identified by a registered public accounting firm.

[82] *See, e.g.*, SAS 1, ''Subsequent Discovery of Facts Existing at the Date of the Auditor's Report,'' AU § 561.

[83] *See, e.g.*, section 204 of the Act, which adds section 10A(k) to the Exchange Act and requires each registered public accounting firm to report certain matters to the audit committee, and AICPA, SAS 61, ''Communication With Audit Committees'' (as amended by SAS 89 and SAS 90).

[84] *See* Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d).

[85] *See, e.g.*, section 7(a) of the Securities Act of 1933, 15 U.S.C. 77g, which states in part, ''If any accountant * * * is named as having prepared or certified any part of the registration statement, the written consent of such person shall be filed with the registration statement''; Rule 436 under the Securities Act of 1933, 17 CFR 230.436.

rendering the financial statements materially misleading.

Many commenters indicated that the examples in paragraph (b)(2) were appropriate and should be retained.[86] Some commenters suggested that the list of examples be expanded to include improperly influencing the auditor to permit the inconsistent use of generally accepted accounting principles (''GAAP'') or the use of ''non-preferable'' GAAP in the issuer's financial statements.[87] Others suggested including improperly influencing an auditor in connection with the auditor's report on an issuer's assertions about its internal controls.[88] Another commenter suggested that the examples be replaced with a statement that actions that could result in ''rendering the financial statements materially misleading'' include improperly influencing an auditor during the performance of any procedures by the auditor.[89] We believe that the list of examples in paragraph (b)(2) is sufficiently broad to include the majority of instances, including under appropriate circumstances those addressed by commenters, where improperly influencing an auditor could result in the issuer publishing misleading financial statements. As noted above, the list of examples is not all-inclusive. Other actions, in appropriate circumstances, could result in rendering the issuer's financial statements materially misleading.

''*Knew or should have known.*'' Section 303(a) states that conduct by an officer, director, or person acting under the direction of the officer or director designed to improperly influence an issuer's auditor is actionable if undertaken ''for the purpose of rendering [the issuer's] financial statements materially misleading.'' We proposed, however, the rule state that an officer, director, or person acting under the direction of the officer, who engaged in conduct to improperly influence an auditor would be culpable if he or she ''knew or was unreasonable in not knowing'' that the improper influence, if successful, could result in rendering financial statements materially misleading. In the proposing release we noted that we would consider changing this wording to another phrase to convey that proving a particular purpose or intent is not required. We are adopting in the final rule the phrase ''knew or should have known,'' which historically has indicated the existence of a negligence standard.[90] As noted elsewhere in this release, this standard is consistent with the Commission's enforcement actions in this area.[91]

Several commenters suggested that the rule should contain the statutory language, which they believe requires a fraudulent intent, instead of the proposed language, which they believe reflected a negligence standard.[92] Other commenters, however, indicated that the proposed language should be adopted [93] or that, at a minimum, a reasonableness standard is appropriate when evaluating the actions of officers and directors.[94]

We believe that the adopted language, particularly in the absence of any private right of action under the rule,[95] best achieves the purpose of restoring investor confidence in the audit process.[96] For example, if an officer of an issuer coerces an auditor not to conduct certain audit procedures required by generally accepted auditing standards (''GAAS'') because the officer wants to conceal his embezzlement of funds from the issuer, then it is possible that his actions might not be found to be for the ''purpose of rendering the financial statements misleading.'' If that officer, however, knew or should have known that not performing the procedures could result in the auditor not detecting and seeking correction of material errors in the financial statements, then we believe the officer's conduct should be subject to the rule. Excusing this conduct from the scope of the rule would be inconsistent with the restoration of investor confidence in financial statements and in the integrity of the audit process.

Response to Other Significant Comments. In the proposing release, we asked if we should replace the statement in paragraphs (b)(1) and (c) of the rule that no person acting ''under the direction'' of an officer or director shall improperly influence the auditors of the issuer's financial statements, with a statement that no person acting ''at the behest of'' or ''on behalf of'' an officer or director shall improperly influence the auditors. Although some commenters supported use of the phrase ''on behalf of,'' [97] in general commenters opposed changing this aspect of the proposed rule.[98] We agree that there may be circumstances where a person acting on behalf of an officer or director would be considered to be acting under the direction of that officer or director as contemplated by the rule. We believe, however, that the rule, as proposed and adopted, is sufficiently clear. Replacing

[86] *See, e.g.*, letters from National Association of State Boards of Accountancy dated November 25, 2002, Independent Community Bankers of America dated November 25, 2002, Plains All American Pipeline LP dated November 25, 2002, Ernst & Young LLP dated November 25, 2002, and PwC dated November 25, 2002. One commenter, however, suggested that the list of examples be removed. Letter from Intel Corporation dated November 25, 2002.

[87] Letter from Robert Waxman dated November 25, 2002.

[88] Letter from Transparency International—USA dated November 8, 2002.

[89] Letter from Deloitte & Touche dated November 27, 2002.

[90] *See, e.g.*, section 21C(a) of the Exchange Act, 15 U.S.C. 78u–3, which authorizes the Commission to order a person to cease and desist from committing or causing violations, or future violations, of the federal securities laws due to actions that the person ''knew or should have known'' would contribute to the violation, and *KPMG LLP* v. *Securities and Exchange Commission*, 289 F. 3d 109, 126 (D.C. Cir. 2002), which states, ''We affirm the Commission's determination that negligence is an appropriate basis for violations underlying a Section 21C cease-and-desist order. * * *''

[91] *See, e.g.*, *In the Matter of Donald F. Marcus and In the Matter of Harry P. Adler*, AAER 1715 (February 10, 2003); *SEC* v. *John F. Mortell, et al.*, AAER 1569 (June 5, 2002); *In the Matter of Ronald G. Davies*, AAER 1281 (June 29, 2000); and *In the Matter of Terry R. Kuntz and Richard J. Scheer*, AAER 720 (September 26, 1995).

[92] *See, e.g.*, letters from Wells Fargo dated November 22, 2002, Dorsey and Whitney LLP dated November 25, 2002, Sullivan & Cromwell dated November 25, 2002, The Business Roundtable dated November 29, 2002, America's Community Bankers dated November 25, 2002, Steven Hazen dated November 25, 2002, New York State Bar Association dated November 25, 2002, KPMG LLP dated November 25, 2002, and Plains All American Pipeline LP dated November 25, 2002.

[93] *See, e.g.*, letters from the American Institute of Certified Public Accountants dated November 25, 2002 and the National Association of State Boards of Accountancy dated November 25, 2002.

[94] *See, e.g.*, letter from Ernst & Young LLP dated November 25, 2002.

[95] We believe that the mental state requirements of the rules generally should be construed consistently with the existing rules in Regulation 13B–2. Because there is no private right of action, among other reasons, the Commission believes that a lesser standard of liability is appropriate. *See* Release No. 34–15570 (February 15, 1979); 44 FR 10970. *See also*, Report of the Committee on Banking, Housing, and Urban Affairs, To Accompany S. 2673, ''Public Company Accounting Reform and Investor Protection Act of 2002,'' 107th Cong., 2d Sess., (S.R. 107–205), at 26 (Comm. Print, July 3, 2002), which cites as a reason for enacting section 303 the testimony of witnesses who were concerned with addressing fraud and other ''misconduct in the audit process.''

[96] *See In the Matter of Terry R. Kuntz and Richard J. Scheer*, AAER 720 (September 26, 1995), which states, in part, ''The Commission will not tolerate conduct by third party vendors * * *, which poses a very real threat to the integrity of the disclosure process.''

[97] *See, e.g.*, letters from Transparency International—USA dated November 8, 2002, National Association of State Boards of Accountancy dated November 25, 2002, and Independent Community Bankers of America dated November 25, 2002.

[98] *See, e.g.*, letters from the American Bar Association dated December 13, 2002, The Business Roundtable dated November 29, 2002, the New York State Bar Association dated November 25, 2002, BDO Seidman LLP dated November 25, 2002, Ernst & Young LLP dated November 25, 2002, and the National Association of Real Estate Investment Trusts dated November 25, 2002.

''under the direction of'' with ''on behalf of'' might be construed as narrowing the scope of the rule, and having both phrases in the rule might create confusion in the interpretation of the rule. Accordingly, we have adopted the rule as proposed.

We also asked in the proposing release if we should replace the word ''fraudulently'' in paragraphs (b)(1) and (c)(2) of the rule with the word ''improperly'' or some other word to convey a mental state short of scienter. Although some commenters noted that there is a need for the Commission to adopt rules intended to enhance investor confidence in issuers' financial statements,[99] commenters generally opposed this change as exceeding the purpose and scope of section 303 of the Act.[100] The new rule retains the statutory language of ''fraudulently influence'' because we are concerned about a lack of specificity associated with the word ''improperly'' in the context of the rule. As discussed above, ''fraudulently'' modifies only influence and not ''coerce, manipulate or mislead.''

Finally, commenters questioned whether an auditor would have an obligation to report violations of the new rule as ''illegal acts'' under section 10A(b) of the Exchange Act.[101] Section 10A defines an ''illegal act'' to be an act or omission that violates any law or any rule or regulation having the force of law.[102] Accordingly, violations of the new rule are illegal acts within section 10A and should be dealt with as required by that section.[103]

C. Issues Related to Investment Companies

In the case of registered investment companies and business development companies,[104] the prohibition on improper influence on the conduct of audits covers not only officers and directors of the investment company itself, but also officers and directors of the investment company's investment adviser, sponsor, depositor, trustee, and administrator.[105] These service providers perform virtually all of the management, administrative, and other services necessary to the investment company's operations, including preparation of the financial statements. We are also amending existing rule 13b2–2 to cover officers and directors of these entities.[106]

One commenter suggested expanding the scope of the persons covered by the prohibition, to include accounting personnel working for an investment company's service providers.[107] Consistent with the language of section 303(a) and the scope of the rule for operating companies, we have not expressly included these persons, although we note that they would be covered by the rule if they are acting under the direction of an officer or director of the investment company or its investment adviser, sponsor, depositor, trustee, or administrator. By contrast, another commenter argued that the prohibition should extend to officers and directors of an investment company's investment adviser, because the investment adviser acts, in effect, in an executive capacity with a fund, but should not extend to other service providers.[108] We have determined not to narrow the service providers covered by the new rule in this manner, because any of the investment adviser, sponsor, depositor, trustee, or administrator may have responsibility for preparation of an investment company's financial statements, and therefore its officers and directors may be in a position to exercise improper influence over the investment company's audit.

III. Paperwork Reduction Act

The Paperwork Reduction Act is not applicable to the rules because they do not impose any collection of information requirements.

IV. Costs and Benefits

The new rules implement a Congressional mandate. We recognize that any implementation of the Act likely will result in costs and benefits and have an effect on the economy. We are sensitive to the costs and benefits imposed by our rules and, in the proposing release, we identified certain costs and benefits of the proposed rule.

The new rules prohibit officers and directors of an issuer, and persons acting under the direction of an officer or director, from taking any action to coerce, manipulate mislead, or fraudulently influence the auditor of the issuer's financial statements if that person knew or should have known that such action, if successful, could result in rendering the financial statements materially misleading.

Some commenters were concerned that the rules could have a chilling effect on communications between the auditor and third parties,[109] or dampen the debate on accounting issues between auditors and issuers.[110] Such a chilling effect on communications between third parties and auditors, or between auditors and the issuer, could result in an added cost associated with the rule. We believe, however, that the conduct addressed by the new rules generally was prohibited under provisions of the securities laws that existed before enactment of the Sarbanes-Oxley Act.[111]

[99] *See, e.g.*, letter from Association for Investment Management and Research dated December 12, 2002.

[100] *See, e.g.*, letters from Wells Fargo dated November 22, 2002, Eastman Kodak Company received on November 25, 2002, Sullivan & Cromwell dated November 25, 2002, the American Bar Association dated December 13, 2002, The Business Roundtable dated November 29, 2002, America's Community Bankers dated November 25, 2002, the Software Finance & Tax Executives Council dated November 25, 2002, New York State Bar Association dated November 25, 2002, Independent Community Bankers of America dated November 25, 2002, Plains All American Pipeline LP dated November 25, 2002, Dechert dated November 25, 2002, Intel Corporation dated November 25, 2002, Compass Bancshares Inc. dated November 25, 2002, and Robert Waxman dated November 25, 2002.

[101] Letters from KPMG LLP dated November 25, 2002 and PwC dated November 25, 2002. Section 10A(a) of the Exchange Act, 15 U.S.C. 78j–1(a), requires auditors to conduct procedures designed to provide, among other things, reasonable assurance of the detection of illegal acts that would have a direct and material effect on the determination of financial statement amounts. Section 10A(b) of the Exchange Act, 15 U.S.C. 78j–1(b), states that if the accountant becomes aware of information indicating that an illegal act has or may have occurred the accountant shall perform additional procedures to determine whether it is likely an illegal act has occurred and, if so, its possible effect on the financial statements, and report the act to management and assure that the issuer's audit committee is informed of the act. If the accountant concludes that the illegal act has a material effect on the financial statements, appropriate remedial actions are not taken, and the failure to take such actions is reasonably expected to warrant a modified audit report or resignation from the audit engagement, then the auditor must report his or her conclusions to the issuer's board of directors. If the board does not notify the Commission that it has received such a report, then the auditor must furnish to the Commission a copy of its report.

[102] Section 10A(f) of the Exchange Act, 15 U.S.C. 78j–1(f).

[103] One commenter also suggested ''technical corrections'' to the rule to include ''review'' in paragraph (a)(2)(i) and ''reissue'' in paragraph (b)(2)(i). Letter from KPMG LLP dated November 25, 2002. We have made these corrections and a conforming change to paragraph (c)(1)(ii)(A).

[104] Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act of 1940. See 15 U.S.C. § 80a–2(a)(48) (defining business development companies).

[105] Rule 13b2–2(c)(2).

[106] Rule 13b2–2(c)(1).

[107] Letter from PwC dated November 25, 2002.

[108] Letter from Dechert dated November 25, 2002.

[109] *See, e.g.*, letters from Wells Fargo dated November 22, 2002, Dorsey & Whitney dated November 25, 2002, Deloitte & Touche dated November 27, 2002, Sidley Austin Brown & Wood dated December 30, 2002, America's Community Bankers dated November 25, 2002, and BDO Seidman LLP dated November 25, 2002.

[110] *See, e.g.*, letter from New York County Lawyers' Association dated December 3, 2002.

[111] *See, e.g., In the Matter of Donald F. Marcus* and *In the Matter of Harry P. Adler,* AAER 1715 (February 10, 2003); *SEC* v. *John F. Mortell, et al.*, AAER 1569 (June 5, 2002); *In the Matter of Ronald G. Davies,* AAER 1281 (June 29, 2000); and *In the*

Continued

Because the new rule is consistent with previous law, rules, and cases [112] we do not anticipate that the new rules will increase significantly costs for issuers or accounting firms.

Nonetheless, the Act and new rules might prompt some issuers to adopt procedures or guidelines that would assure additional care is used by an issuer's officers and directors, and others acting under their direction, in communicating with auditors of the issuer's financial statements. For example, some issuers might require that more discussions include members of senior management or the issuer's legal counsel. Because no particular procedures related to such communications are required, and the nature and scope of those procedures are likely to vary among issuers, it is difficult to provide an accurate cost estimate.

As noted above, in some circumstances the new rules might apply before the professional engagement period begins. For example, the rules would apply if an officer, director, or person acting under the direction of an officer or director, offers to engage an accounting firm on the condition that the firm either issue an unqualified audit report on financial statements that do not conform with generally accepted accounting principles, or limit the scope or performance of audit or review procedures in violation of generally accepted auditing standards. We believe, however, that such conduct would not be permitted under existing laws and regulations and, accordingly, the rules should not result in a significant increase in costs for issuers.

Potential benefits of the rules include increased investor confidence in the integrity of the audit process and, in turn, in the reliability of reported financial information. One of the most important factors in the successful operation of our securities markets is the trust that investors have in the reliability of the information used to make voting and investment decisions.[113]

Section 303(a) and the new rules are designed to provide added assurance that the full-disclosure purposes of the securities laws are fulfilled,[114] and to help restore the faith of America's investors in the integrity of the audit process and in the reliability of reported financial information. If section 303 of the Act and the new rules lead to increased investor confidence in financial reporting, they also might facilitate capital formation. An increased willingness of investors to participate in the securities markets could result in issuers being able to lower their cost of capital.

Commenters generally agreed that the costs associated with the new rules are not significant.[115] One commenter, however, indicated that increased costs might be associated with more litigation and increased liability exposure for accounting firms.[116] Because there is no private right action under section 303 or the new rule,[117] we expect that such costs will not be significant.

V. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 604. It relates to revised rule 13b2–2 of Regulation 13B–2, which implements the statutory prohibition on officers and directors of an issuer, and persons acting under their direction, improperly influencing the conduct of an audit or review of the issuer's financial statements.

A. Reasons for, and Objectives of, the Rules

The purpose of the new rules is to implement section 303(a) of the Act. The rules prohibit officers and directors of issuers, including ''small businesses,'' and persons acting under their direction, from improperly influencing an accounting firm's audit or review of the issuer's financial statements. Regardless of the application of section 303(a) and the new rules, such conduct would violate the anti-fraud or other provisions of the securities laws or aid and abet or cause the issuer's violations of those sections. The new rules, and section 303(a) of the Act, provide the Commission with an additional means to address such conduct and are intended to enhance the credibility of financial statements.

B. Significant Issues Raised by Public Comments

Some commenters indicated that the cost of compliance with the rules is not significant and that there should be no differences in the rules for small companies.[118] Another commenter stated that special rules are not necessary for small entities if the definitions of officer and director are sufficiently broad to include persons who normally have the responsibility for governance of an entity.[119] As noted above, under the securities laws and the Commission's regulations, the definition of ''officer'' includes not only those with certain corporate titles but also those performing corresponding functions with respect to any organization,[120] and the definition of ''director'' includes not only directors of corporations but also those performing similar functions with respect to any organization.[121] Such definitions are sufficiently broad to include persons responsible for governance of an entity.

One comment letter, responding to the Commission's rule proposals related to sections 404, 406 and 407 of the Act, as well as section 303, encouraged the Commission to exempt small companies

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Matter of Terry R. Kuntz and Richard J. Scheer, AAER 720 (September 26, 1995).

[112] *Id.*

[113] *See* Accounting Series Release No. 296 (Aug. 20, 1981), which states in part:

(T)he capital formation process depends in large part on the confidence of investors in financial reporting. An investor's willingness to commit his capital to an impersonal market is dependent on the availability of accurate, material and timely information regarding the corporations in which he has invested or proposes to invest. The quality of information disseminated in the securities markets and the continuing conviction of individual investors that such information is reliable are thus key to the formation and effective allocation of capital. Accordingly, the audit function must be meaningfully performed and the accountant's independence not compromised.

[114] *See, e.g.*, H.R. Rep. No. 1383, 73rd Cong., 2d Sess., 11 (1934), which states:

Just as artificial manipulation tends to upset the true function of an open market, so the hiding and secreting of important information obstructs the operation of the markets as indices of real value. There cannot be honest markets without honest publicity.

Manipulation and dishonest practices of the market place thrive upon mystery and secrecy.

This House Report also includes a letter from the Executive Assistant of the Committee on Stock List for the New York Stock Exchange, which recognizes management's need for accurate financial information and then states:

[U]nder the conditions of today, the next object in order of importance has become to give stockholders, in understandable form, such information in regard to the business as will avoid misleading them in any respect and as will put them in possession of all information needed, and which can be supplied in financial statements, to determine the true value of their investments * * *. The exchange is interested in the accounts of companies as a source of reliable information for those who deal in stocks. It is not sufficient for the stock exchange that the accounts should be in conformity with law or even that they should be conservative; the stock exchange desires that they should be fully and fairly informative.

Id. at 12.

[115] *See, e.g.*, letters from National Association of State Boards of Accountancy dated November 25, 2002 and PwC dated November 25, 2002.

[116] Letter from Independent Community Bankers of America dated November 25, 2002.

[117] Section 303(b) of the Act states, ''In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation under this section.''

[118] *See, e.g.* letters from PwC dated November 25, 2002 and Robert Waxman dated November 25, 2002.

[119] Letter from National Association of State Boards of Accountancy dated November 25, 2002.

[120] *See* Rules 3b–2 and 3b–7 under the Exchange Act, 17 CFR 240.3b–2 and 240.3b–7.

[121] *See* section 3(a)(7) of the Exchange Act, 15 U.S.C. 78c(a)(7).

from the ''onerous and sometimes impossible rules for board membership.''[122] These comments, however, would appear to address the requirements related to the disclosure of an ''audit committee financial expert'' under section 407 and not improperly influencing auditors under section 303. This commenter also suggested that we ''nurture and encourage business formation and finance'' and not impose ''insurmountable difficulties for the smaller companies.''[123] We believe that enhanced investor confidence in the audit process will encourage capital formation by all companies and that the new rule, which addresses conduct that generally was unlawful prior to the enactment of the Act, does not place ''insurmountable difficulties'' on small companies.

Another commenter stated that the Commission should be mindful of difficulties some smaller institutions face ''in seeking auditing firm alternatives and complying with other new regulatory requirements due to limited staff resources.''[124] Although the rule might encourage some companies to exercise additional care in communicating with auditors, the rule does not impose any specific requirements on companies and should not result in the use of additional staff resources. Accordingly, we do not believe that it imposes significant costs on small entities.

C. Small Entities Subject to the Rules

The rules affect small registrants that are small entities. Exchange Act Rule 0–10(a)[125] and 1933 Act Rule 157[126] define a company to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that approximately 2,500 companies are small entities, other than investment companies.

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[127] We estimate that approximately 225 investment companies meet this definition.

D. Reporting, Recordkeeping and Other Compliance Requirements

The enactment of section 303(a) of the Act and the adoption of the rules might result in some issuers adopting more detailed procedures for communications between the company and the accounting firm that audits the company's financial statements. These procedures might result in an insignificant increase in costs associated with compliance with the securities laws.

We received no comments or data indicating the extent of burden that might be imposed on small entities. As noted above, we assume the burden would be minor for most issuers.

E. Agency Action To Minimize Effects on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the amendments, or any part thereof, for small entities.

Section 303(a) of the Act does not provide an exemption for small businesses. The section does provide, however, that the rules adopted by the Commission should be ''as necessary and appropriate in the public interest and for the protection of investors.''

We considered not applying the rules to small business issuers. We believe, however, that investors in small companies, just as investors in large companies, would want and benefit from the added confidence in reported financial information that comes from knowing that efforts to improperly influence the performance of the audit have been prohibited.

We are using a performance standard rather than a design standard. In addition, Congress has dictated the timetable for this rulemaking.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[128] requires us, when adopting rules under the Exchange Act, to consider the impact on competition of any rule we adopt. Section 2(b) of the 1933 Act,[129] section 3(f) of the Exchange Act,[130] and section 2(c) of the Investment Company Act of 1940,[131] require us, when engaging in rulemaking where we are required to consider or determine whether the action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The new rules prohibit improper influences on auditors in connection with their reviews and audits of financial statements filed with the Commission. The proposals, therefore, should enhance investor confidence in the audit process and in the quality of information available to them, and lead to a more efficient market.

Because of the nature of the new rules, we do not believe that they would impose any burden on competition. They prohibit equally all officers and directors of public companies (and persons acting under their direction) from improperly influencing the auditor.

As noted in the cost-benefit section, if section 303 of the Act and the new rules lead to increased investor confidence in financial reporting, they also may facilitate capital formation. An increased willingness of investors to participate in the securities markets might result in issuers being able to lower their cost of capital.

We received no comments indicating that the rule would impact competition, efficiency or capital formation.

VII. Statutory Authority

We are adopting the new rules under the authority set forth in sections 3(a) and 303 of the Act; Schedule A and sections 5, 6, 7, 8, 10 and 19 of the 1933 Act; Sections 3, 10A, 12, 13, 14, 15, 17 and 23 of the Exchange Act; and Sections 6, 8, 20, 30, 31 and 38 of the Investment Company Act of 1940.

Text of Rules and Amendments

List of Subjects in 17 CFR Part 240

Securities.

[122] Letter from Nicholas Taylor dated November 8, 2002.

[123] *Id.*

[124] Letter from Independent Community Bankers of America dated November 25, 2002.

[125] 17 CFR 240.0–10(a).

[126] 17 CFR 230.157

[127] 17 CFR 270.0–10.

[128] 15 U.S.C. 78w(a)(2).

[129] 15 U.S.C. 77b(b).

[130] 15 U.S.C. 78c(f).

[131] 15 U.S.C. 80a–2(c).

■ In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

■ 2. Section 240.13b2–2 is revised to read as follows:

§ 240.13b2–2 Representations and conduct in connection with the preparation of required reports and documents.

(a) No director or officer of an issuer shall, directly or indirectly:

(1) Make or cause to be made a materially false or misleading statement to an accountant in connection with; or

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with:

(i) Any audit, review or examination of the financial statements of the issuer required to be made pursuant to this subpart; or

(ii) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

(b)(1) No officer or director of an issuer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that issuer that are required to be filed with the Commission pursuant to this subpart or otherwise if that person knew or should have known that such action, if successful, could result in rendering the issuer's financial statements materially misleading.

(2) For purposes of paragraphs (b)(1) and (c)(2) of this section, actions that, ''if successful, could result in rendering the issuer's financial statements materially misleading'' include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an auditor:

(i) To issue or reissue a report on an issuer's financial statements that is not warranted in the circumstances (due to material violations of generally accepted accounting principles, generally accepted auditing standards, or other professional or regulatory standards);

(ii) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(iii) Not to withdraw an issued report; or

(iv) Not to communicate matters to an issuer's audit committee.

(c) In addition, in the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), no officer or director of the company's investment adviser, sponsor, depositor, trustee, or administrator (or, in the case of paragraph (c)(2) of this section, any other person acting under the direction thereof) shall, directly or indirectly:

(1)(i) Make or cause to be made a materially false or misleading statement to an accountant in connection with; or

(ii) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(A) Any audit, review, or examination of the financial statements of the investment company required to be made pursuant to this subpart; or

(B) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise; or

(2) Take any action to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that investment company that are required to be filed with the Commission pursuant to this subpart or otherwise if that person knew or should have known that such action, if successful, could result in rendering the investment company's financial statements materially misleading.

Dated: May 20, 2003.
By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–13095 Filed 5–27–03; 8:45 am]

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May 28, 2003

Part V

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Health Care Continuation Coverage; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA60

Health Care Continuation Coverage

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed regulations.

SUMMARY: This document contains proposed regulations implementing the notice requirements of the health care continuation coverage (COBRA) provisions of Part 6 of title I of the Employee Retirement Income Security Act of 1974 (ERISA). The continuation coverage provisions generally require group health plans to provide participants and beneficiaries who under certain circumstances would lose coverage (qualified beneficiaries) the opportunity to elect to continue coverage under the plan at group rates for a limited period of time.

The proposed rules set minimum standards for the timing and content of the notices required under the continuation coverage provisions and establish standards for administering the notice process. This document also contains model forms for use by administrators of single-employer group health plans to satisfy their obligation to provide general notices and election notices. These proposed regulations, if finalized, would affect administrators of group health plans, participants and beneficiaries (including qualified beneficiaries) of group health plans, and the sponsors and fiduciaries of such plans.

DATES: Written comments on these proposed regulations should be received by the Department of Labor on or before July 28, 2003.

ADDRESSES: Comments (preferably at least three copies) should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attn: COBRA Notice Regulations. Comments also may be submitted electronically to *e-ORI@EBSA.dol.gov.* All comments received will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fields or Suzanne M. Adelman, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8523. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

The continuation coverage provisions, sections 601 through 608 of title I of ERISA, were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which also promulgated parallel provisions that became part of the Internal Revenue Code (the Code) and the Public Health Service Act (the PHSA).[1] *See* Code section 4980B; PHSA, 42 U.S.C. 300bb–1 *et seq.* These provisions are commonly referred to as the COBRA provisions, and the continuation coverage that they mandate is commonly referred to as COBRA coverage. The COBRA provisions of title I of ERISA generally require that ''any group health plan''[2] offer ''qualified beneficiaries'' the opportunity to elect ''continuation coverage'' following certain events that would otherwise result in the loss of coverage (''qualifying events'').[3] Continuation coverage is a temporary extension of the qualified beneficiary's previous group health coverage. The right to elect continuation coverage allows individuals to maintain group health coverage under adverse circumstances and to bridge gaps in health coverage that otherwise could limit their access to health care.

COBRA, as enacted, provides that the Secretary of Labor (the Secretary) has the authority under section 608 to carry out the provisions of part 6 of title I of ERISA. The Conference Report that accompanied COBRA divided interpretive authority over the COBRA provisions between the Secretary and the Secretary of the Treasury (the Treasury) by providing that the Secretary has the authority to issue regulations implementing the notice and disclosure requirements of COBRA, while the Treasury is authorized to issue regulations defining the required continuation coverage.[4] Under its authority to interpret the COBRA provisions, the Treasury has issued final regulations that provide rules for determining which plans are subject to the COBRA provisions, who is or can become a qualified beneficiary, which events constitute qualifying events, what COBRA obligations exist in the case of mergers and acquisitions, and the nature of the continuation coverage that must be offered. *See* Treas. Reg. §§ 54.4980B–1 through 54.4980B–10. These proposed rules implementing the notice requirements of the COBRA provisions of Part 6 of title I of ERISA would apply for purposes of the COBRA provisions of section 4980B of the Code.[5]

B. COBRA Notice Requirements

Section 606(a)(1) requires group health plans to provide a written notice containing general information about COBRA rights to each covered employee and his or her spouse when coverage under the plan commences. Sections 606(a)(2) and 606(a)(3) require the plan administrator to be notified when a qualifying event occurs, and the nature of the qualifying event determines whether the employer or the covered employee and qualified beneficiary must give this notice to the plan

[1] The Code and PHSA COBRA provisions, although very similar in other ways, are not identical to the COBRA provisions in title I of ERISA in their scope of application. The PHSA provisions apply only to State and local governmental plans, and the Code provisions grant COBRA rights to individuals who would not be considered participants or beneficiaries under ERISA. *See* PHSA, 42 U.S.C. 300bb–8; Code section 5000(b)(1).

[2] A group health plan is not subject to the COBRA provisions for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year. *See* section 601(b).

[3] Each of the quoted terms is specifically defined in the COBRA provisions. In particular, the term *group health plan* is defined in section 607(1) to mean an employee welfare benefit plan as defined in section 3(1) that provides medical care (as defined in section 213(d) of the Code) to participants or beneficiaries directly or through insurance, reimbursement, or otherwise. The Department notes that employee welfare benefit plans under ERISA include, *inter alia*, plans sponsored by unions for their members as well as plans sponsored by employers for their employees. Such union-sponsored plans would not involve employers in any sponsorship capacity, nor would they necessarily cover individuals all of whom are employees. Although the proposed regulations use the terms ''employer'' and ''employee,'' as do the COBRA provisions, in assigning duties, they are intended to apply to all group health plans, as defined in section 607(1), subject to COBRA.

[4] H.R. Conf. Rep. No. 99–453, 99th Cong., 1st Sess., at 562–63 (1985). The Conference Report further indicates that the Secretary of Health and Human Services, who is to issue regulations implementing the continuation coverage requirements for State and local governments, must conform the actual requirements of those regulations to the regulations issued by the Secretary and the Treasury. *Id.* at 563.

[5] As noted in footnote 1, above, certain COBRA provisions (such as the definitions of group health plan, employee and employer) are not identical in the Code and title I of ERISA. The Treasury has reviewed these rules and concurs that, in those cases in which the statutory language is not identical, §§ 2590.606–1 through 2590.606–4 would nonetheless apply to the COBRA provisions of sec. 4980B of the Code, except to the extent that such regulations are inconsistent with the statutory language of the Code.

administrator.[6] Section 606(a)(4) requires a plan administrator who has received a notice of qualifying event to provide each qualified beneficiary with a notice of such beneficiary's rights under the COBRA provisions. The provision of an election notice starts the running of the 60-day period during which qualified beneficiaries may elect continuation coverage. *See* section 605(1)(C).

The maximum period for which a plan is obliged to provide COBRA coverage is 36 months, but in certain circumstances a plan is required to provide only 18 months of continuation coverage (after a qualifying event that is termination or reduction in hours of a covered employee's employment). The COBRA provisions require an 18-month period of COBRA coverage to be extended to a longer period in only two circumstances: if a qualified beneficiary is or becomes disabled, or if a second qualifying event occurs. Sections 602(2) and 606(a)(3) require notice of a disability to be provided as a prerequisite to the disability extension. The right to an extension of continuation coverage based on the occurrence of a second qualifying event is based on providing notice of such second qualifying event pursuant to section 606(a)(3).

The Trade Act of 2002, Public Law 107–210, enacted on August 6, 2002, amended section 605 of ERISA to add a new subsection (b). This new subsection provides a second 60-day COBRA election period for certain individuals who become eligible for trade adjustment assistance (TAA) pursuant to the Trade Act of 1974.[7] New section 605(b)(1) provides that an individual who is either an eligible TAA recipient under section 35(c)(2) of the Code or an eligible alternative TAA recipient under section 35(c)(3) of the Code (collectively, a TAA-eligible individual), and who did not elect continuation coverage during the 60-day COBRA election period that was a direct consequence of the TAA-related loss of coverage,[8] may elect continuation coverage during a 60-day period that begins on the first day of the month in which he or she is determined to be a TAA-eligible individual, provided such election is made not later than 6 months after the date of the TAA-related loss of coverage. The individual may elect coverage for both himself or herself and his or her family. Any continuation coverage elected during the second election period will begin with the first day of the second election period, and not on the date on which coverage originally lapsed. However, the time between the loss of coverage and the start of the second election period will not be counted for purposes of determining whether the individual has had a 63-day break in coverage under section 701(c)(2) of ERISA (and corresponding provisions of the PHSA and the Code).

The new second COBRA election period is intended to assist individuals who become TAA-eligible in taking advantage of a new tax credit, also created by the Trade Act of 2002. Under the new tax provisions, individuals who become eligible for TAA assistance can take a tax credit of 65% of premiums paid for qualified health insurance. The Trade Act of 2002 provides for advance payment of the tax credit to health insurers, beginning in 2003. COBRA continuation coverage is one of the types of health insurance that qualifies for the tax credit. Because of the importance of the right to elect COBRA continuation coverage as a TAA-eligible individual, it is the view of the Department that information on the possible availability of a new second election period in the event of TAA eligibility should, pursuant to 29 CFR 2520.102–3(o), be included in the summary plan description of a group health plan as part of the discussion of continuation coverage provisions.

It is anticipated that information on the right to a second COBRA election, together with other information on trade adjustment assistance and the health coverage tax credit, will also be made available to potentially eligible individuals through the State Workforce Agencies in connection with the certification process for trade adjustment assistance.

C. Overview of Proposed Regulations

The provision of timely and adequate notifications regarding COBRA rights, the occurrence of qualifying events, and election rights is critical to the effective exercise of COBRA rights. Failure to meet notice requirements may cause a qualified beneficiary to lose COBRA rights or may conversely cause a plan administrator to be subject to fines or other adverse consequences. In the Department's view, regulatory guidance establishing clearer standards for the administration of the COBRA notice processes would reduce the risks both to plans and to qualified beneficiaries by providing certainty as to how the notice obligations can be met.[9] The attached proposed regulations are intended to provide the necessary guidance.

The proposed guidance comprises four separate regulations. Section 2590.606–1 covers the general notice. Section 2590.606–2 creates rules for employer-provided notices of the occurrence of a qualifying event. Section 2590.606–3 addresses the responsibilities of qualified beneficiaries to provide notice of a qualifying event or a disability. Finally, § 2590.606–4 deals with the election notice and other notices that plan administrators must provide subsequent to the election of COBRA coverage. As part of this proposal, the Department is also including, for public comment, model forms for two of the administrator's notices: the general notice and the election notice.[10] The model forms are appended, respectively, to § 2590.606–1 and § 2590.606–4. Each model allows for inclusion of plan-specific information to reflect the circumstances of a particular plan. It should be noted, however, that these models have been designed for use primarily by single-employer plans and do not reflect the special rules or practices that may apply in the case of other types of group health plans, such as multiemployer plans or plans sponsored by unions for their members.[11] The Department specifically requests comment on what, if any, changes should be made to the model

[6] When the qualifying event is the death of the covered employee, the termination or reduction of hours of the covered employee's employment, the covered employee's becoming entitled to Medicare, or a bankruptcy proceeding of the employer, the notice obligation falls on the employer. For the other qualifying events (divorce or legal separation or a dependent child's ceasing to be a dependent under the terms of the plan), the notice obligation falls on the covered employee or qualified beneficiary.

[7] Pursuant to the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), workers whose employment is adversely affected by international trade (increased imports or a shift in production to another country) may become entitled to receive TAA, which primarily consists of career counseling, up to two years of training, income support during training, job search assistance, and relocation allowances.

[8] Section 605(a)(1) of ERISA provides that the election period is the period which: (A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event; (B) is of at least 60 days' duration; and (C) ends not earlier than 60 days after the later of the date coverage terminates or the date of the notice.

[9] On September 23, 1997, the Department issued a Request for Information (RFI) to assess public views on the advisability of developing regulations on the COBRA notice provisions. 62 FR 49894 (Sept. 23, 1997). The Department received 15 comments in response to that RFI. These proposed regulations take into account the views expressed in those comments.

[10] Of the 15 comments received in response to the COBRA notice RFI, 11 commenters advocated that the Department develop model plan administrators' notices.

[11] The model election notice, further, is not designed to be used when bankruptcy is the qualifying event.

forms to adequately reflect current practice and meet the needs of plan administrators, participants, and beneficiaries.

These proposed regulations establish minimum timing and content requirements for the required notices and set forth general rules for administering the COBRA notice process. The goal of this regulatory initiative is to create certainty and uniformity in this process, while also improving the consistency and quality of information provided to participants and beneficiaries about their COBRA rights. The Department believes that the proposed regulations, which would provide clear, uniform rules for the required notices, would make it easier for plans and employers to comply with COBRA notice requirements. The Department proposes to make these regulations, in their final form, effective and applicable as of the first day of the first plan year that occurs on or after January 1, 2004.

The Department notes that the Conference Report that accompanied COBRA states that ''pending the promulgation of regulations, employers are required to operate in good faith compliance with a reasonable interpretation of these [COBRA] substantive rules, notice requirements, etc.''[12] In the absence of final regulations, this continues to be the standard by which the Department will judge plan operations in this area. The publication of these proposed regulations should not be considered to relieve plan administrators of their obligation to meet this standard. In particular, the Department notes that, effective with publication of these proposed regulations, the Department will no longer consider use of the model general notice in ERISA Technical Release 86–2 (June 26, 1986) (TR 86–2) to be good faith compliance with the requirements of section 606(a)(1). [13]

Section 2590.606–1 General Notice

Section 606(a)(1) requires each group health plan covered under COBRA to provide a written notice ''at the time of commencement of coverage'' to each covered employee and spouse (if any) of the employee. Proposed § 2590.606–1 establishes rules for both when this general notice must be provided and what information it must contain.

Paragraph (c) of the regulation sets forth the required minimum content of a general notice. These content requirements cover basic information regarding COBRA and the rights and responsibilities of qualified beneficiaries that a participant or beneficiary would need to know before the occurrence of a qualifying event in order to be able to protect his or her COBRA rights. In particular, paragraph (c) requires the general notice to describe the plan's requirements for notices that must be provided by qualified beneficiaries, such as the notice of a qualifying event involving divorce, separation, or a dependent's becoming no longer eligible for coverage as a dependent.

Paragraph (b) of the regulation establishes a 90-day period for the furnishing of the general notice, beginning with the date on which the covered employee or spouse first becomes covered under the plan. If the plan administrator must provide an election notice to the employee or to his or her spouse or dependent during the first 90 days of coverage, however, paragraph (b) requires the general notice to be provided at that earlier time. This provision protects participants and beneficiaries during the first 90 days of coverage by ensuring that they receive all of the information they need to understand their rights when the information is most necessary.

Paragraph (e) further permits plans to satisfy the general notice requirement by including the information described in paragraphs (c)(1), (2), (3), (4), and (5) in the summary plan description (SPD) of the plan and providing the SPD at a time that complies with the timing requirements for the general notice. The Department anticipates that many, and perhaps most, plans would prefer to take advantage of the reduced cost and added efficiency of providing a single disclosure document that satisfies both the general notice requirement and the SPD requirement. If a plan chooses to satisfy both disclosure obligations by furnishing a single document, the plan must ensure that the document satisfies both the general notice content requirements and the SPD content requirements.[14]

Paragraph (f) provides that delivery of the general notice should be made in accordance with the standards of 29 CFR 2520.104b–1, including the standards for use of electronic media. Paragraph (d) permits delivery of a single notice addressed to a covered employee and the covered employee's spouse at their residence, provided the plan's latest information indicates that both reside at that address. A single notice would not be permitted, however, if a spouse's coverage under the plan begins at a different time from the covered employee's coverage, unless the spouse's coverage begins before the date on which the notice must be provided to the covered employee. Further, in-hand furnishing of the general notice at the workplace to a covered employee is deemed to be adequate delivery to the employee, although such delivery to the employee would not constitute delivery to the spouse.

The appendix to this section contains a model general notice that plan administrators may use to satisfy the content requirements of the regulation. The model general notice allows for inclusion of plan-specific information, including designation of the appropriate COBRA administrative contact and description of specific plan procedures, and provides alternatives to reflect the plan's practices regarding premium payment requirements, dates on which continuation coverage will begin, and whether bankruptcy could be a qualifying event under the specific plan. While the Department intends that use of an appropriately completed model notice, when finalized, would be considered compliance with the content requirements of the regulation, the Department does not intend to require its use and anticipates that a variety of other notices could satisfy the requirements of the regulation. The Department requests comment on whether the proposed model general notice adequately reflects current practice and provides plans with sufficient flexibility to describe individual plans' specific COBRA provisions.

Section 2590.606–2 Employer's Notice of Qualifying Event

Section 606(a)(2) requires an employer to provide notice to the plan administrator of a qualifying event that

[12] H.R. Conf. Rep. No. 99–453, at 563.

[13] On June 26, 1986, the Department issued TR 86–2 to provide guidance to employers on the then newly enacted COBRA provisions. The Department provided, with TR 86–2, a model general notice to assist group health plans with the immediate necessity of providing a general notice by the effective date of COBRA, which came into force as of the beginning of the first plan year on or after July 1, 1986. The Department indicated that use of the model notice would be considered good faith compliance with the requirements of section 606(a)(1). The TR 86–2 model notice was intended to inform participants and beneficiaries, for the first time, of the passage of COBRA and educate them about the new COBRA rights. Because of the variety of subsequent statutory amendments, the TR 86–2 model notice no longer adequately reflects the COBRA provisions.

[14] The SPD content regulation, § 2520.102–3, specifies other information, in addition to description of COBRA rights, that must be included in an SPD for a group health plan. See, *e.g.*, § 2520.102–3(j)(2), (3), (l).

is either the employee's termination of employment or reduction in hours of employment, the employee's death, the employee's becoming enrolled in Medicare, or the commencement of a proceeding in bankruptcy with respect to the employer. Proposed § 2590.606–2 addresses this notice obligation of employers.

Paragraph (b) of the regulation provides that an employer shall notify the plan administrator of a qualifying event no later than 30 days after the date of the qualifying event. However, paragraph (b) further provides that, for any plan under which continuation coverage begins, pursuant to section 607(5), with the date of loss of coverage, the 30–day period for providing the notice of qualifying event must also begin with the date of loss of coverage, rather than the date of the qualifying event. Paragraphs (b) and (d) also recognize that multiemployer plans may have different notice periods, as permitted under sections 606(a)(2) and 606(b).

Paragraph (c) of the regulation requires that an employer provide the plan administrator sufficient information to enable the administrator to determine the identity of the plan, the covered employee, the qualifying event, and the date of the qualifying event.

Section 2590.606–3 Qualified Beneficiary's Notices

Under section 606(a)(3), each covered employee or qualified beneficiary is responsible for notifying the plan administrator of a qualifying event that is either the divorce or legal separation of the employee from his or her spouse or a dependent's becoming no longer eligible to be covered as a dependent under the plan. This notice must be provided within 60 days after the occurrence of the qualifying event. Proposed § 2590.606–3 provides guidance with respect to this notice obligation and other notice obligations of qualified beneficiaries, such as the notice of disability or second qualifying event.

Paragraph (b) of the regulation requires plans to establish reasonable procedures for the furnishing of notices by covered employees and qualified beneficiaries and sets general standards for what will be considered reasonable.[15] A plan's procedures generally would be deemed reasonable if they are described in the plan's SPD, specify who is designated to receive notices and specify the means qualified beneficiaries must use for giving notice and the required content of the notice. Paragraph (b) further provides that, if a plan does not have reasonable procedures for qualified beneficiaries' notices, notice will be deemed to have been provided if certain information adequately identifying a specific qualifying event is communicated to any of the parties that would customarily be considered in charge of the plan. Paragraph (b) provides that plans may require notices to be submitted via a specific form, if the form is easily available to qualified beneficiaries without cost, and may require specific information to be provided.

Paragraph (d) provides that a plan may not reject an incomplete notice as untimely if the notice is provided within the plan's time limits and contains enough information to enable the plan administrator to identify the plan, the covered employee and qualified beneficiar(ies), the qualifying event or disability determination, and the date on which it occurred. However, if a timely notice fails to supply all of the information required under the plan's procedures, the plan administrator can require qualified beneficiaries to supply the missing information.

Paragraph (c) provides that the statutory time limits for the qualified beneficiaries' notices are minimum time limits and that plans can provide for longer notice periods. The proposed regulation specifies, however, that a plan's time limit for providing any of the qualified beneficiaries' notices could not begin to run unless and until the plan had satisfied the general notice requirements of section 606(a)(1) with respect to the affected qualified beneficiaries.

Paragraph (c) further requires that a plan structured in accordance with section 607(5) to begin continuation coverage with the date of loss of coverage, rather than the date on which a qualifying event occurs, must provide that the 60-day period for qualified beneficiaries' notices also begins with the date of loss of coverage.[16] Paragraph (e) provides that any of the qualified beneficiary notice obligations can be satisfied with respect to all qualified beneficiaries affected by a single qualifying event through a single notice and that any individual representing the qualified beneficiaries can provide the required notice.

With respect to the notice of disability required to be provided under section 606(a)(3), paragraph (c) specifies that qualified beneficiaries can be required by a plan to provide the disability notice within 60 days of the date of the Social Security Administration's determination of disability and before the end of the initial period of 18 months of continuation coverage. Under the proposed regulation, therefore, failure to provide the disability notice within those time limits, if required by the plan, could be a basis for concluding that notice had not been timely provided under section 606(a)(3). Paragraph (c) makes clear, however, that plans may not decline to provide the disability extension for failure to provide a timely disability notice unless the affected qualified beneficiaries were adequately notified, in advance, of the notice obligation. The regulation further specifies that plans may adopt more generous notice requirements.

Section 2590.606–4 Plan Administrator's Notice Obligations

Section 606(a)(4) requires a plan administrator to notify each qualified beneficiary who is entitled to elect continuation coverage of his or her COBRA rights. Section 606(c) requires a plan administrator to provide such notice within 14 days after the plan administrator is notified of a qualifying event. Proposed § 2590.606–4 provides guidance on the requirements of sections 606(a)(4) and 606(c). The regulation describes timing and content requirements for election notices, requires administrators to notify individuals if continuation coverage is determined not to be available, and requires plan administrators to provide notice when continuation coverage terminates before the end of the maximum period for such coverage.

Paragraph (b) of the regulation sets forth the information that must be included in an election notice.[17] In

[15] ERISA does not mandate that qualified beneficiaries provide notices of qualifying event. A qualified beneficiary may not wish to elect continuation coverage and may therefore decide to forgo providing the notice of qualifying event without violating the COBRA provisions.

[16] Section 607(5) requires coordination of the running of the employer's period for providing notice of qualifying event with the beginning of the continuation coverage period.

[17] The regulation requires an administrator to provide an election notice only when it has been determined that a qualified beneficiary is entitled to elect continuation coverage. In this regard, the Department notes that it is the administrator's responsibility, as a fiduciary, to determine whether individuals who are named in a notice of qualifying event are entitled to continuation coverage and that disputes may arise over the correctness of the administrator's determinations. These proposed regulations are not intended to provide guidance on the substantive rights provided by the COBRA provisions, as such issues are beyond the scope of the Department's authority. The administrator, in reaching decisions on COBRA issues, must apply the COBRA provisions as interpreted by the Treasury regulations. For example, Treasury has

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addition to identifying significant pertinent facts, such as the names and contact information for plan administrators and (if different) COBRA administrators and the qualified beneficiaries and qualifying event, the election notice must describe the continuation coverage being made available and the manner in which the qualified beneficiaries' COBRA rights must be exercised, making clear that each qualified beneficiary has an independent right to elect continuation coverage.[18] The notice must explain the plan's payment requirements, payment schedule, and payment policies (including grace periods and the consequences of late payment or non-payment). If the plan makes alternative coverage available or provides any conversion options, the notice must describe those options and alternatives and explain how choosing them would affect continuation coverage rights. The notice must also specifically state that it does not fully describe continuation coverage or other rights under the plan and that more complete information is available in the plan's summary plan description or from the plan administrator.

The notice must inform qualified beneficiaries of the consequences of not electing continuation coverage under the plan.[19] The Department is concerned that many participants and beneficiaries will not take into account the possible effects of not electing COBRA coverage on other rights they may have to secure health care coverage (*e.g.*, limitations on pre-existing condition exclusions, guaranteed right to purchase individual coverage without a pre-existing condition exclusion, special enrollment rights). The regulation (and model election notice, discussed below) are designed to remind participants and beneficiaries of these considerations as part of the continuation coverage election process.

If continuation coverage is offered for only a maximum of 18 months, the notice must also provide information on possible extensions of that period due to disability or second qualifying events, including detailed instructions on any notices required to be given by qualified beneficiaries.

Paragraph (b) of the regulation coordinates the running of the statutory 14-day time limit for providing an election notice with circumstances that could affect that period, such as a plan's adoption of the alternative limits permitted under section 607(5), or the special rules for multiemployer plans. Paragraph (e) further provides rules permitting a single election notice to be provided to multiple qualified beneficiaries who are part of a single family unit.

If a plan administrator receives a notice of a qualifying event pursuant to § 2590.606–3 from a participant or beneficiary not eligible to receive continuation coverage under the plan, paragraph (c) of the regulation requires the administrator to provide notice to the individual(s) explaining why he or she is not entitled to such coverage. When a participant or beneficiary submits a notice of qualifying event, there is an expectation of coverage on the part of the participant or beneficiary. Requiring notice in such circumstances is intended to avoid problems attendant to misunderstandings in this area. The notice is subject to the same timing requirements as those applicable to election notices.

Paragraph (d) of the regulation requires a specific notice to be provided to qualified beneficiaries in the event that the administrator terminates a period of continuation coverage before the end of its maximum duration. The COBRA provisions permit early termination of continuation coverage in a number of circumstances, such as when the employer ceases to offer group health coverage to its employees or when the required premium payment is not timely paid. In the Department's view, providing a notice of early termination serves an important administrative function and permits qualified beneficiaries to take appropriate next steps to protect their access to health coverage, either on a group or individual basis. Accordingly, the proposed regulation requires plan administrators to give specific notice of early termination of continuation coverage. Such notice must be provided as soon as administratively practicable after the termination decision is made, must explain why and when the continuation coverage is being terminated, and must describe any rights to other coverage the qualified beneficiaries will have upon termination. Nothing in these proposed regulations is intended to prevent a plan administrator from combining, for ease of administration, the furnishing of an early termination notice to a qualified beneficiary with the furnishing of the certificate of creditable coverage that must be provided to the qualified beneficiary under Part 7 of ERISA.

The appendix to this section contains a model election notice for plan administrators to use in discharging this notice obligation. The model election notice, like the model general notice, allows for inclusion of plan-specific information and provides alternatives, where appropriate, to tailor specific notices to reflect specific plan design. Among the alternatives, the model election notice includes language about the new 65% tax credit under the Trade Act that may be used if an administrator believes employees might be eligible for trade adjustment assistance. The model is intended for use only by single-employer group health plans and does not reflect the special rules that may apply to other plans, such as multiemployer plans or union-sponsored plans. Because of the complexity of the applicable rules, the model is also not intended for use when bankruptcy is the qualifying event.

Use of an appropriately completed model election notice under final regulations would be considered by the Department compliance with the content requirements of the regulation. However, the Department does not intend to require use of the model election notice and anticipates that plans could satisfy the requirements of the regulation through other types of notices. As with the proposed model general notice, the Department specifically solicits public comment on whether the model election notice adequately reflects current COBRA administrative practice and provides sufficient flexibility to be used by a majority of group health plans, as well as suggestions as to how the model could be improved.

D. Regulatory Impact Analysis

Summary

The Department expects these proposed regulations to benefit both plan sponsors and participants. They will dispel plan administrators' uncertainty about how to comply with COBRA notice provisions and reduce the risk of inadvertent violations. They will help participants and beneficiaries to understand how to exercise their COBRA rights thereby averting costly

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determined that a qualifying event does not occur when an employee begins a family or medical leave from employment under the Family and Medical Leave Act (FMLA), but may occur if the individual does not return to work at the end of the FMLA leave. 26 CFR 54.4980B–10.

[18] The notice could either provide a full description of the offered coverage (including separate options) or make specific reference to relevant portions of the plan's SPD, along with information on how to obtain the SPD.

[19] In particular, paragraph (b) requires the notice to include an explanation of the effect of electing or not electing continuation coverage on rights guaranteed under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which became Part 7 of title I of ERISA. *See* § 2590.606–4(b)(4)(vi). The model election notice contains specific language that would carry out this requirement.

disputes and lost opportunities to elect COBRA coverage. This will result in an increase in the number of COBRA elections by qualified beneficiaries. These benefits of the regulation are expected to outweigh its costs.

New administrative costs imposed by these regulations are limited because plan sponsors and administrators already distribute notices pursuant to the COBRA statute, and many of their existing practices are likely to already satisfy the requirements of these proposed regulations. The Department estimates the new administrative costs to be $2.4 million in the first year that the regulations are effective and $0.9 million annually in subsequent years. The $0.9 million ongoing annual cost is attributable to the new requirements to notify qualified beneficiaries when continuation coverage is not available or has been terminated before the maximum period of coverage has ended. The additional $1.5 million first-year cost reflects the cost to plans to review existing notices and procedures, to make any necessary revisions, and to develop the new notices.

The Department also expects the number of COBRA elections to increase slightly, resulting in an increased subsidy from employers to COBRA enrollees, *i.e.,* those qualified beneficiaries who elect continuation coverage. Employers can charge COBRA enrollees the full average cost of coverage plus an administrative charge, but those electing continuation coverage tend to have higher than average costs and therefore as a group enjoy a subsidy from plan sponsors equal to about one-third of the cost of their coverage. If COBRA elections increase by between 0.5 percent and 1.0 percent, the amount of the subsidy will increase by a similar proportion, or between $12 million and $24 million annually. This cost to plan sponsors represents an even larger benefit to the new enrollees. Absent COBRA continuation coverage, these enrollees might purchase insurance individually, and such individual policies generally provide less coverage per dollar than the group policies continued under COBRA. Alternatively, they might go without any coverage and thereby place their finances and possibly their health at risk.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is ''significant'' within the meaning of section 3(f)(4) of the Executive Order and therefore subject to review by the Office of Management and Budget (OMB). Accordingly, the Department has undertaken an assessment of the costs and benefits of this regulatory action. The analysis is summarized below.

As noted earlier in this preamble, COBRA provides that under specific circumstances participants and beneficiaries may elect to continue group health coverage temporarily following events that would otherwise result in the loss of coverage. Within its authority to issue implementing guidance concerning the notice and disclosure provisions of COBRA, the Department is proposing these regulations to address concerns raised by plan administrators, participants, and beneficiaries about the content, timing, and format of the notices required by the statute.

Costs—The Department considered economic costs and benefits in its consideration of alternatives and formulation of this proposal. The Department estimates that the regulations will increase administrative costs by $2.4 million in the first year and $0.9 million annually in subsequent years. Reflecting instances in which clear guidance will avert a lost opportunity to elect COBRA coverage, the Department also expects the number of COBRA elections to increase slightly. As a result, a portion of the cost of health care coverage will transfer from those new COBRA enrollees to plan sponsors, thereby increasing the subsidy from employers to COBRA enrollees by between 0.5 percent and 1.0 percent, or between $12 million and $24 million annually. This transfer represents a cost to plan sponsors and a benefit to COBRA enrollees. Both the administrative cost and the transfer cost will be borne by the 415,000 group health plans, covering a total of about 111 million participants and their dependents, that are currently required to offer continuation coverage.

The administrative cost of these regulations is expected to be modest, primarily because COBRA's statutory provisions have been in effect since 1986. As a result, most group health plans, plan administrators, and health insurance issuers already have developed forms and procedures for the administration of COBRA notices. The Department's estimates recognize only the cost of changes to existing practices that are likely to be associated with these rules; they exclude the pre-regulation impact of the statute itself.

Economies of scale also tend to moderate COBRA administrative costs because the majority of notice obligations are met through the purchase of COBRA administrative services from a number of providers that is small relative to the number of group health plans they serve. Nonetheless, group health plan sponsors, plan administrators, and professional service providers have stated a need for guidance, the implementation of which is expected to result in their reconsideration of their notices and procedures in light of the specific provisions of these regulations and model notices. The estimate includes the cost of professional time for the entities administering continuation coverage for all group health plans to conduct such a review. The estimate is grounded in an assumption as to the entity expected to perform the needed work (*e.g.,* a health insurer or professional administrator); the assumption should not be interpreted to bear on any party's legal responsibility for COBRA compliance.

The Department assumes that the percentage of qualified beneficiaries who lose the opportunity to elect COBRA coverage because they receive inadequate notice is very small. A portion of the cost of health care for those qualified beneficiaries would be transferred to plan sponsors to the extent that the inadequacies would be corrected as a result of the adoption of clearer and more uniform standards in connection with this guidance. The transfer arises because surveys indicate that although qualified beneficiaries who elect COBRA coverage pay the applicable cost of coverage plus an administrative charge for continuation coverage, the average cost of continuation coverage to the sponsor is

somewhat higher than the amount paid by the qualified beneficiary. This normally constitutes a subsidy of the continuation coverage by the plan sponsor. However, where qualified beneficiaries have lost the opportunity to elect the COBRA coverage to which they are entitled, they may bear the entire cost of their health care rather than the cost and administrative charge for group coverage. Averting the lost opportunity would result in a transfer of cost from the qualified beneficiary denied coverage to the plan sponsor that is equivalent to the subsidy, assuming the former participant or dependent is paying the entire cost of his or her health care.

The amount of this transfer is estimated at between $12 million and $24 million per year. In deriving this estimate, the Department observed that the number of inquiries the Department receives annually concerning COBRA, about 59,000, is equivalent to just more than 1 percent of the estimated 5 million annual COBRA qualifying events. It is likely that some but not all of these inquiries reflect notice inadequacies that these regulations would correct. The Department also noted that approximately 19 percent of qualifying events result in elections, and that the average subsidy from plan sponsors to COBRA enrollees amounts to about $2,500. If between 0.5 percent and 1.0 percent of qualifying events involve missed opportunities due to inadequate notice, and 19 percent of those events would have resulted in elections, then the regulations would increase COBRA enrollees by between 4,750 and 9,500, increasing the aggregate subsidy by between $12 million and $24 million. Expressed in unit costs, for every one percent increase in the number of participants that were wrongfully denied continuation health coverage, there is an estimated incremental increase in cost of $24 million to plan sponsors or approximately $58 per plan.

The transfer cost, together with the $2.4 million in administrative costs, is equal to only one-hundredth of 1 percent or less of total group health plan costs to companies subject to COBRA. Because the magnitude of the overall increase in costs to plans is small, the Department believes that it will not have a consequential effect on the availability of health coverage for employees, but welcomes comment on these assumptions.

Benefits—The benefits of these proposed rules will arise from improved administrative efficiency, reduced exposure to risk, and from the potential avoidance of some unnecessary losses of group health plan coverage by otherwise qualified beneficiaries.

Inconsistent procedures, and notices that are not fully compliant as to content, timing, and form are known to generate questions, delays, disputes, and duplications of effort that require the expenditure of additional resources by both plan administrators and participants and beneficiaries to resolve. Although the magnitude of the costs and potential savings associated with administrative inefficiencies is unknown, clearer and more uniform standards should serve to avoid the otherwise unnecessary expense associated with rectifying procedural and substantive notice inadequacies.

Providing greater certainty to plan sponsors and plan administrators as to how their notice obligations can be met should also limit risks to both plans and qualified beneficiaries. Plan sponsors and plan administrators who comply with this guidance should be less likely to be subjected to costly disputes, litigation, or penalties as a result of their compliance with this guidance. Improvements in the consistency and quality of information provided to participants and dependents is expected to help them understand their rights and limit their risk of losing the opportunity to elect COBRA coverage.

The benefits of improved efficiency and reduced risk cannot be specifically quantified. The beneficial impact of preventing lost opportunities to elect continuation coverage can be estimated, however. The benefit to enrollees will exceed the financial value of the transfer insofar as the enrollees will gain access to high-value group coverage, rather than a choice between buying generally lower-value individual insurance or going without coverage altogether. Qualified beneficiaries who lose group health plan coverage due to inadequate notice may be faced with a choice between purchasing individual coverage at a rate significantly higher than a plan's group rate or going without coverage for a period of time. The uninsured bear the risk of catastrophic losses. They are also known to seek preventive care less frequently and to delay or forgo treatment, which may lead to less favorable health outcomes and higher social costs for acute care at a later time. Interruptions in group health plan coverage can ultimately limit the portability of group coverage, as well. A reduction of the numbers of losses of coverage that result from notification failures will also result in efficiency gains to the extent that the qualified beneficiaries elect group health plan coverage rather than individual coverage. Individual coverage is more costly and less efficient due in large part to significantly higher costs of individual policy administration.

Alternatives—The Department gave thorough consideration to the need for guidance on the COBRA notice provisions and to the alternative forms that guidance might take. Being aware that most plan administrators and service providers make use of established forms and procedures, the Department did not wish to impose the costs likely to arise from reviews and changes to forms and procedures likely to result from the issuance of guidance unless it was actually valuable to plan administrators and qualified beneficiaries. Public comments received in response to the 1997 RFI, and information received from a range of interested parties by the Department in the conduct of its compliance assistance, outreach, and enforcement activities, however, persuaded the Department that guidance would be beneficial.

The Department also considered whether an informational booklet or question and answer publication rather than regulatory guidance would serve to provide the needed general information and address administrative complexities. Ultimately, the Department determined that while such publications might be helpful, they would not provide plan administrators with the certainty to meet their stated needs. Similarly, in its deliberations concerning the inclusion of model notices, the Department concluded that promulgation of models would encourage improved uniformity and information quality while providing greater certainty to plan administrators that their notices and procedures conform to the requirements of the statute. Because use of the models is voluntary, it is considered to provide this greater certainty without unnecessarily restricting plan administrators' continued use of existing notices and procedures that are appropriate as to content and timing.

Because the direct costs of this proposal arise from disclosure provisions, additional details concerning the data and assumptions used in developing these estimates may be found in the Paperwork Reduction Act section of this preamble. As required, the paperwork burden estimates include an analysis of the cost of the statutory provisions underlying these proposed regulations.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent

burden, the Department of Labor conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This 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, EBSA is soliciting comments concerning the proposed information collection request (ICR) included in this Notice of Proposed Rulemaking with respect to the Health Care Continuation Coverage Provisions of Part 6 of title I of ERISA. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through July 28, 2003, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The Department is issuing these proposed rules to set minimum standards for the timing and content of the notices required under the continuation coverage provisions of Part 6 of title I of ERISA, and to establish uniform standards for administering the notice process. In very general terms, the statute requires that qualified beneficiaries be offered the opportunity to elect to continue group health coverage after losses of coverage due to death of the employee, termination of employment or reduction of hours, divorce or legal separation of the covered employee from the employee's spouse, the covered employee's becoming entitled to Medicare, or bankruptcy of an employer that affects covered retirees. Qualified beneficiaries may include employees, the spouse of a covered employee and dependent children of the covered employee. Coverage can extend for 18 or 36 months, depending on the nature of the qualifying event. The plan administrator must notify COBRA participants when their coverage is terminated earlier than its maximum duration. Additional distributions of notices may be required when a COBRA enrollee experiences a second qualifying event.

Each of the sections of the proposed regulations includes an information collection request. The specific regulatory requirements of each section are described in detail earlier in this preamble. The information collection provisions are identified and very briefly described below. The actual provisions of the proposed regulation rather than this summary should be referred to for COBRA compliance purposes.

Section 2590.6061—General Notice. This section describes the plan administrator's obligation to provide a general notice of COBRA rights to participants and their spouses who newly become covered under a group health plan. These general notices may be included in the Summary Plan Description. A model general notice has been drafted to assist plan administrators with compliance and reduce compliance burden.

Section 2590.6062—Employer's notice of qualifying event. These notices are required to be provided by employers to plan administrators whenever a qualifying event occurs that is an employee's termination of employment or reduction of hours, death, or enrollment in Medicare.

Section 2590.6063—Qualified beneficiary's notices. Qualified beneficiaries are responsible for notifying the plan administrator of a qualifying event that is the divorce or legal separation of the employee and spouse, or a dependent's becoming no longer eligible for coverage as a dependent under the plan.

Section 2590.6064—Plan administrator's notice obligations. Plan administrators are required to notify each qualified beneficiary who is entitled to elect continuation coverage of his or her rights under COBRA. Paragraph (d) requires specific notice to be provided to qualified beneficiaries in the event that the administrator terminates continuation coverage prior to the end of its maximum duration. A single notice may be sent to multiple qualifying beneficiaries known to reside at a single address, although they each have separate COBRA election rights. A model election notice has been drafted to assist with compliance and reduce compliance burden.

In order to estimate the burden of compliance with the statute and these proposed rules, the Department used data from several sources and made a number of assumptions. It should be noted that this Paperwork Reduction Act analysis includes the cost of the statute as well as the cost of the discretion exercised in this rulemaking. These costs were developed in the manner described below.

In order to develop estimates of the cost of the review, revision, development, and distribution of COBRA notices, it was first necessary to determine the numbers of participants and dependents in plans that are required to offer COBRA coverage (generally plans with 20 or more participants), the numbers of dependents who reside at addresses that are different from other related participants, and the rates of the occurrence of the qualifying events that give rise to notice obligations. The participants and dependents identified in available data sets represent the group of qualified beneficiaries who will have qualifying events. Estimates of the number of entities such as group health insurance issuers and professional administrators that would review their COBRA notices, the number that would consequently revise their COBRA notices, and the time required to do so for each type of notice was also required.

The Department developed its estimates of 55,778,300 employees and 55,002,439 dependents, 67,000 of whom reside at different addresses, and 2,461,000 COBRA enrollees from the February and March 2001 Current Population Survey (CPS; Census Bureau household surveys), the 2000 Medical Expenditure Panel Survey, Household and Insurance Components (MEPS; joint Census Bureau and Agency for Healthcare Policy and Research surveys of households and private establishments), and the 1996 Panel of the Survey of Income and Program Participation (SIPP; a Census Bureau longitudinal household survey). Frequency rates for qualifying events were also developed from MEPS and SIPP.

An estimate of the number of plans covering these employees and dependents was also needed. About 50,000 group health plans file the Form 5500—Annual Return/Report of Employee Benefit Plan. These are generally plans with 100 or more participants that are defined for purposes of regulatory analyses as large plans. Because the majority of small group health plans are not required to file Form 5500, the number of such plans must be estimated from other data sources. CPS and MEPS data can be used to derive an estimate of the number of establishments that offer group health coverage by size of establishment. The establishments with fewer than 20 employees can be excluded based on establishment size variables. While the count of establishments with 20 to 99 employees that do offer coverage will vary to some degree from a count of plans because some plans include multiple establishments, it is considered to offer a reasonable proxy for the number of small plans and the distribution of participants and dependents between large and small plans. Using this approach, it can be assumed that these proposed rules would affect a total of about 415,000 plans, 50,000 of which are large, and 365,000 of which are small. The number of participants in large plans is estimated at 43.5 million. The number of participants in small plans is estimated to be 12.3 million.

The Department has assumed that all administrators for these plans will review their existing forms and procedures in response to promulgation of this guidance, and that some of those plan administrators will additionally need to revise their notices and procedures. The Department is aware that, for a large majority of plans, administration of COBRA general notices and election notices is performed by service providers rather than the plans themselves. In order to derive an estimate of the number of entities that will review forms and procedures, the Department looked at the number of health insurers offering group products and the number of professional administrators providing services to group health plans. This results in an estimate of about 3,000 entities that perform COBRA administration for the majority of all plans. All of these entities are expected to review all of their notices and procedures in response to regulatory guidance.

These reviews are assumed to require 2 hours each for the general notice and election notice requirements, and 1 hour each for the employer notice requirements, the employee notice requirements, and for development of a new notice of early termination of COBRA coverage. Employer and employee notices may need to be developed. These 3,000 reviews are expected to be conducted by professionals at the level of financial managers at a cost of $68 per hour.[20] No cost has been included for the new notice of unavailability of continuation coverage because there is currently no basis for determining the number of these notices that might be sent. The Department has assumed, however, that due to the clear and consistent information provided in the general notice, plan administrators will distribute a limited number of these notices annually, and that the associated cost would be very small.

In order to estimate the number of service providers that would be required to revise their existing notices, the Department examined its data pertaining to the nature of telephone inquiries it receives. These data show that about 59,000 inquiries pertaining to COBRA are received each year. Although the portion of these inquiries that pertain to notice provisions is unknown, as is the number of COBRA notification issues that do not give rise to contact with the Department, this number provides the only available proxy for a rate of notice-related difficulties. Given the roughly 5 million COBRA election notices provided each year, the rate of notice inadequacies is assumed to be about 1%. The actual rate might range from .5% to 1% because inquiries do pertain to issues other than notices, but 1% has been used for purposes of these estimates.

For the purpose of determining the number of service providers involved in preparing and distributing the 1% of COBRA notices that may require revision, the Department took into consideration the fact that service providers are known to use standardized forms, and that a small number of service providers are known to provide COBRA administration to a very large number of plans. Reasoning that the rate of notice inadequacies would be higher if the providers serving the majority of plans made use of notices and procedures that were not adequate as to content and timing, the Department assumed that more than 1% of the providers to the remaining fewer plans would be required to revise notices and procedures. Although the actual number is not known, the Department has assumed that 3%, or 90, service providers will need to make revisions. Modification is assumed to require an additional two hours at $68 for each notice in use.

The start-up costs that arise from this proposal pertain to the review and revision of existing forms and procedures and the development of the new early termination notices. The cost of distribution of the termination notices will be an ongoing operating cost.

Ongoing operating costs arise from completing the forms upon the occurrence of each event that gives rise to a notice obligation with information specific to the dates, plan, employee, spouse, or dependent children, and from distributing the completed forms. No completion or distribution cost is attributed to the general notice, except where dependents reside at separate addresses, as the required information is expected to be included in the Summary Plan Description. No burden is included for completing the employer's notices because they involve adding information that the employer has at hand in its customary personnel practices. Similarly, no completion burden is calculated for the qualified beneficiaries' notices because this information is limited, readily accessible, and would be provided as a usual practice by only the qualified beneficiary who wished to continue coverage. Otherwise, the cost of completion of notices is expected to be incurred at a rate of $34 per hour for 5 minutes for election notices and 1 minute for termination notices.

Postage and materials for distribution are estimated at $0.38 per notice. No assumption has been made as to the number of these notices that will be

[20] Wage rates are based on National Occupational Employment and Wage Estimates from the Occupational Employment of the Bureau of Labor Statistics for 2000, adjusted for compensation rate growth, additional compensation costs, and overhead.

distributed electronically. Plan administrators are not precluded from using electronic disclosure methods that comply with regulations at 29 CFR.104b–1(b) and (c). However, the Department believes that due to the nature of the rights and obligations involved in COBRA notice requirements, most plan administrators tend not to choose electronic distribution methods for COBRA notices. The Department requests comments on the use of electronic technology in COBRA notice administration. The application of these assumptions results in estimates of the distribution of 2,809,000 employer notices, 651,000 employee notices, 4,699,000 plan administrator election notices, and 1,000,000 early termination notices each year.

The preparation and distribution of these notices is accounted for as cost rather than hours because most COBRA administration is accomplished through the purchase of services for which fees are paid. The Department welcomes comments on its assumptions and methodology for arriving at these estimates. The number of notices of unavailability of continuation coverage cannot be reasonably estimated.

Type of Review: New collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice Requirements of the Health Care Continuation Coverage Provisions.

OMB Number: 1210–0NEW.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 415,000.

Frequency of Response: On occasion.

Responses: 9,159,000.

Estimated Total Burden Hours: None.

Total Annualized Capital/Startup Costs: $1,452,500.

Total Burden Cost (Operating and Maintenance): $17,386,200.

Total Annualized Cost: $18,838,700.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Act which permits the Secretary to prescribe simplified annual reports for pension plans, which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure requirements for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants that satisfy certain other requirements.

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities. On this basis, EBSA has determined that the proposed regulation will not have a significant impact on a substantial number of small entities. In support of this conclusion, the Department has conducted an initial regulatory flexibility analysis, which is summarized below.

EBSA is proposing the regulation to provide plans and qualified beneficiaries with greater certainty as to how the notice obligations of COBRA can be met. The Department is considering this action because inquiries to the Department as well as public comment in response to the 1997 RFI indicated that service providers and plan administrators would welcome guidance that would provide greater administrative efficiency and reduce exposure to risk resulting from procedural or substantive failures to meet notification requirements. At the same time, improvements in the quality of information provided to participants and beneficiaries is expected to help them understand their rights and limit their risk of losing the opportunity to elect the COBRA coverage that is required to be offered.

The COBRA provisions of title I of ERISA require a group health plan to offer qualified beneficiaries the opportunity to elect continuation coverage when they would otherwise lose group health coverage as a result of certain events described in the statute as ''qualifying events.'' Under section 608, the Secretary has the authority to carry out the provisions of Part 6 of title I of ERISA. Further, the Conference Report that accompanied COBRA provided that the Secretary has the authority to issue regulations implementing the notice and disclosure provisions of section 606 of ERISA. The Department's objective in issuing the proposed regulations is to provide guidelines that will assure plan administrators that they are in compliance with the notification provisions of COBRA and that participants and beneficiaries have sufficient information to exercise their COBRA rights. Small plans will benefit from clarifications about the content and timing of notices and from the likelihood that fewer determinations about COBRA coverage will be delayed, disputed, or appealed. In addition, an increased number of qualified beneficiaries in small health plans will be able to obtain group health plan continuation coverage.

The Department believes that, because of the expertise required, small plans will use service providers to review notices and to modify or adapt Department models for use by the plan administrator. Generally, COBRA service providers offer plans on-going administrative services such as notifying employees about their group health plan continuation coverage, distributing and processing election forms, collecting and applying premium payments, and monitoring COBRA compliance. Small plans, in particular, are less likely to have in-house capabilities to handle these administrative tasks. For a service provider, reviewing and adopting or modifying forms for plans will result in some direct cost. Service providers may choose to absorb some of the cost in order to maintain competitive products; others may charge the cost to their client

plans. Where these costs are charged to plans, the cost will most likely be minimized because of the economies of scale inherent in the use of standardized forms and procedures. At the same time, costs to small plans are further reduced because of the large number of small plans that share the cost burden; there are approximately seven times as many small plans as large plans. Finally, to further reduce costs, the Department has provided two model notices that can be adapted by service providers for use by individual plans.

The cost estimates for small plan compliance recognize only the cost of changes to existing practices associated with the proposed regulation; they exclude the impact of the statute itself. Costs result first from the likelihood that service providers will develop or modify two notices currently required to be sent to a plan administrator, and the requirement to develop and implement the new early termination notice described in the proposed regulation. No cost is attributable to the new notice of unavailability of continuation coverage. Finally, small plans will incur transfer costs as a result of an increase in the number of elections of continuation coverage by qualified beneficiaries who would have lost the opportunity to elect COBRA coverage absent improved notices and procedures.

The Department estimates that there are approximately 2.5 million plans with fewer than 100 participants that are considered small group health plans under the Department's definition. Among these, COBRA applies to only those plans with 20 or more employees or 365,000 plans, with approximately 12.3 million participants. While the majority of group health plans subject to COBRA are small plans, participation in those plans represents only about 22% of participation in all plans covered by COBRA. Based on the analysis below, the cost to small group health plans to review and adapt or modify existing notices is estimated at $275,900. The cost to develop the new early notice of termination is estimated at $254,300. The total cost to small plans for a service provider's assistance in reviewing, modifying, or developing notices is estimated to be $530,200, or $1.45 per small plan. The comparable average cost to large plans is $37.38 per plan.

Employers with small plans will also incur transfer costs as a result of increased numbers of qualified beneficiaries who will elect continuation coverage. A portion of the cost of health care coverage previously borne by individuals will be transferred from those new COBRA enrollees to plan sponsors under the proposed regulations. For small plans, the per-plan transfer costs are considerably less than for large plans due to there being fewer participants. The potential transfer cost to small plans is estimated to range between $2.6 million and $5.2 million, depending on the number of qualified beneficiaries who will elect COBRA coverage. The rate of potential losses of opportunity to elect COBRA coverage is estimated to fall between .5% and 1%. This represents an average of $7–$14 per small plan. The comparable cost to large plans ranges from $9.4 million to $18.7 million, an average of $185–$370 per plan. At the upper bound, the cost of the proposed regulation for 365,000 small plans is estimated to be $5.7 million, or $15.45 per plan.

Although the basis for the proposed regulation lies in the notice and disclosure provisions of section 606 of title I of ERISA, the proposed regulation does not duplicate, overlap, or conflict with other relevant federal rules. COBRA notification provisions have been in effect for many years. As such, most plan administrators and service providers have developed procedures to comply with their statutory obligations. The proposed regulation merely seeks to provide additional, detailed guidance that will clarify a plan's administrative obligations while assuring plan administrators and service providers that, in complying with the proposed regulation, they have satisfied their statutory obligations. A discussion of alternatives to the proposed regulation that the Department considered appears above in the discussion under Executive Order 12866.

The Department has attempted to minimize the burden of the review and potential revision of existing notices that will be undertaken in response to this guidance by including model notices that can be adapted to plans' specific circumstances. This should lessen the use of resources for small and large plans alike.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2590

Employee benefit plans, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to

amend Subchapter L, Part 2590 of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER L—GROUP HEALTH PLANS

PART 2590—RULES AND REGULATIONS FOR GROUP HEALTH PLANS

1. The heading of subchapter L is revised to read as shown above.

2. The heading of part 2590 is revised to read as shown above.

3. The authority citation for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1161–1168, 1169, 1181–1183, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c; sec. 401(b), Pub. L. 105–00, 112 Stat. 645; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003).

4. The following new sections are added to subpart A of part 2590:

Subpart A—Continuation Coverage, Qualified Medical Child Support Orders, Coverage for Adopted Children

Sec.
2590.606–1 General notice of continuation coverage.
Appendix to § 2590.606–1.
2590.606–2 Notice requirement for employers.
2590.606–3 Notice requirements for covered employees and qualified beneficiaries.
2590.606–4 Notice requirements for plan administrators.
Appendix to § 2590.606–4.

§ 2590.606–1. General notice of continuation coverage.

(a) *General.* Pursuant to section 606(a)(1) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator of a group health plan subject to the continuation coverage requirements of Part 6 of title I of the Act shall provide, in accordance with this section, written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.

(b) *Timing of notice.* The notice required by paragraph (a) of this section shall be furnished to each employee and each employee's spouse, not later than the earlier of:

(1) The date that is 90 days after the date on which such individual's coverage under the plan commences, or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or

(2) The first date after commencement of coverage of either the covered employee or the spouse on which the administrator is required, pursuant to § 2590.606–4(b), to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.

(c) *Content of notice.* The notice required by paragraph (a) of this section shall be written in a manner calculated to be understood by the average plan participant and shall contain the following information:

(1) The name of the plan under which continuation coverage is available, and the name, address and telephone number of the party responsible under the plan for the administration of continuation coverage benefits;

(2) A general description of the continuation coverage under the plan, including identification of the classes of individuals who may become qualified beneficiaries, the types of qualifying events that may give rise to the right to continuation coverage, the obligation of the employer to notify the plan administrator of the occurrence of certain qualifying events, the maximum period for which continuation coverage may be available, when and under what circumstances continuation coverage may be extended beyond the applicable maximum period, and the plan's requirements applicable to the payment of premiums for continuation coverage;

(3) An explanation of the plan's requirements regarding the responsibility of a qualified beneficiary to notify the administrator of a qualifying event that is a divorce, legal separation, or a child's ceasing to be a dependent under the terms of the plan, and a description of the plan's procedures for providing such notice;

(4) An explanation of the plan's requirements regarding the responsibility of qualified beneficiaries who are receiving continuation coverage to provide notice to the administrator of a second qualifying event (such as divorce or legal separation, death of covered employee, covered employee's becoming enrolled in Medicare, and child's loss of dependent child status) or a determination by the Social Security Administration, under title II or XVI of the Social Security Act (42 U.S.C. 401 *et seq.* or 1381 *et seq.*), that a qualified beneficiary is disabled, and a description of the plan's procedures for providing such notices;

(5) An explanation of the importance of keeping the administrator informed of the current addresses of all participants or beneficiaries under the plan who are or may become qualified beneficiaries; and

(6) A statement that the notice does not fully describe continuation coverage or other rights under the plan and that more complete information regarding such rights is available from the plan administrator and in the plan's summary plan description.

(d) *Single notice rule.* A plan administrator may satisfy the requirement to provide notice in accordance with this section to a covered employee and the covered employee's spouse by furnishing a single notice addressed to both the covered employee and the covered employee's spouse, if, on the basis of the most recent information available to the plan, the covered employee's spouse resides at the same location as the covered employee. The prior sentence shall not apply if a spouse's coverage under the plan commences after the date on which the covered employee's coverage commences, unless the spouse's coverage commences before the date on which the notice required by this section is required to be provided to the covered employee.

(e) *Notice in summary plan description.* A plan administrator may satisfy the requirement to provide notice in accordance with this section by including the information described in paragraphs (c)(1), (2), (3), (4), and (5) of this section in a summary plan description meeting the requirements of § 2520.102–3 of this title furnished in accordance with paragraph (b) of this section.

(f) *Delivery of notice.* The notice required by this section shall be furnished in a manner consistent with the requirements of § 2520.104b–1 of this title, including paragraph (c) of that section relating to the use of electronic media.

(g) *Model notice.* The appendix to this section contains a model notice that is intended to assist administrators in discharging the notice obligations of this section. Use of the model notice is not mandatory. The model reflects the requirements of this section as they would apply to single-employer group health plans and must be modified if used to provide notice with respect to other types of group health plans, such as multiemployer plans or plans established and maintained by employee organizations for their members. In order to use the model notice, administrators must appropriately add relevant information where indicated in the model notice, select among alternative language, and supplement the model notice to reflect applicable plan provisions. Items of information that are not applicable to a particular plan may be deleted. Use of the model notice, appropriately modified and supplemented, will be deemed to satisfy the notice content

requirements of paragraph (c) of this section.

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APPENDIX TO § 2590.606-1
MODEL GENERAL NOTICE OF COBRA CONTINUATION COVERAGE RIGHTS
(For use by single-employer group health plans)

** CONTINUATION COVERAGE RIGHTS UNDER COBRA**

Introduction

You are receiving this notice because you have recently become covered under [*enter name of group health plan*] (the Plan). This notice contains important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. The right to COBRA continuation coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA continuation coverage can become available to you and to other members of your family who are covered under the Plan when you would otherwise lose your group health coverage. **This notice generally explains COBRA continuation coverage, when it may become available to you and your family, and what you need to do to protect the right to receive it.** This notice gives only a summary of your COBRA continuation coverage rights. For more information about your rights and obligations under the Plan and under federal law, you should either review the Plan's Summary Plan Description *or* get a copy of the Plan Document from the Plan Administrator.

The Plan Administrator is [*enter name, address and telephone number of Plan Administrator*]. [*If the Plan Administrator administers COBRA continuation coverage, add the following:* The Plan Administrator is responsible for administering COBRA continuation coverage.] [*If the Plan Administrator does not administer COBRA continuation coverage, add the following:* COBRA continuation coverage for the Plan is administered by [*enter name, address and telephone number of party responsible for administering COBRA continuation coverage*].

COBRA Continuation Coverage

COBRA continuation coverage is a continuation of Plan coverage when coverage would otherwise end because of a life event known as a "qualifying event." Specific qualifying events are listed later in this notice. COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." A qualified beneficiary is someone who will lose coverage under the Plan because of a qualifying event. Depending on the type of qualifying event, employees, spouses of employees, and dependent children of employees may be qualified beneficiaries. Under the Plan, qualified beneficiaries who elect COBRA continuation coverage [*choose and enter appropriate information:* must pay *or* are not required to pay] for COBRA continuation coverage.

If you are an employee, you will become a qualified beneficiary if you will lose your coverage under the Plan because either one of the following qualifying events happens:

(1) Your hours of employment are reduced, or

(2) Your employment ends for any reason other than your gross misconduct.

If you are the spouse of an employee, you will become a qualified beneficiary if you will lose your coverage under the Plan because any of the following qualifying events happens:

(1) Your spouse dies;

(2) Your spouse's hours of employment are reduced;

(3) Your spouse's employment ends for any reason other than his or her gross misconduct;

(4) Your spouse becomes enrolled in Medicare (Part A, Part B, or both); or

(5) You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they will lose coverage under the Plan because any of the following qualifying events happens:

(1) The parent-employee dies;

(2) The parent-employee's hours of employment are reduced;

(3) The parent-employee's employment ends for any reason other than his or her gross misconduct;

(4) The parent-employee becomes enrolled in Medicare (Part A, Part B, or both);

(5) The parents become divorced or legally separated; or

(6) The child stops being eligible for coverage under the plan as a "dependent child."

[*If the Plan provides retiree health coverage, add the following paragraph:*]

Sometimes, filing a proceeding in bankruptcy under title 11 of the United States Code can be a qualifying event. If a proceeding in bankruptcy is filed with respect to [*enter name of employer sponsoring the plan*], and that bankruptcy results in the loss of coverage of any retired employee covered under the Plan, the retired employee is a qualified beneficiary with respect to the bankruptcy. The retired employee's spouse, surviving spouse, and dependent children will also be qualified beneficiaries if bankruptcy results in the loss of their coverage under the Plan.

The Plan will offer COBRA continuation coverage to qualified beneficiaries only after the Plan Administrator has been notified that a qualifying event has occurred. When the qualifying event is the end of employment or reduction of hours of employment, death of the employee, [*add if Plan provides retiree health coverage:* commencement of a proceeding in bankruptcy with respect to the employer,] or enrollment of the employee in Medicare (Part A, Part B, or both), the employer must notify the Plan Administrator of the qualifying event [*choose and enter option*

applicable to this Plan: (1) within 30 days of any of these events *or (2)* within 30 days following the date coverage ends.]

For the other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator. The Plan requires you to notify the Plan Administrator within 60 days [or enter longer period permitted under the terms of the Plan] after the qualifying event occurs. You must send this notice to: [*Enter name of appropriate party*]. [*Add description of any additional Plan procedures for this notice, including a description of any required information or documentation.*]

Once the Plan Administrator receives notice that a qualifying event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. For each qualified beneficiary who elects COBRA continuation coverage, COBRA continuation coverage will begin [*Enter the option applicable to this Plan: (1)* on the date of the qualifying event *or (2)* on the date that Plan coverage would otherwise have been lost].

COBRA continuation coverage is a temporary continuation of coverage. When the qualifying event is the death of the employee, enrollment of the employee in Medicare (Part A, Part B, or both), your divorce or legal separation, or a dependent child losing eligibility as a dependent child, COBRA continuation coverage lasts for up to 36 months.

When the qualifying event is the end of employment or reduction of the employee's hours of employment, COBRA continuation coverage lasts for up to18 months. There are two ways in which this 18-month period of COBRA continuation coverage can be extended.

Disability extension of 18-month period of continuation coverage

If you or anyone in your family covered under the Plan is determined by the Social Security Administration to be disabled at any time during the first 60 days of COBRA continuation coverage and you notify the Plan Administrator in a timely fashion, you and your entire family can receive up to an additional 11 months of COBRA continuation coverage, for a total maximum of 29 months. [*insert and modify to reflect actual plan provisions on this notice:* You must make sure that the Plan Administrator is notified of the Social Security Administration's determination within 60 days of the date of the determination and before the end of the 18-month period of COBRA continuation coverage.] This notice should be sent to: [*Enter name of appropriate party*]. [*Add description of any additional Plan procedures for this notice, including a description of any required information or documentation.*]

Second qualifying event extension of 18-month period of continuation coverage

If your family experiences another qualifying event while receiving COBRA continuation coverage, the spouse and dependent children in your family can get additional months of COBRA continuation coverage, up to a maximum of 36 months. This extension is available to the spouse and dependent children if the former employee dies, enrolls in Medicare (Part A, Part B, or both), or gets divorced or legally separated. The extension is also available to a dependent child when that child stops being eligible under the Plan as a dependent child. **In all of these**

cases, you must make sure that the Plan Administrator is notified of the second qualifying event within 60 days of the second qualifying event [or *enter longer period if permitted under the terms of the Plan*]. This notice must be sent to: [*Enter name of appropriate party*]. [*Add description of any additional Plan procedures for this notice, including a description of any required information or documentation.*]

If You Have Questions

If you have questions about your COBRA continuation coverage, you should contact [*enter name of appropriate party*] or you may contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA). Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website at www.dol.gov/ebsa.

Keep Your Plan Informed of Address Changes

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

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§ 2590.606–2. Notice requirement for employers.

(a) *General.* Pursuant to section 606(a)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act), except as otherwise provided in this section, the employer of a covered employee under a group health plan subject to the continuation coverage requirements of Part 6 of title I of the Act shall provide, in accordance with this section, notice to the administrator of the plan of the occurrence of a qualifying event that is the covered employee's death, termination of employment (other than by reason of gross misconduct), reduction in hours of employment, Medicare entitlement, or a proceeding in a case under title 11, United States Code, with respect to the employer from whose employment the covered employee retired at any time.

(b) *Timing of notice.* The notice required by this section shall be furnished to the administrator of the plan—

(1) In the case of a plan that provides, pursuant to section 607(5) of the Act, that continuation coverage and the applicable period for providing notice under section 606(a)(2) of the Act shall commence with the date of loss of coverage, not later than 30 days after the date on which a qualified beneficiary loses coverage under the plan due to the qualifying event;

(2) In the case of a multiemployer plan that provides, pursuant to section 606(a)(2) of the Act, for a longer period of time within which employers may provide notice of a qualifying event, not later than the end of the period provided pursuant to the plan's terms for such notice; and

(3) In all other cases, not later than 30 days after the date on which the qualifying event occurred.

(c) *Content of notice.* The notice required by this section shall include sufficient information to enable the administrator to determine the plan, the covered employee, the qualifying event, and the date of the qualifying event.

(d) *Multiemployer plan special rules.* This section shall not apply to any employer that maintains a multiemployer plan, with respect to qualifying events affecting coverage under such plan, if the plan provides, pursuant to section 606(b) of the Act, that the administrator shall determine whether such a qualifying event has occurred.

§ 2590.606–3. Notice requirements for covered employees and qualified beneficiaries.

(a) *General.* In accordance with the authority of sections 505 and 606(a)(3) of the Employee Retirement Income Security Act of 1974, as amended (the Act), this section sets forth requirements for group health plans subject to the continuation coverage requirements of Part 6 of title I of the Act with respect to the responsibility of covered employees and qualified beneficiaries to provide the following notices to administrators:

(1) Notice of the occurrence of a qualifying event that is a divorce or legal separation of a covered employee from his or her spouse;

(2) Notice of the occurrence of a qualifying event that is a beneficiary's ceasing to be covered under a plan as a dependent child of a participant;

(3) Notice of the occurrence of a second qualifying event after a qualified beneficiary has become entitled to continuation coverage with a maximum duration of 18 (or 29) months;

(4) Notice that a qualified beneficiary entitled to receive continuation coverage with a maximum duration of 18 months has been determined by the Social Security Administration, under title II or XVI of the Social Security Act (42 U.S.C. 401 *et seq.* or 1381 *et seq.*) (SSA), to be disabled at any time during the first 60 days of continuation coverage; and

(5) Notice that a qualified beneficiary, with respect to whom a notice described in paragraph (a)(4) of this section has been provided, has subsequently been determined by the Social Security Administration, under title II or XVI of the SSA to no longer be disabled.

(b) *Reasonable procedures.* (1) A plan subject to the continuation coverage requirements shall establish reasonable procedures for the furnishing of the notices described in paragraph (a) of this section.

(2) For purposes of this section, a plan's notice procedures shall be deemed reasonable only if such procedures:

(i) Are described in the plan's summary plan description required by § 2520.102–3 of this title;

(ii) Specify the individual or entity designated to receive such notices;

(iii) Specify the means by which notice may be given;

(iv) Describe the information concerning the qualifying event or determination of disability that the plan deems necessary in order to provide continuation coverage rights consistent with the requirements of the Act; and

(v) Comply with the requirements of paragraphs (c), (d), and (e) of this section.

(3) A plan's procedures will not fail to be reasonable, pursuant to this section, solely because the procedures require a covered employee or qualified beneficiary to utilize a specific form to provide notice to the administrator, provided that any such form is easily available, without cost, to covered employees and qualified beneficiaries.

(4) If a plan has not established reasonable procedures for providing a notice required by this section, such notice shall be deemed to have been provided when a written or oral communication identifying a specific qualifying event is made in a manner reasonably calculated to bring the information to the attention of any of the following:

(i) In the case of a single-employer plan, either the organizational unit that has customarily handled employee benefits matters of the employer, or any officer of the employer;

(ii) In the case of a plan to which more than one unaffiliated employer contributes, or which is established or maintained by an employee organization, either the joint board, association, committee, or other similar group (or any member of any such group) administering the plan, or the person or organizational unit to which claims for benefits under the plan customarily have been referred; or

(iii) In the case of a plan the benefits of which are provided or administered by an insurance company, insurance service, or other similar organization subject to regulation under the insurance laws of one or more States, the person or organizational unit that handles claims for benefits under the plan or any officer of the insurance company, insurance service, or other similar organization.

(c) *Periods of time for providing notice.* A plan may establish a reasonable period of time for furnishing any of the notices described in paragraph (a) of this section, provided that any time limit imposed by the plan with respect to a particular notice may not be shorter than the time limit described in this paragraph (c) with respect to that notice.

(1) *Time limits for notices of qualifying events.* The period of time for furnishing a notice described in paragraph (a)(1), (2), or (3) of this section may not end before the date that is 60 days after the later of:

(i) In the case of a plan that provides, pursuant to section 607(5) of the Act, that continuation coverage and the applicable period for providing notice under section 606(a)(2) of the Act shall commence with the date of loss of coverage, the date on which the qualified beneficiary loses (or would lose) coverage under the plan as a result of the qualifying event;

(ii) In the case of any plan other than a plan described in paragraph (c)(1)(i) of this section, the date on which the relevant qualifying event occurs; or

(iii) The date on which the qualified beneficiary is informed, through the furnishing of the plan's summary plan description or the notice described in § 2590.606–1, of both the responsibility to provide the notice and the plan's procedures for providing such notice to the administrator.

(2) *Time limits for notice of disability determination.* (i) Subject to paragraph (c)(2)(ii) of this section, the period of time for furnishing the notice described in paragraph (a)(4) of this section may not end before the date that is 60 days after the later of:

(A) The date of the disability determination by the Social Security Administration; or

(B) The date on which the qualified beneficiary is informed, through the furnishing of the summary plan description or the notice described in § 2590.606–1, of both the responsibility to provide the notice and the plan's procedures for providing such notice to the administrator.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a plan may require the notice described in paragraph (a)(4) of this section to be furnished before the end of the first 18 months of continuation coverage.

(3) *Time limits for notice of change in disability status.* The period of time for furnishing the notice described in paragraph (a)(5) of this section may not end before the date that is 30 days after the later of:

(i) The date of the final determination by the Social Security Administration, under title II or XVI of the SSA, that the qualified beneficiary is no longer disabled; or

(ii) The date on which the qualified beneficiary is informed, through the furnishing of the plan's summary plan description or the notice described in § 2590.606–1, of both the responsibility to provide the notice and the plan's procedures for providing such notice to the administrator.

(d) *Required contents of notice.* (1) A plan may establish reasonable requirements for the content of any notice described in this section, provided that a plan may not deem a notice to have been provided untimely if such notice, although not containing all of the information required by the plan, is provided within the time limit established under the plan in conformity with paragraph (c) of this section and the administrator is able to determine from such notice the plan, the covered employee and qualified beneficiary(ies), the qualifying event or disability, and the date on which the qualifying event (if any) occurred.

(2) An administrator may require a notice that does not contain all of the information required by the plan to be supplemented with the additional information necessary to meet the plan's reasonable content requirements for such notice before the notice is deemed to have been provided in accordance with this section.

(e) *Who may provide notice.* With respect to each of the notice requirements of this section, any individual who is either the covered employee, a qualified beneficiary with respect to the qualifying event, or any representative acting on behalf of the covered employee or qualified beneficiary may provide the notice, and the provision of notice by one individual shall satisfy any responsibility to provide notice on behalf of all related qualified beneficiaries with respect to the qualifying event.

(f) *Plan provisions.* To the extent that a plan provides a covered employee or qualified beneficiary a period of time longer than that specified in this section to provide notice to the administrator, the terms of the plan shall govern the time frame for such notice.

(g) *Additional rights to continuation coverage.* Nothing in this section shall be construed to preclude a plan from providing, in accordance with its terms, continuation coverage to a qualified beneficiary although a notice requirement of this section was not satisfied.

§ 2590.606–4. Notice requirements for plan administrators.

(a) *General.* Pursuant to section 606(a)(4) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator of a group health plan subject to the

continuation coverage requirements of Part 6 of title I of the Act shall provide, in accordance with this section, notice to each qualified beneficiary of the qualified beneficiary's rights to continuation coverage under the plan.

(b) *Notice of right to elect continuation coverage.* (1) Except as provided in paragraph (b)(2) or (3) of this section, upon receipt of a notice of qualifying event furnished in accordance with § 2590.606–2 or § 2590.606–3, the administrator shall furnish to each qualified beneficiary, not later than 14 days after receipt of the notice of qualifying event, a notice meeting the requirements of paragraph (b)(4) of this section.

(2) In the case of a plan with respect to which an employer of a covered employee is also the administrator of the plan, except as provided in paragraph (b)(3) of this section, a notice meeting the requirements of paragraph (b)(4) of this section shall be furnished not later than 44 days after:

(i) In the case of a plan that provides, pursuant to section 607(5) of the Act, that continuation coverage and the applicable period for providing notice under section 606(a)(2) of the Act shall commence with the date of loss of coverage, the date on which a qualified beneficiary loses coverage under the plan due to the qualifying event; or

(ii) In all other cases, the date on which the qualifying event occurred.

(3) In the case of a plan that is a multiemployer plan, a notice meeting the requirements of paragraph (b)(4) of this section shall be furnished not later than the later of:

(i) The end of the time period provided in paragraph (b)(1) of this section; or

(ii) The end of the time period provided in the terms of the plan for such purpose.

(4) The notice required by this paragraph (b) shall be written in a manner calculated to be understood by the average plan participant and shall contain the following information:

(i) The name of the plan under which continuation coverage is available; and the name, address and telephone number of the party responsible under the plan for the administration of continuation coverage benefits;

(ii) Identification of the qualifying event;

(iii) Identification of each qualified beneficiary who is recognized by the plan as being entitled to elect continuation coverage with respect to the qualifying event, and the date on which coverage under the plan will terminate (or has terminated) unless continuation coverage is elected;

(iv) A statement that each individual who is a qualified beneficiary with respect to the qualifying event has an independent right to elect continuation coverage, that a covered employee or a qualified beneficiary who is the spouse of the covered employee (or was the spouse of the covered employee on the day before the qualifying event occurred) may elect continuation coverage on behalf of all other qualified beneficiaries with respect to the qualifying event, and that a parent or legal guardian may elect continuation coverage on behalf of a minor child;

(v) An explanation of the plan's procedures for electing continuation coverage, including an explanation of the time period during which the election must be made, and the date by which the election must be made;

(vi) An explanation of the consequences of failing to elect or waiving continuation coverage, including an explanation that a qualified beneficiary's decision whether to elect continuation coverage will affect the future rights of qualified beneficiaries to portability of group health coverage, guaranteed access to individual health coverage, and special enrollment under Part 7 of title I of the Act, with a reference to where a qualified beneficiary may obtain additional information about such rights; and a description of the plan's procedures for revoking a waiver of the right to continuation coverage before the date by which the election must be made;

(vii) A description of the continuation coverage that will be made available under the plan, if elected, including the date on which such coverage will commence, either by providing a description of the coverage or by reference to the plan's summary plan description;

(viii) An explanation of the maximum period for which continuation coverage will be available under the plan, if elected; an explanation of the continuation coverage termination date; and an explanation of any events that might cause continuation coverage to be terminated earlier than the end of the maximum period;

(ix) A description of the circumstances (if any) under which the maximum period of continuation coverage may be extended due either to the occurrence of a second qualifying event or a determination by the Social Security Administration, under title II or XVI of the Social Security Act (42 U.S.C. 401 *et seq.* or 1381 *et seq.*) (SSA), that the qualified beneficiary is disabled, and the length of any such extension;

(x) In the case of a notice that offers continuation coverage with a maximum duration of less than 36 months, a description of the plan's requirements regarding the responsibility of qualified beneficiaries to provide notice of a second qualifying event and notice of a disability determination under the SSA, along with a description of the plan's procedures for providing such notices, including the times within which such notices must be provided and the consequences of failing to provide such notices. The notice shall also explain the responsibility of qualified beneficiaries to provide notice that a disabled qualified beneficiary has subsequently been determined to no longer be disabled;

(xi) A description of the amount, if any, that each qualified beneficiary will be required to pay for continuation coverage;

(xii) A description of the due dates for payments, the qualified beneficiaries' right to pay on a monthly basis, the grace periods for payment, the address to which payments should be sent, and the consequences of delayed payment and non-payment;

(xiii) A description of any opportunity provided under the plan for other health coverage for which the covered employee or qualified beneficiary may be eligible, either as an alternative to continuation coverage or in addition to continuation coverage (*e.g.*, alternative coverage on a group basis under the plan, an option to enroll under an individual conversion health plan after exhaustion of continuation coverage, retiree health coverage), an explanation of how election of such other coverage would affect the qualified beneficiaries' continuation coverage rights under the plan and rights to guaranteed access to individual health coverage;

(xiv) An explanation of the importance of keeping the administrator informed of the current addresses of all participants or beneficiaries under the plan who are or may become qualified beneficiaries; and

(xv) A statement that the notice does not fully describe continuation coverage or other rights under the plan, and that more complete information regarding such rights is available in the plan's summary plan description or from the plan administrator.

(c) *Notice of unavailability of continuation coverage.* (1) In the event that an administrator who receives a notice of qualifying event furnished in accordance with § 2590.606–3 determines that an individual is not entitled to continuation coverage under Part 6 of title I of the Act, the administrator shall provide to such

individual an explanation as to why the individual is not entitled to elect continuation coverage.

(2) The notice required by this paragraph (c) shall be furnished by the administrator in accordance with the time frame set out in paragraph (b) of this section that would apply if the administrator had determined that the individual was entitled to elect continuation coverage.

(d) *Notice of termination of continuation coverage.* (1) The administrator of a plan that is providing continuation coverage to one or more qualified beneficiaries with respect to a qualifying event shall provide, in accordance with this paragraph (d), notice to each such qualified beneficiary of any termination of continuation coverage that takes effect earlier than the end of the maximum period of continuation coverage applicable to such qualifying event.

(2) The notice required by this paragraph (d) shall be written in a manner calculated to be understood by the average plan participant and shall contain the following information:

(i) The reason that continuation coverage has terminated earlier than the end of the maximum period of continuation coverage applicable to such qualifying event;

(ii) The date of termination of continuation coverage; and

(iii) Any rights the qualified beneficiary may have under the plan or under applicable law to elect an alternative group or individual coverage, such as a conversion right.

(3) The notice required by this paragraph (d) shall be furnished by the administrator as soon as practicable following the administrator's determination that continuation coverage shall terminate.

(e) *Special notice rules.* The notices required by paragraphs (b), (c), and (d) of this section shall be furnished to each qualified beneficiary or individual, except that—

(1) An administrator may provide notice to a covered employee and the covered employee's spouse by furnishing a single notice addressed to both the covered employee and the covered employee's spouse, if, on the basis of the most recent information available to the plan, the covered employee's spouse resides at the same location as the covered employee; and

(2) An administrator may provide notice to each qualified beneficiary who is the dependent child of a covered employee by furnishing a single notice to the covered employee or the covered employee's spouse, if, on the basis of the most recent information available to the plan, the dependent child resides at the same location as the individual to whom such notice is provided.

(f) *Delivery of notice.* The notices required by this section shall be furnished in any manner consistent with the requirements of § 2520.104b–1 of this title, including paragraph (c) of that section relating to the use of electronic media.

(g) *Model notice.* The appendix to this section contains a model notice that is intended to assist administrators in discharging the notice obligations of this section. Use of the model notice is not mandatory. The model reflects the requirements of this section as they would apply to single-employer group health plans and must be modified if used to provide notice with respect to other types of group health plans, such as multiemployer plans or plans established and maintained by employee organizations for their members. In order to use the model notice, administrators must appropriately add relevant information where indicated in the model notice, select among alternative language and supplement the model notice to reflect applicable plan provisions. Items of information that are not applicable to a particular plan may be deleted. Use of the model notice, appropriately modified and supplemented, will be deemed to satisfy the notice content requirements of paragraph (b)(4) of this section.

BILLING CODE 4510–29–P

APPENDIX TO § 2590.606-4
MODEL COBRA CONTINUATION COVERAGE ELECTION NOTICE
(For use by single-employer group health plans)

[*Enter date of notice*]

Dear: [*Enter Name of Employee,*
Spouse, Dependent Children, as appropriate]

This notice contains important information about your right to continue your health care coverage in the [*enter name of group health plan*] (the Plan).

Please read the information contained in this notice very carefully. This notice provides important information concerning your rights and what you have to do to continue your health care coverage under the Plan. If you have any questions concerning the information in this notice or your rights to coverage, you should contact [*enter name of party responsible for COBRA administration for the Plan, with telephone number and address*].

If you do not elect to continue your health care coverage by completing the enclosed "Election Form" and returning it to us, your coverage under the Plan will end on [*enter date*] due to:

☐ End of employment
☐ Death of employee
☐ Enrollment in Medicare
☐ Reduction in hours of employment
☐ Divorce or legal separation
☐ Loss of dependent child status

Each of the following persons is entitled to elect to continue health care coverage under the Plan:

☐ Employee – [*enter name*]
☐ Spouse (or former spouse of employee) [*enter name*]
☐ Dependent children [*enter name(s)*]

Because of the event (checked above) that will end your coverage under the Plan, you [*and/or, as appropriate,* your spouse, and dependent children] are entitled to continue your health care coverage for up to _____ months [*enter 18 or 36 months as appropriate*]. If you elect to continue your coverage under the Plan, your continuation coverage will begin on [*enter date*] and can last until [*enter date*].

Your continuation coverage will cost: [*enter amount each qualified beneficiary would be required to pay for each option per month of coverage and any other permitted coverage periods.]*

IMPORTANT - To elect continuation coverage you MUST complete the enclosed "Election Form" and return it to us. You may mail it to the address shown on the Election Form [*or describe other acceptable means of submission*]. The completed Election Form must be post-marked by [*enter date*] [*or received by [enter date] if submitted by other means*]. If you do not submit a completed Election Form by this date, you will lose your right to elect

continuation coverage. Important information about your rights is provided to you on the pages after the Election Form.

COBRA CONTINUATION COVERAGE ELECTION FORM

[*Name of Employee / Spouse / Dependent Children (as appropriate)*]

IMPORTANT: This form must be completed and returned by mail [*or describe other means of submission and due date*]. If mailed, it must be post-marked no later than [*enter date*]. Send completed form to:

[*Enter Name and Address*]

I (We) elect to continue our coverage in the [*enter name of plan*] (the Plan) as indicated below:

	Name	Date of Birth	Relationship to Employee	SSN (or other identifier)
a.				
b.				
c.				
d.				

Type of coverage elected (check only one):

☐ [*enter description of option*]

☐ [*enter description of option*]

☐ [*enter description of option*]

Signature _____ Date _____

Print Name _____ Relationship to individual(s) listed above _____

_____

_____

Print Address _____ Telephone number _____

IMPORTANT INFORMATION ABOUT YOUR COBRA CONTINUATION COVERAGE RIGHTS

What is continuation coverage?

Federal law requires that most group health plans (including this Plan) give employees and their families the opportunity to continue their health care coverage when there is a "qualifying event" that would result in a loss of coverage under an employer's plan. Depending on the type of qualifying event, "qualified beneficiaries" can include the employee covered under the group health plan, a covered employee's spouse, and dependent children of the covered employee.

Continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries under the Plan who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan, including [*add if applicable:* open enrollment and] special enrollment rights. The persons listed on page one of this notice have been identified by the Plan as qualified beneficiaries entitled to elect continuation coverage. Specific information describing continuation coverage can be found in the Plan's summary plan description (SPD), which can be obtained from [*enter name, address and telephone number of appropriate party (Plan Administrator or other party)*].

How long will continuation coverage last?

In the case of a loss of coverage due to end of employment or reduction in hours of employment, coverage may be continued for up to 18 months. In the case of losses of coverage due to an employee's death, divorce or legal separation, the employee's enrollment in Medicare or a dependent child ceasing to be a dependent under the terms of the plan, coverage may be continued for up to 36 months. Page one of this notice shows the maximum period of continuation coverage available to the listed qualified beneficiaries.

Continuation coverage will be terminated before the end of the maximum period if any required premium is not paid on time, if a qualified beneficiary becomes covered under another group health plan that does not impose any pre-existing condition exclusion for a pre-existing condition of the qualified beneficiary, if a covered employee enrolls in Medicare, or if the employer ceases to provide any group health plan for its employees. Continuation coverage may also be terminated for any reason the Plan would terminate coverage of a participant or beneficiary not receiving continuation coverage (such as fraud).

[If the maximum period of coverage of this notice is 18 months, add the following three paragraphs:]

How can you extend the length of continuation coverage?

If you elect continuation coverage, an extension of the maximum period of 18 months of coverage may be available if a qualified beneficiary is disabled or a second qualifying event

occurs. You must notify [*enter name of COBRA administrator*] of a disability or a second qualifying event in order to extend the period of continuation coverage. Failure to provide notice of a disability or second qualifying event may affect the right to extend the period of continuation coverage.

Disability

An 11-month extension of coverage may be available if any of the qualified beneficiaries is disabled. The Social Security Administration (SSA) must determine that the qualified beneficiary was disabled at some time during the first 60 days of continuation coverage, and you must notify [*enter name of COBRA administrator*] of that fact within 60 days of the SSA's determination and before the end of the first 18 months of continuation coverage. All of the qualified beneficiaries listed on page one of this notice who have elected continuation coverage will be entitled to the 11-month disability extension if one of them qualifies. If the qualified beneficiary is determined by SSA to no longer be disabled, you must notify [*enter name of COBRA administrator*] of that fact within 30 days of SSA's determination.

Second Qualifying Event

An 18-month extension of coverage will be available to spouses and dependent children who elect continuation coverage if a second qualifying event occurs during the first 18 months of continuation coverage. The maximum amount of continuation coverage available when a second qualifying event occurs is 36 months. Such second qualifying events include the death of a covered employee, divorce or separation from the covered employee, the covered employee's enrolling in Medicare, or a dependent child's ceasing to be eligible for coverage as a dependent under the Plan. You must notify [*enter name of COBRA administrator*] within 60 days after a second qualifying event occurs.

How can you elect continuation coverage?

Each qualified beneficiary listed on page one of this notice has an independent right to elect continuation coverage. For example, both the employee and the employee's spouse may elect continuation coverage, or only one of them. Parents may elect to continue coverage on behalf of their dependent children only. A qualified beneficiary must elect coverage by the date specified on the Election Form. Failure to do so will result in loss of the right to elect continuation coverage under the Plan. A qualified beneficiary may change a prior rejection of continuation coverage any time until that date.

In considering whether to elect continuation coverage, you should take into account that a failure to continue your group health coverage will affect your future rights under federal law. First, you can lose the right to avoid having pre-existing condition exclusions applied to you by other group health plans if you have more than a 63-day gap in health coverage, and election of continuation coverage may help you not have such a gap. Second, you will lose the guaranteed right to purchase individual health insurance policies that do not impose such pre-existing condition exclusions if you do not get continuation coverage for the maximum time available to you. Finally, you should take into account that you have special enrollment rights under federal

law. You have the right to request special enrollment in another group health plan for which you are otherwise eligible (such as a plan sponsored by your spouse's employer) within 30 days after your group health coverage ends because of the qualifying event listed above. You will also have the same special enrollment right at the end of continuation coverage if you get continuation coverage for the maximum time available to you.

How much does continuation coverage cost?

Generally, each qualified beneficiary may be required to pay the entire cost of continuation coverage. The amount a qualified beneficiary may be required to pay may not exceed 102 percent of the cost to the group health plan (including both employer and employee contributions) for coverage of a similarly situated plan participant or beneficiary who is not receiving continuation coverage (or, in the case of an extension of continuation coverage due to a disability, 150 percent). The required payment for continuation coverage for the qualified beneficiaries listed on page one of this notice is described on page one.

[*If employees might be eligible for trade adjustment assistance, the following information may be added*: The Trade Act of 2002 created a new tax credit for certain individuals who become eligible for trade adjustment assistance (eligible individuals). Under the new tax provisions, eligible individuals can either take a tax credit or get advance payment of 65% of premiums paid for qualified health insurance, including continuation coverage. If you have questions about these new tax provisions, you may call the Health Care Tax Credit Customer Contact Center toll-free at 1-866-628-4282. TTD/TTY callers may call toll-free at 1-866-626-4282. More information about the Trade Act is also available at www.doleta.gov/tradeact/2002act_index.asp.

When and how must payment for continuation coverage be made?

First payment for continuation coverage

If you elect continuation coverage, you do not have to send any payment for continuation coverage with the Election Form. However, you must make your first payment for continuation coverage within 45 days after the date of your election. (This is the date the Election Notice is post-marked, if mailed.) If you do not make your first payment for continuation coverage within that 45 days, you will lose all continuation coverage rights under the Plan.

Your first payment must cover the cost of continuation coverage from the time your coverage under the Plan would have otherwise terminated [*if Plan permits, add:* unless you request that your continuation coverage begin only with the date of your Election Notice] up to the time you make the first payment. You are responsible for making sure that the amount of your first payment is enough to cover this entire period. You may contact [*enter appropriate contact information, e.g., the Plan Administrator or other party responsible for COBRA administration under the Plan*] to confirm the correct amount of your first payment.

Your first payment for continuation coverage should be sent to:

[*enter appropriate payment address*]

Periodic payments for continuation coverage

After you make your first payment for continuation coverage, you will be required to pay for continuation coverage for each subsequent month of coverage. [*Enter additional information on other due dates for payments if Plan permits other periodic payment schedules.*] Under the Plan, these periodic payments for continuation coverage are due on the [*enter due day for each month of coverage*]. [*If Plan offers other payment schedules, enter with appropriate dates:* You may instead make payments for continuation coverage for the following coverage periods, due on the following dates:]. If you make a periodic payment on or before its due date, your coverage under the Plan will continue for that coverage period without any break. The Plan [*select one:* will *or* will not] send periodic notices of payments due for these coverage periods.

Periodic payments for continuation coverage should be sent to:

[*enter appropriate payment address*]

Grace periods for periodic payments

Although periodic payments are due on the dates shown above, you will be given a grace period of 30 days [*or enter longer period permitted by Plan*] to make each periodic payment. Your continuation coverage will be provided for each coverage period as long as payment for that coverage period is made before the end of the grace period for that payment. [*If Plan suspends coverage during grace period for nonpayment, enter and modify as necessary:* However, if you pay a periodic payment later than its due date but during its grace period, your coverage under the Plan will be suspended as of the due date and then retroactively reinstated (going back to the due date) when the periodic payment is made. This means that any claim you submit for benefits while your coverage is suspended may be denied and may have to be resubmitted once your coverage is reinstated.]

If you fail to make a periodic payment before the end of the grace period for that payment, you will lose all rights to continuation coverage under the Plan.

[If Plan provides any election of other health coverage besides continuation coverage (such as alternative coverage in lieu of continuation coverage, individual conversion rights, etc.), enter description of all such coverages and explain how election of such other coverages would affect continuation coverage rights under the Plan. The following are two separate examples of such a description:]

Can you elect other health coverage besides continuation coverage?

Under the Plan, you have the right to elect alternative group health coverage for a period of six months at no cost to you instead of the continuation coverage described in this Notice. If you elect this six-month alternative coverage, you will lose all rights to the continuation coverage described in this Notice. You should also note that if you enroll in the alternative group health coverage you lose your right under federal law to purchase individual health insurance that does

not impose any pre-existing condition limitations when your alternative group health coverage ends. You must contact [*add appropriate contact information*] if you wish to elect alternative coverage.

-- OR –

Under the Plan, you have the right, when your group health coverage ends, to enroll in an individual health insurance policy, without providing proof of insurability. The benefits provided under such an individual conversion policy may not be identical to those provided under the Plan. You may exercise this right in lieu of electing continuation coverage, or you may exercise this right after you have received the maximum continuation coverage available to you. You should note that if you enroll in an individual conversion policy you lose your right under federal law to purchase individual health insurance that does not impose any pre-existing condition limitations when your conversion policy coverage ends.

For more information

This notice does not fully describe continuation coverage or other rights under the Plan. More information about continuation coverage and your rights under the Plan is available in your summary plan description or from the Plan Administrator. You can get a copy of your summary plan description from: [*Enter name, address and telephone number of appropriate party (plan administrator or other party)*].

For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit the EBSA website at www.dol.gov/ebsa.

Keep Your Plan Informed of Address Changes

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

Signed at Washington, DC, this 20th day of May, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–13057 Filed 5–27–03; 8:45 am]

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Federal Register

Wednesday,
May 28, 2003

Part VI

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1980

Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002; Interim Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1980

RIN 1218 AC10

Procedures for the Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides the text of regulations governing the employee protection (''whistleblower'') provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or ''Act''), enacted on July 30, 2002, to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws. This rule establishes procedures and time frames for the handling of discrimination complaints under Title VIII of Sarbanes-Oxley, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (''OSHA''), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (''ALJ'') for a hearing *de novo,* hearings by ALJs, appeals of ALJ decisions to the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decisions.

DATES: This interim final rule is effective on May 28, 2003. Comments on the interim final rule are due on or before July 28, 2003.

ADDRESSES: Submit written comments to: OSHA Docket Office, Docket No. C–09, Room N–2625, U.S. Department of Labor—OSHA, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience, comments may be transmitted by facsimile (''FAX'') machine to (202) 693–1648 (not a toll-free number) or by electronic means through the Internet at *http://www.ecomments.osha.gov.* All comments should reference docket No. C–09. If commenters transmit comments by FAX or through the Internet and also submit a hard copy by mail, please indicate on the hard copy that it is a duplicate copy of the FAX or Internet transmission.

FOR FURTHER INFORMATION CONTACT: John Spear, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3610, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley''), Public Law No. 107–204, was enacted on July 30, 2002. Title VIII of Sarbanes-Oxley is designated as the Corporate and Criminal Fraud Accountability Act of 2002. Section 806, codified at 18 U.S.C. 1514A, provides protection to employees against retaliation by companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 780(d)), or any officer, employee, contractor, subcontractor, or agent of such companies, because the employee provided information to the employer or a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, employees are protected against discrimination when they have filed, testified in, participated in, or otherwise assisted in a proceeding filed or about to be filed against one of the above companies relating to any such violation or alleged violation. These rules establish procedures for the handling of discrimination complaints under Title VIII of Sarbanes-Oxley. In drafting these regulations, consideration has been given to the regulations implementing the whistleblower provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), codified at 29 CFR 1979, the Surface Transportation Assistance Act (''STAA''), codified at 29 CFR part 1978, and the Energy Reorganization Act (''ERA''), codified at 29 CFR part 24, where deemed appropriate.

II. Summary of Statutory Provisions

The Sarbanes-Oxley whistleblower provisions provide that a covered employee may file, within 90 days of the alleged discrimination, a complaint with the Secretary of Labor (''the Secretary'').[1] The statute requires the Secretary to notify the person named in the complaint and the employer of the filing of the complaint. The statute further provides that proceedings under Sarbanes-Oxley will be governed by the rules and procedures and burdens of proof of AIR21, 49 U.S.C. 42121(b). These rules and procedures are described below in Section III.

Sarbanes-Oxley authorizes an award to a prevailing employee of make-whole relief, including reinstatement with the same seniority status that the employee would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained, including litigation costs, expert witness fees and reasonable attorney's fees. 18 U.S.C. 1514A(c)(2). If the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that there has been delay due to the bad faith of the claimant, the claimant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such action without regard to the amount in controversy.

III. Summary of Procedures

These rules and procedures provide that upon receipt of a complaint, the Secretary must give written notice to both the person named in the complaint who is alleged to have violated the Act and the employer (if the complainant did not allege that the employer violated the Act) of the allegations contained in the complaint, the substance of the evidence submitted with the complaint, and the rights of the named person throughout the investigation. The person named in the complaint and the employer are defined collectively in the regulations and referred to collectively throughout this preamble as ''the named person.'' The Secretary must then, within 60 days of receipt of the complaint, afford the named person an opportunity to submit a response and

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 5–2002, 67 FR 65008 (Oct. 22, 2002). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. Secretary's Order 1–2002, 67 FR 64272 (Oct. 17, 2002).

meet with the investigator to present statements from witnesses, conduct an investigation, and make a determination of reasonable cause. However, the Secretary may conduct an investigation only if the complainant has made a *prima facie* showing that the alleged protected activity was a contributing factor in the unfavorable personnel action alleged in the complaint and the named person has not demonstrated, through clear and convincing evidence, that it would have taken the same unfavorable personnel action in the absence of the protected activity. This provision is similar to the 1992 amendments to the ERA, codified at 42 U.S.C. 5851.

After investigating a complaint, the Secretary will issue a determination letter. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that discriminatory behavior has occurred, the Secretary must notify the named person of those findings and issue a preliminary order providing appropriate make whole relief. The complainant and the named person then have 30 days after receipt of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record before an administrative law judge (''ALJ''). The filing of objections will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an administrative law judge is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, it must be conducted ''expeditiously'' by the ALJ. The Secretary then has 120 days after the ''conclusion of a hearing'' in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, complainant and the named person may enter into a settlement agreement, which terminates this proceeding. If the Secretary finds that a violation has occurred, the Secretary will order appropriate make whole relief. If the Secretary finds that the complaint is frivolous or has been brought in bad faith, the Secretary may award each prevailing named person a reasonable attorney's fee not exceeding $1,000. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation.

IV. Summary and Discussion of Regulatory Provisions

Section 1980.100 Purpose and Scope

This section describes the purpose of the regulations implementing Sarbanes-Oxley and provides an overview of the procedures covered by these new regulations.

Section 1980.101 Definitions

In addition to the general definitions, the regulations define ''company'' and ''company representative'' to together include all entities and individuals covered by Sarbanes-Oxley. The definition of ''named person'' includes the employer as well as the company and company representative who the complainant alleges in the complaint to have violated the Act. Thus, the definition of ''named person'' will implement Sarbanes-Oxley's unique statutory provisions that identify individuals as well as the employer as potentially liable for discriminatory action. We anticipate, however, that in most cases the named person likely will be the employer.

Section 1980.102 Obligations and Prohibited Acts

This section describes the whistleblower activity which is protected under the Act and the type of conduct which is prohibited in response to any protected activity. Complaints to an individual member of Congress are protected, even if such member is not conducting an ongoing Committee investigation within the jurisdiction of a particular Congressional committee, provided that the complaint relates to conduct that the employee reasonably believes to be a violation of one of the enumerated laws or regulations.

Section 1980.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint under Sarbanes-Oxley. To be timely, a complaint must be filed within 90 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints filed under the Act must be made in writing, but do not need to be made in any particular form. With the consent of the employee, complaints may be made by any person on the employee's behalf.

Section 1980.104 Investigation

Sarbanes-Oxley follows the AIR21 requirement that a complaint will be dismissed if it fails to make a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the AIR21 requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the *prima facie* showing of the complainant. Upon receipt of a complaint in the investigating office, the Assistant Secretary notifies the named person of these requirements and the right of each named person to seek attorney's fees from an ALJ or the Board if the named person alleges that the complaint was frivolous or brought in bad faith.

Under this section also, the named person has the opportunity within 20 days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of its position. If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within ten business days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments why preliminary relief is not warranted. This section provides due process procedures in accordance with the Supreme Court decision under STAA in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987).

Section 1980.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue a finding regarding whether or not the complaint has merit. If the finding is that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief. The

letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

Where the named party establishes that the complainant would have been discharged even absent the protected activity, there would be no reasonable cause to believe that a violation has occurred. Therefore, a preliminary reinstatement order would not be issued. Furthermore, as under AIR21, a preliminary order of reinstatement would not be an appropriate remedy where, for example, the named party establishes that the complainant is, or has become, a security risk based upon information obtained after the complainant's discharge in violation of Sarbanes-Oxley. *See McKennon* v. *Nashville Banner Publishing Co.,* 513 U.S. 352, 360–62 (1995), in which the Supreme Court recognized that reinstatement would not be an appropriate remedy for discrimination under the Age Discrimination in Employment Act where, based upon after-acquired evidence, the employer would have terminated the employee upon lawful grounds. Finally, in appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he received prior to his termination, but not actually return to work. Such ''economic reinstatement'' frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977. *See, e.g., Secretary of Labor on behalf of York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020 **1 (June 26, 2001).

Section 1980.106 Objections to the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, D.C. within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal or e-mail communication is considered the date of the filing; if the filing of objections is made in person, by hand-delivery or other means, the date of receipt is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ.

Section 1980.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR part 18, subpart A. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and/or order of the Assistant Secretary. In order for hearings to be conducted as expeditiously as possible, and particularly in light of the unique provision in Sarbanes-Oxley allowing complainants to seek a *de novo* hearing in Federal court if the Secretary has not issued a final decision within 180 days of the filing of the complaint, this section provides that the ALJ has broad authority to limit discovery. For example, an ALJ may limit the number of interrogatories, requests for production of documents, or depositions allowed. An ALJ also may exercise discretion to limit discovery unless the complainant agrees to delay filing a complaint in Federal court for some definite period of time beyond the 180-day point. If a complainant seeks excessive or burdensome discovery or fails to adhere to an agreement to delay filing a complaint in Federal court, a district court considering a request for *de novo* review might conclude that such conduct resulted in delay due to the claimant's bad faith.

Section 1980.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and the public interest has not required OSHA's participation. The Department believes this is even more likely to be the situation in cases involving allegations of corporate fraud. Therefore, as in the AIR21 regulations, this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or *amicus curiae* at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an administrative law judge; petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as *amicus curiae* before the ALJ or in the Administrative Review Board proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate in Sarbanes-Oxley proceedings, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The Securities and Exchange Commission (''SEC''), at that agency's discretion, also may participate as *amicus curiae* at any time in the proceedings. OSHA believes it is unlikely that its preliminary decision ordinarily not to prosecute meritorious Sarbanes-Oxley cases will discourage employees from making complaints about corporate fraud.

The Department seeks comment regarding its preliminary decision that the Assistant Secretary should not ordinarily participate in Sarbanes-Oxley proceedings, but should participate in appropriate cases, or whether instead the Department should follow the STAA model under which it ordinarily participates where a complaint is found to have merit. The Department will consider these comments, as well as its experience under this program in the interim, in issuance of the final rule.

Section 1980.109 Decision of the Administrative Law Judge.

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's determination as to whether to dismiss the complaint without an investigation or conduct an investigation pursuant to § 1980.104 is not subject to review by the ALJ, who hears the case on the merits.

Section 1980.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary unless a timely petition for review is filed with the Administrative Review Board. Appeals to the Board are not a matter of right, but rather petitions for review are accepted at the discretion of the Board. Upon the issuance of the ALJ's decision, the parties have ten business days within which to petition the Board for review of that decision. The parties must specifically identify the findings and conclusions to which they take exception, or the exceptions are deemed waived by the parties. The Board has 30 days to decide whether to grant the petition for review. If the Board does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If the Board grants the petition, the Act requires the Board to issue a decision not later than 120 days after the date of the conclusion of the hearing before the ALJ. The conclusion of the hearing is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, ten days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while the matter is pending before the Board. This section further provides that, when the Board accepts a petition for review, its review of factual determinations will be conducted under the substantial evidence standard. This standard also is applied to Board review of ALJ decisions under the whistleblower provision of STAA. 29 CFR 1978.109(b)(3).

Section 1980.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1980.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1980.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1980.114 District Court Jurisdiction of Discrimination Complaints.

This section sets forth the Sarbanes-Oxley provision allowing complainants to bring an action in district court for *de novo* review if there has been no final decision of the Secretary within 180 days of the filing of the complaint and there is no delay due to the complainant's bad faith. It provides that complainants will provide notice 15 days in advance of their intent to file a Federal court complaint. This provision authorizing a Federal court complaint is unique among the whistleblower statutes administered by the Secretary. This statutory structure creates the possibility that a complainant will have litigated a claim before the agency, will receive a decision from an administrative law judge, and will then file a complaint in Federal court while the case is pending on review by the Board. The Act might even be interpreted to allow a complainant to bring an action in Federal court after receiving a final decision from the Board, if that decision was issued more than 180 days after the filing of the complaint. The Secretary believes that it would be a waste of the resources of the parties, the Department, and the courts for complainants to pursue duplicative litigation. The Secretary notes that the courts have recognized that, when a party has had a full and fair opportunity to litigate a claim, an adversary should be protected from the expense and vexation of multiple lawsuits and that the public interest is served by preserving judicial resources by prohibiting subsequent suits involving the same parties making the same claims. *Montana* v. *United States,* 440 U.S. 147, 153 (1979). When an administrative agency acts in a judicial capacity and resolves disputed issues of fact properly before it that the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply the principles of issue preclusion (collateral estoppel) or claim preclusion (*res judicata*) on the basis of that administrative decision. *University of Tennessee* v. *Elliott,* 478 U.S. 788, 799 (1986), citing *United States* v. *Utah Construction and Mining Co.,* 384 U.S. 394, 422 (1966). Therefore, the Secretary anticipates that Federal courts will apply such principles if a complainant brings a new action in Federal court following extensive litigation before the Department that has resulted in a decision by an administrative law judge or the Secretary. Where an administrative hearing has been completed and a matter is pending before an administrative law judge or the Board for a decision, a Federal court also might treat a complaint as a petition for mandamus and order the Department to issue a decision under appropriate time frames.

Section 1980.115 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

V. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1980.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The estimated reporting activity under OMB control number 1218–0236 has been revised to reflect the projected reporting under this interim rule.

VI. Administrative Procedure Act

This is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A). Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required for these regulations, which provide procedures for the handling of discrimination complaints. Although this rule is not subject to the notice and comment procedures of the APA, persons interested in this interim final rule may submit comments within 60 days. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It

is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VII. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because Sarbanes-Oxley is a new program and because of the importance to investors that ''whistleblowers'' be protected from retaliation. E.O. 12866 requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) as rules that may ''have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule 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'' and therefore is not subject to Executive Order 13132 (Federalism).

VIII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of Sarbanes-Oxley, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1980

Administrative practice and procedure, Corporate fraud, Employment, Investigations, Reporting and recordkeeping requirements, Whistleblowing.

Signed at Washington, DC this 20th day of May, 2003.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

■ Accordingly, for the reasons set out in the preamble part 1980 of title 29 of the Code of Federal Regulations is added as follows:

PART 1980—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 806 OF THE CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY ACT OF 2002, TITLE VIII OF THE SARBANES-OXLEY ACT OF 2002

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.
1980.100 Purpose and scope.
1980.101 Definitions.
1980.102 Obligations and prohibited acts.
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1980.104 Investigation.
1980.105 Issuance of findings and preliminary orders.

Subpart B—Litigation

1980.106 Objections to the findings and the preliminary order and request for a hearing.
1980.107 Hearings.
1980.108 Role of Federal agencies.
1980.109 Decision and orders of the administrative law judge.
1980.110 Decision and orders of the Administrative Review Board.

Subpart C—Miscellaneous Provisions

1980.111 Withdrawal of complaints, objections, and findings; settlement.
1980.112 Judicial review.
1980.113 Judicial enforcement.
1980.114 District Court jurisdiction of discrimination complaints.
1980.115 Special circumstances; waiver of rules.

Authority: 18 U.S.C. 1514A; Secretary of Labor's Order No. 5–2002, 67 FR 65008 (October 22, 2002).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1980.100 Purpose and scope.

(a) This part implements procedures under section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or ''Act''), enacted into law July 30, 2002. Sarbanes-Oxley provides for employee protection from discrimination by companies and representatives of companies because the employee has engaged in protected activity pertaining to a violation or alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

(b) This part establishes procedures pursuant to Sarbanes-Oxley for the expeditious handling of discrimination complaints made by employees, or by persons acting on their behalf. These rules, together with those rules codified at 29 CFR part 18, set forth the procedures for submission of complaints under Sarbanes-Oxley, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1980.101 Definitions.

Act means section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, Public Law No. 107–204, July 30, 2002, codified at 18 U.S.C. 1514A.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

Company means any company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and any company required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

Company representative means any officer, employee, contractor, subcontractor, or agent of a company.

Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

Employee means an individual presently or formerly working for a company or company representative, an individual applying to work for a company or company representative, or an individual whose employment could

be affected by a company or company representative.

Named person means the employer and/or the company or company representative named in the complaint who is alleged to have violated the Act.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Person means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1980.102 Obligations and prohibited acts.

(a) No company or company representative may discharge, demote, suspend, threaten, harass or in any other manner discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (2) of this section.

(b) A company or company representative is deemed to have violated the Act if it intimidates, threatens, restrains, coerces, blacklists, or in any other manner discriminates against an employee in the terms and conditions of employment because of any lawful act done by the employee:

(1) To provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

(i) A Federal regulatory or law enforcement agency;

(ii) Any Member of Congress or any committee of Congress; or

(iii) A person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

(2) To file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of 18 U.S.C. 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

§ 1980.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by a company or company representative in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

§ 1980.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person (or named persons) of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (redacted to protect the identity of any confidential informants). The Assistant Secretary also will notify the named person of its right under paragraphs (b) and (c) of this section and paragraph (e) of § 1980.110. A copy of the notice to the named person will also be provided to the Securities and Exchange Commission.

(b) A complaint of alleged violation will be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew or suspected, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the unfavorable personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint will not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within 20 days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the named person may request a meeting with the Assistant Secretary to present its position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, the Assistant Secretary will

conduct an investigation. Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1980.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The named person will be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of its position, and to present legal and factual arguments. The named person will be directed to present this evidence within ten business days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1980.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include all relief necessary to make the employee whole, including: Where appropriate, reinstatement with the same seniority status that the employee would have had but for the discrimination; back pay with interest; and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees. Where the named person establishes that the complainant is a security risk (whether or not the information is obtained after the complainant's discharge), a preliminary order of reinstatement would not be appropriate.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of their right to file objections and to request a hearing, and of the right of the named person to request attorney's fees from the ALJ, regardless of whether the named person has filed objections, if the named person alleges that the complaint was frivolous or brought in bad faith. The letter also will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the original complaint and a copy of the findings and order.

(c) The findings and the preliminary order will be effective 30 days after receipt by the named person pursuant to paragraph (b) of this section, unless an objection and a request for a hearing has been filed as provided at § 1980.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon receipt of the findings and preliminary order.

Subpart B—Litigation

§ 1980.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorneys' fees, must file any objections and a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1980.105(b). The objection or request for attorneys' fees and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or whether there should be an award of attorneys' fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20001, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement. The portion of the preliminary order requiring reinstatement will be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order.

(2) If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, will become the final decision of the Secretary, not subject to judicial review.

§ 1980.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted as hearings *de novo,* on the record. Administrative law judges will have broad discretion to limit discovery in order to expedite the hearing.

(c) If the complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The administrative law judge may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

§ 1980.108 Role of Federal agencies.

(a)(1) The complainant and the named person will be parties in every proceeding. At the Assistant Secretary's

discretion, the Assistant Secretary may participate as a party or may participate as *amicus curiae* at any time in the proceedings. This right to participate includes, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The Securities and Exchange Commission (SEC) may participate as *amicus curiae* at any time in the proceedings, at the SEC's discretion. At the request of the SEC, copies of all pleadings in a case must be sent to the SEC, whether or not the SEC is participating in the proceeding.

§ 1980.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint without completing an investigation pursuant to § 1980.104(b) nor the Assistant Secretary's determination to proceed with an investigation is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge will hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order will provide all relief necessary to make the employee whole, including reinstatement of the complainant to that person's former position with the seniority status that the complainant would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney's fees. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the named person, and may not be stayed. All other portions of the judge's order will be effective ten business days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1980.110 Decision and orders of the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a decision of the administrative law judge, or a named person alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney's fees, must file a written petition for review with the Administrative Review Board (''the Board''), which has been delegated the authority to act for the Secretary and issue final decisions under this part. The decision of the administrative law judge will become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Board. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the administrative law judge will become the final order of the Secretary unless the Board, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the administrative law judge will be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement will be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed. The Board will review the factual determinations of the administrative law judge under the substantial evidence standard.

(c) The final decision of the Board will be issued within 120 days of the conclusion of the hearing, which will be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.*, 10 business days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed with the administrative law judge in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. The final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210, even if the Assistant Secretary is not a party.

(d) If the Board concludes that the party charged has violated the law, the final order will order the party charged to provide all relief necessary to make the employee whole, including reinstatement of the complainant to that person's former position with the seniority status that the complainant would have had but for the discrimination, back pay with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys' fees.

(e) If the Board determines that the named person has not violated the law, an order will be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was

brought in bad faith, the Board may award to the named person a reasonable attorneys' fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1980.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether the withdrawal will be approved. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period described in § 1980.106, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement will be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement will be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, will constitute the final order of the Secretary and may be enforced pursuant to § 1980.113.

§ 1980.112 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1980.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1980.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1980.114 District Court jurisdiction of discrimination complaints.

(a) If the Board has not issued a final decision within 180 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for *de novo* review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.

(b) Fifteen days in advance of filing a complaint in Federal court, a complainant must file with the administrative law judge or the Board, depending upon where the proceeding is pending, a notice of his or her intention to file such a complaint. The notice must be served upon all parties to the proceeding. If the Assistant Secretary is not a party, a copy of the notice must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

§ 1980.115 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

[FR Doc. 03–13082 Filed 5–27–03; 8:45 am]

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Part VII

Department of Housing and Urban Development

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program—Fiscal Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4852–N–01]

Fair Market Rents for the Housing Choice Voucher Program and Moderate Rehabilitation Single Room Occupancy Program—Fiscal Year 2004

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of proposed fiscal year (FY) 2004 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (the Act) requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used to determine payment standard amounts for the Housing Choice Voucher program, to determine initial renewal rents for some expiring project-based Section 8 contracts, and to determine initial rents for housing assistance payments (HAP) contracts in the Moderate Rehabilitation Single Room Occupancy (SRO) program. Other programs may require use of FMRs for other purposes. Today's notice proposes revised FMRs that reflect estimated 40th and 50th percentile rent levels trended to April 1, 2004.

DATES: Comments Due Date: June 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.—5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, telephone (202) 708–0477, responsible for decisions on how fair market rents are used; or Allison Manning, Community Assistance Division, telephone (202) 708–1234, responsible for administration of the Mod Rehab Single Room Occupancy program. For technical information on the methodology used to develop fair market rents or a listing of all fair market rents, please call HUD USER at 1–800–245–2691, or access the information on the HUD Web site, *http://www.huduser.org/datasets/fmr.html.* Further questions on the methodology may be addressed to Marie Lihn, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, (e-mail: *marie l._lihn@hud.gov*). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In the voucher program, the FMR is used to determine the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family (*see* 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Lower Than Normal Increases for Proposed FY 2004 FMRs: It should be noted that proposed FMR increases in many parts of the country, especially nonmetropolitan areas, were modest or non-existent. This is due to two factors. One is relatively modest increases in shelter rents (*i.e.*, total rents excluding utilities). The other and more significant factor is reductions in utility costs from the previous year.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page: *http://www.hudclips.org/cgi/index.cgi.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. HUD's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and publish final FMRs after evaluating public comments (*see* 24 CFR 888.115).

Schedule B of the proposed FY 2003 FMR schedules at the end of this document lists the fair market rents for existing housing, including housing assisted under the housing choice voucher program.

Schedule D lists FMRs for the rental of manufactured home spaces in the housing choice voucher program for areas where HUD has approved a manufactured home space FMR greater than 40 percent of the 2-bedroom FMR, based on public comments (*see* 24 CFR 888.113(e) and 982.623(e)).

In the Moderate Rehabilitation SRO program, the fair market rent is 90 percent of the 0-bedroom existing housing fair market rent in Schedule B. (This is equivalent to 75 percent of the moderate rehabilitation 0-bedroom fair market rent (*See* 24 CFR 882.408(a).) The FMR for the moderate rehabilitation SRO program is the maximum initial gross rent (gross rent at the beginning of the HAP contract term).

Units are no longer developed under the regular moderate rehabilitation program. For the purpose of determining renewal gross rents for a HAP contract under the regular moderate rehabilitation program, the applicable FMR is 120 percent of the existing housing fair market rent in Schedule B.

How HUD Sets FMRs

HUD Standard for Setting the FMR

FMRs are gross rent estimates that include both shelter rent paid by the tenant to the landlord and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible.

FMRs are set at a percentile within the rent distribution for standard quality rental housing units in each FMR areas (*see* 24 CFR 888.113). FMRs are based on the distribution of rents for units that are occupied by recent movers—renter households who moved into their units within the past 15 months. The distribution does not include rents for units less than two years old or for public housing units. Rents for subsidized housing units are adjusted by adding back the amount of the subsidy.

HUD sets FMRs either at the 40th percentile rent or at the 50th percentile rent. For most FMR areas, the FMR is set at the 40th percentile rent. The rent for

40 percent of standard rental housing units is at or below this dollar amount. FMRs have been increased to the 50th percentile rent in those metropolitan areas where a FMR increase is most needed to promote residential choice, help families move closer to areas for job growth, and deconcentrate poverty (*See* 24 CFR 888.113(c)). The rent for 50 percent of standard rental housing units is at or below this dollar amount. An asterisk in Schedule B identifies each of the 39 FMR areas for which HUD has set 50th percentile FMRs.

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The following sources of survey data are used to develop the base-year estimates:

(1) The 1990 Census provides statistically reliable rent data for all FMR areas;

(2) The Bureau of the Census' American Housing Survey (AHS) is used to develop between-Census revisions for the largest metropolitan areas. The revised FMRs have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas. The RDD surveys are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on the Consumer Price Index (CPI) data for rents and utilities or on HUD regional rent change factors developed from regional RDD surveys. Area-specific annual average CPI contract rent and residential utility cost data are available individually for 99 metropolitan FMR areas and for the four Census Regions. RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The utility component of RDD surveys is updated using CPI regional utility cost change factors. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

With the exception of areas with FMRs set at the 50th percentile, FMRs are established at the higher of the local 40th percentile rent level or a state minimum equal to the statewide average 40th percentile rent for nonmetropolitan counties. The state minimum affects a small number of metropolitan areas whose rents would otherwise fall below the state minimum.

Bedroom Size Adjustments

FMRs are calculated separately for each bedroom size category.

In FMR areas where FMRs are based on the state minimums, the FMR for each bedroom size category is the higher of the 40th percentile rent for that bedroom size category: (1) for the FMR area or (2) for the statewide average of nonmetropolitan counties. For all other FMR areas, the bedroom intervals are based on 1990 census data indicating the rent for that bedroom size for the specific FMR area.

There are some areas where the bedroom intervals were adjusted because the rent intervals between bedroom sizes were above or below an acceptable range. The acceptable range of rent intervals between bedroom sizes was determined from a distribution of bedroom intervals for all metropolitan areas. For areas with rent intervals outside these standard ranges, the rent intervals between bedroom sizes were increased or decreased to bring them back within the range.

Higher ratios continue to be used for 3-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units. The FMRs for unit sizes larger than a 4 bedroom are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for SRO units are 0.75 times the 0-bedroom FMR.

Area RDD Rent Survey Adjustments

RDD surveys are used to obtain statistically reliable FMR estimates for selected FMR areas. This telephone survey technique involves drawing random samples of renter units occupied by recent movers. RDD surveys exclude public housing units, other assisted units for which the market rent cannot be determined, units built in the past two years, seasonal units, non-cash rental units, and units owned by relatives of the unit occupants.

A HUD analysis has shown that the slight downward RDD survey bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Approximately 15,000–20,000 telephone numbers need to be contacted to achieve the target survey sample level of 200 eligible recent mover responses. RDD surveys have a high degree of statistical accuracy; there is a 95 percent likelihood that the recent mover rent estimates developed using this approach are within 3 to 4 percent of the actual rent value. Virtually all of the estimates are within 5 percent of the actual value.

Today's notice includes proposed FMR decreases below the normal update factor based on RDD surveys conducted in July 2002 for the following areas:

Oklahoma City, OK MSA
San Francisco, CA PMSA

Unlike past years, HUD did not complete any RDDs this winter for the FY 2004 FMRs.

FMR Area Definition Changes

This notice includes FMRs for two nonmetropolitan counties (boroughs) in Alaska not previously listed separately: Denali and Yakutat. Denali comes from the Yukon-Koyukuk area and Yakutat comes from the former area of Skagway-Yakutat-Angoon, now renamed Skagway-Hoonah-Angoon.

Request for Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

For the supporting data, HUD recommends the use of professionally conducted RDD telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of about $20,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual 2-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on

the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties whose FMRs are based on the state minimum will not have their FMRs revised unless the grouped survey results show a revised FMR above the state minimum level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled ''Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments.'' Smaller PHAs should obtain a guide entitled ''Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments.'' These guides are available from HUD USER on 1–800–245–2691, or from HUD's Worldwide website, in Microsoft Word or Adobe Acrobat format, at the following address: *http://www.huduser.org/datasets/fmr.html.*

Other survey methodologies are acceptable in providing data with comments as long as the surveys submitted provide statistically reliable, unbiased estimates of the gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Most surveys cover only 1- and 2-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the decennial Census data for the FMR area. When 3– and 4-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 40th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the 2-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area (and note the utilities included in this rental fee) along with a copy of the applicable public housing authority utility schedule.

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are proposed to be amended as follows:

Dated: May 20, 2003.

Mel Martinez,

Secretary.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. The FMRs shown in Schedule B are determined for the same areas as the Office of Management and Budget's (OMB) most current definitions of metropolitan areas, with the exceptions discussed in paragraph b. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective states under the ''Metropolitan FMR Areas'' listing:

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ-UT: Kane County, UT
New Orleans, LA: St. James Parish
Washington, DC–MD–VA–WV: Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George, and Warren counties in Virginia

c. *Nonmetropolitan Area FMRs*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states, and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands. Nonmetropolitan area FMRs are set at the higher of the local 40th percentile rent level or the statewide average of nonmetropolitan counties. (The state minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the state minimum.)

d. *Virginia Independent Cities*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county. The complete definitions of these areas including the independent cities are as follows:

Virginia Nonmetropolitan County FMR Area and Independent Cities Included

County	Cities
Alleghany	Clifton Forge and Covington
Augusta	Staunton and Waynesboro
Carroll	Galax
Frederick	Winchester
Greensville	Emporia
Henry	Martinsville
Montgomery	Radford
Rockbridge	Buena Vista and Lexington
Rockingham	Harrisonburg
Southhampton	Franklin
Wise	Norton

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0-bedroom FMR.

3. FMRs for Manufactured Home Spaces

FMRs for manufactured home spaces in the housing choice voucher program are 40 percent of the 2-bedroom existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis

of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the housing choice voucher program are the same as the area definitions used for other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by state.

The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 1

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	279	330	413	576	652	Calhoun
Auburn--Opelika, AL MSA	278	388	499	648	820	Lee
Birmingham, AL MSA	425	481	559	758	840	Blount, Jefferson, St. Clair, Shelby
Columbus, GA--AL MSA	377	419	503	656	712	Russell
Decatur, AL MSA	370	374	471	611	730	Lawrence, Morgan
Dothan, AL MSA	335	343	426	586	595	Dale, Houston
Florence, AL MSA	315	361	464	579	649	Colbert, Lauderdale
Gadsden, AL MSA	279	341	393	511	629	Etowah
Huntsville, AL MSA	388	455	561	747	890	Limestone, Madison
Mobile, AL MSA	407	455	523	703	825	Baldwin, Mobile
Montgomery, AL MSA	425	454	537	731	881	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	367	392	523	717	758	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	261	311	370	480	550	Bibb	261	311	370	500	599
Bullock	261	311	370	480	550	Butler	261	311	370	480	550
Chambers	261	311	370	480	551	Cherokee	261	311	370	480	550
Chilton	271	311	370	480	550	Choctaw	261	311	370	480	550
Clarke	261	311	370	480	550	Clay	261	311	370	480	550
Cleburne	261	311	370	480	550	Coffee	261	367	477	663	744
Conecuh	261	311	370	480	550	Coosa	261	311	370	480	550
Covington	261	311	370	480	550	Crenshaw	261	311	370	480	550
Cullman	261	311	370	492	598	Dallas	261	311	370	480	550
DeKalb	261	311	370	480	550	Escambia	261	311	370	480	550
Fayette	261	311	370	480	550	Franklin	261	311	370	480	550
Geneva	261	311	370	480	550	Greene	261	311	370	480	550
Hale	261	311	370	480	550	Henry	261	311	370	480	550
Jackson	282	311	370	480	589	Lamar	261	311	370	480	550
Lowndes	261	311	370	480	550	Macon	285	320	427	535	599
Marengo	261	311	370	480	550	Marion	261	311	370	480	550
Marshall	300	311	378	522	619	Monroe	261	311	370	480	550
Perry	261	311	370	480	550	Pickens	261	311	370	480	550
Pike	313	364	434	563	656	Randolph	261	311	370	480	550
Sumter	261	311	370	480	550	Talladega	261	311	370	480	550
Tallapoosa	262	311	370	480	550	Walker	261	322	380	491	624
Washington	261	311	370	480	550	Wilcox	261	311	370	480	550
Winston	261	311	370	480	550						

ALASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	565	668	885	1231	1454	Anchorage

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aleutians East	563	635	718	895	1172	Aleutians West	484	547	612	769	860
Bethel	729	910	1154	1445	1617	Bristol Bay	584	675	757	1054	1145

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 2

ALASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Denali	784	905	1153	1533	1593	Dillingham	704	716	951	1190	1333
Fairbanks North Star	444	604	793	1090	1285	Haines	525	650	740	1006	1037
Juneau	784	905	1153	1533	1593	Kenai Peninsula	478	608	733	1017	1201
Ketchikan Gateway	576	705	943	1313	1382	Kodiak Island	749	824	1071	1338	1736
Lake and Peninsula	450	730	820	1023	1149	Matanuska-Susitna	504	682	768	1042	1231
Nome	741	917	1030	1434	1618	North Slope	842	862	1067	1482	1727
Northwest Arctic	892	1003	1126	1567	1848	Prince of Wales-Outer Ketch	393	625	720	998	1055
Sitka	620	737	827	1151	1358	Skagway-Hoonah-Angoon	482	490	634	795	892
Southeast Fairbanks	494	519	625	783	879	Valdez-Cordova	589	722	801	1023	1220
Wade Hampton	422	634	716	894	1001	Wrangell-Petersburg	429	632	769	978	1075
Yakutat	482	490	634	795	892	Yukon-Koyukuk	561	633	714	893	1033

ARIZONA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ--UT MSA	633	683	887	1190	1429	Coconino
*Las Vegas, NV--AZ MSA	606	719	856	1191	1407	Mohave
*Phoenix--Mesa, AZ MSA	549	664	835	1161	1367	Maricopa, Pinal
Tucson, AZ MSA	443	531	707	983	1159	Pima
Yuma, AZ MSA	427	495	659	915	922	Yuma

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Apache	402	422	537	701	833	Cochise	402	422	537	701	833
Gila	402	422	537	701	833	Graham	402	422	537	701	833
Greenlee	402	422	537	701	833	La Paz	402	422	537	701	833
Navajo	402	422	537	701	833	Santa Cruz	402	444	553	701	833
Yavapai	427	444	594	828	912						

ARKANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville--Springdale--Rogers, AR MSA	330	416	547	738	764	Benton, Washington
Fort Smith, AR--OK MSA	359	363	479	639	671	Crawford, Sebastian
Jonesboro, AR MSA	389	423	498	685	724	Craighead
Little Rock--North Little Rock, AR MSA	406	451	538	742	867	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN--AR--MS MSA	458	534	626	870	913	Crittenden
Pine Bluff, AR MSA	311	369	486	613	795	Jefferson
Texarkana, TX--Texarkana, AR MSA	331	404	495	652	692	Miller

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Arkansas	279	303	388	530	575	Ashley	255	303	388	514	608
Baxter	255	324	431	554	675	Boone	302	307	408	568	669
Bradley	255	303	388	514	575	Calhoun	255	303	388	514	575
Carroll	300	327	388	514	614	Chicot	255	303	388	514	575
Clark	279	303	393	514	621	Clay	255	303	388	514	575
Cleburne	288	303	388	514	582	Cleveland	255	303	388	514	575

ARKANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Columbia	255	303	388	514	575
Cross	265	335	388	521	615
Desha	255	303	388	514	575
Franklin	267	303	388	514	575
Garland	255	324	434	606	716
Greene	273	303	388	514	575
Hot Spring	255	303	388	514	575
Independence	268	310	388	514	575
Jackson	264	303	388	514	575
Lafayette	267	303	388	514	575
Lee	280	303	388	514	575
Little River	255	303	394	547	645
Madison	292	303	394	514	575
Mississippi	291	314	421	555	623
Montgomery	255	303	388	514	575
Newton	255	303	388	514	575
Perry	255	303	388	514	575
Pike	255	303	388	514	575
Polk	255	303	388	514	575
Prairie	255	303	388	514	575
St. Francis	255	309	388	525	617
Searcy	255	303	388	514	575
Sharp	255	303	388	514	575
Union	319	337	405	544	665
White	255	303	388	531	575
Yell	265	303	388	514	575

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Conway	255	314	421	526	589
Dallas	255	303	388	514	575
Drew	255	330	440	609	620
Fulton	264	303	388	514	575
Grant	265	314	388	514	580
Hempstead	255	303	388	514	575
Howard	255	303	388	514	575
Izard	255	303	388	514	575
Johnson	255	303	388	514	575
Lawrence	255	303	388	514	575
Lincoln	275	303	394	527	575
Logan	267	303	388	514	575
Marion	255	303	388	514	575
Monroe	259	303	388	514	575
Nevada	255	303	388	531	575
Ouachita	298	303	388	535	631
Phillips	255	303	388	514	575
Poinsett	255	303	388	514	575
Pope	255	333	421	584	673
Randolph	255	303	388	514	575
Scott	255	303	388	514	575
Sevier	278	303	388	514	575
Stone	255	303	388	514	575
Van Buren	255	303	388	514	634
Woodruff	255	303	388	514	575

CALIFORNIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	421	473	595	826	914	Kern
Chico--Paradise, CA MSA	385	496	660	905	1082	Butte
Fresno, CA MSA	451	504	603	840	967	Fresno, Madera
Los Angeles--Long Beach, CA PMSA	674	807	1021	1378	1646	Los Angeles
Merced, CA MSA	460	519	630	871	1027	Merced
Modesto, CA MSA	549	589	719	1002	1182	Stanislaus
*Oakland, CA PMSA	936	1132	1420	1947	2325	Alameda, Contra Costa
*Orange County, CA PMSA	903	987	1220	1698	1889	Orange
Redding, CA MSA	438	486	608	844	994	Shasta
Riverside--San Bernardino, CA PMSA	535	596	729	1011	1193	Riverside, San Bernardino
*Sacramento, CA PMSA	674	759	950	1318	1554	El Dorado, Placer, Sacramento
Salinas, CA MSA	719	841	1014	1408	1478	Monterey
*San Diego, CA MSA	822	939	1175	1636	1928	San Diego
San Francisco, CA PMSA	1084	1405	1775	2435	2577	Marin, San Francisco, San Mateo
*San Jose, CA PMSA	1294	1475	1821	2496	2803	Santa Clara
San Luis Obispo--Atascadero--Paso Robles, CA MSA	641	724	917	1276	1505	San Luis Obispo
Santa Barbara--Santa Maria--Lompoc, CA MSA	721	800	1015	1412	1595	Santa Barbara
Santa Cruz--Watsonville, CA PMSA	843	1004	1341	1865	2185	Santa Cruz

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 4

CALIFORNIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Santa Rosa, CA PMSA	792	897	1163	1617	1909	Sonoma
Stockton--Lodi, CA MSA	522	589	757	1054	1242	San Joaquin
Vallejo--Fairfield--Napa, CA PMSA	809	920	1121	1557	1836	Napa, Solano
*Ventura, CA PMSA	785	902	1142	1518	1769	Ventura
Visalia--Tulare--Porterville, CA MSA	427	455	592	826	943	Tulare
Yolo, CA PMSA	551	628	779	1077	1274	Yolo
Yuba City, CA MSA	380	444	571	796	919	Sutter, Yuba

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alpine	341	512	579	804	865	Amador	471	518	692	963	1074
Calaveras	412	477	635	885	1041	Colusa	373	417	537	748	865
Del Norte	348	478	635	886	1043	Glenn	341	417	537	748	865
Humboldt	352	487	638	891	1054	Imperial	384	482	593	826	865
Inyo	354	477	612	803	865	Kings	395	460	574	799	940
Lake	383	488	653	821	1070	Lassen	417	422	549	748	865
Mariposa	369	469	602	789	930	Mendocino	472	568	698	971	979
Modoc	373	417	537	748	865	Mono	520	624	830	1154	1364
Nevada	427	584	778	1081	1252	Plumas	376	417	537	748	865
San Benito	587	691	864	1205	1409	Sierra	341	458	563	782	923
Siskiyou	358	417	537	748	865	Tehama	357	417	537	748	865
Trinity	382	417	537	748	865	Tuolumne	377	515	687	956	1127

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder--Longmont, CO PMSA	640	767	983	1371	1615	Boulder
Colorado Springs, CO MSA	490	526	701	977	1153	El Paso
*Denver, CO PMSA	607	724	964	1337	1579	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins--Loveland, CO MSA	484	597	739	1026	1212	Larimer
Grand Junction, CO MSA	445	463	579	780	929	Mesa
Greeley, CO PMSA	536	592	745	1034	1223	Weld
Pueblo, CO MSA	469	486	608	818	976	Pueblo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	419	434	543	732	873	Archuleta	501	548	648	875	1040
Baca	419	434	543	732	873	Bent	419	434	543	732	873
Chaffee	419	434	543	732	873	Cheyenne	419	434	543	732	873
Clear Creek	419	489	552	769	905	Conejos	419	434	543	732	873
Costilla	419	434	543	732	873	Crowley	419	434	543	732	873
Custer	419	434	543	732	873	Delta	419	434	543	732	873
Dolores	419	434	543	732	873	Eagle	562	614	818	1139	1343
Elbert	463	512	587	732	961	Fremont	419	434	543	732	873
Garfield	486	521	658	822	1077	Gilpin	419	556	708	933	1032
Grand	498	502	635	795	963	Gunnison	419	434	543	732	873
Hinsdale	419	443	543	732	873	Huerfano	419	434	543	732	873
Jackson	419	434	543	732	873	Kiowa	419	434	543	732	873

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 5

COLORADO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Kit Carson	419	434	543	732	873
La Plata	547	605	797	1110	1311
Lincoln	419	434	543	732	873
Mineral	419	434	543	732	873
Montezuma	419	434	543	732	873
Morgan	419	434	543	732	873
Ouray	419	434	549	732	889
Phillips	419	434	543	732	873
Prowers	419	434	543	732	873
Rio Grande	419	434	543	732	873
Saguache	419	434	543	732	873
San Miguel	770	1112	1223	1527	1972
Summit	539	645	828	1152	1418
Washington	419	434	543	732	873

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lake	419	434	543	732	873
Las Animas	419	448	543	732	873
Logan	419	434	543	732	873
Moffat	419	434	543	732	873
Montrose	419	434	549	762	897
Otero	419	434	543	732	873
Park	419	464	604	838	954
Pitkin	628	860	1145	1510	1717
Rio Blanco	419	434	543	732	873
Routt	419	506	668	929	1095
San Juan	419	434	543	732	873
Sedgwick	419	434	543	732	873
Teller	419	497	661	919	927
Yuma	419	434	543	732	873

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	575	748	900	1126	1404	Fairfield county towns of Bridgeport town, Easton town, Fairfield town, Monroe town, Shelton town, Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town, Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	725	867	1084	1430	1649	Fairfield county towns of Bethel town, Brookfield town, Danbury town, New Fairfield town, Newtown town, Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town, New Milford town, Roxbury town, Washington town
Hartford, CT MSA	519	647	827	1037	1259	Hartford county towns of Avon town, Berlin town, Bloomfield town, Bristol town, Burlington town, Canton town, East Granby town, East Hartford town, East Windsor town, Enfield town, Farmington town, Glastonbury town, Granby town, Hartford town, Manchester town, Marlborough town, New Britain town, Newington town, Plainville town, Rocky Hill town, Simsbury town, South Windsor town, Southington town, Suffield town, West Hartford town, Wethersfield town, Windsor Locks town, Windsor town Litchfield county towns of Barkhamsted town, Harwinton town, New Hartford town, Plymouth town, Winchester town Middlesex county towns of Cromwell town, Durham town, East Haddam town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 6

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						East Hampton town, Haddam town, Middlefield town, Middletown town, Portland town
						New London county towns of Colchester town, Lebanon town
						Tolland county towns of Andover town, Bolton town, Columbia town, Coventry town, Ellington town, Hebron town, Mansfield town, Somers town, Stafford town, Tolland town, Vernon town, Willington town
						Windham county towns of Ashford town, Chaplin town, Windham town
New Haven--Meriden, CT PMSA	620	761	939	1204	1395	Middlesex county towns of Clinton town, Killingworth town
						New Haven county towns of Bethany town, Branford town, Cheshire town, East Haven town, Guilford town, Hamden town, Madison town, Meriden town, New Haven town, North Branford town, North Haven town, Orange town, Wallingford town, West Haven town, Woodbridge town
New London--Norwich, CT--RI MSA	541	654	797	997	1140	Middlesex county towns of Old Saybrook town
						New London county towns of Bozrah town, East Lyme town, Franklin town, Griswold town, Groton town, Ledyard town, Lisbon town, Montville town, New London town, North Stonington town, Norwich town, Old Lyme town, Preston town, Salem town, Sprague town, Stonington town, Waterford town
						Windham county towns of Canterbury town, Plainfield town
Stamford--Norwalk, CT PMSA	1046	1225	1493	2001	2210	Fairfield county towns of Darien town, Greenwich town, New Canaan town, Norwalk town, Stamford town, Weston town, Westport town, Wilton town
Waterbury, CT PMSA	526	711	881	1098	1231	Litchfield county towns of Bethlehem town, Thomaston town, Watertown town, Woodbury town
						New Haven county towns of Middlebury town, Naugatuck town, Prospect town, Southbury town, Waterbury town, Wolcott town
Worcester, MA--CT PMSA	549	663	827	1033	1158	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Hartford	399	644	727	1010	1191	Hartland town
Litchfield	463	631	842	1050	1196	Canaan town, Colebrook town, Cornwall town, Goshen town, Kent town, Litchfield town, Morris town, Norfolk town, North Canaan town, Salisbury town, Sharon town, Torrington town, Warren town
Middlesex	686	777	1037	1444	1703	Chester town, Deep River town, Essex town, Westbrook town
New London	581	712	808	1042	1323	Lyme town, Voluntown town

CONNECTICUT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Tolland	399	644	727	1010	1017	Union town
Windham	459	561	727	911	1142	Brooklyn town, Eastford town, Hampton town, Killingly town, Pomfret town, Putnam town, Scotland town, Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	527	583	663	861	980	Kent
Wilmington--Newark, DE--MD PMSA	502	661	771	1048	1266	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	460	489	624	820	876

DISTRICT OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Washington, DC--MD--VA--WV PMSA	913	1039	1218	1660	2002	District of Columbia

FLORIDA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	419	492	628	833	885	Flagler, Volusia
*Fort Lauderdale, FL PMSA	567	668	827	1151	1353	Broward
Fort Myers--Cape Coral, FL MSA	450	518	625	874	911	Lee
Fort Pierce--Port St. Lucie, FL MSA	501	549	711	925	997	Martin, St. Lucie
Fort Walton Beach, FL MSA	436	477	542	735	866	Okaloosa
Gainesville, FL MSA	436	477	580	795	939	Alachua
Jacksonville, FL MSA	501	561	675	892	993	Clay, Duval, Nassau, St. Johns
Lakeland--Winter Haven, FL MSA	419	459	518	642	702	Polk
Melbourne--Titusville--Palm Bay, FL MSA	419	491	613	821	956	Brevard
*Miami, FL PMSA	537	676	842	1156	1340	Miami-Dade
Naples, FL MSA	467	658	793	1102	1227	Collier
Ocala, FL MSA	436	477	542	711	834	Marion
Orlando, FL MSA	606	687	820	1076	1312	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	436	477	542	691	741	Bay
Pensacola, FL MSA	436	477	542	723	853	Escambia, Santa Rosa
Punta Gorda, FL MSA	436	502	668	926	1092	Charlotte
Sarasota--Bradenton, FL MSA	438	557	708	910	991	Manatee, Sarasota
Tallahassee, FL MSA	446	496	652	852	1027	Gadsden, Leon
*Tampa--St. Petersburg--Clearwater, FL MSA	530	630	781	1037	1257	Hernando, Hillsborough, Pasco, Pinellas
*West Palm Beach--Boca Raton, FL MSA	570	665	823	1092	1352	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	410	449	508	630	684	Bradford	410	449	508	630	684
Calhoun	410	449	508	630	684	Citrus	410	449	508	630	684

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 8

FLORIDA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Columbia	410	449	508	630	684
Dixie	410	449	508	630	684
Gilchrist	410	449	508	630	684
Gulf	410	449	508	630	684
Hardee	410	449	508	630	684
Highlands	410	449	508	632	707
Indian River	410	513	660	826	924
Jefferson	410	449	508	630	684
Levy	410	449	508	630	684
Madison	410	449	508	630	684
Okeechobee	410	449	508	630	690
Sumter	410	449	508	630	684
Taylor	410	449	508	630	685
Wakulla	410	449	508	630	684
Washington	410	449	508	630	684

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
DeSoto	410	449	508	630	684
Franklin	410	449	508	630	684
Glades	410	449	508	630	684
Hamilton	410	449	508	630	684
Hendry	410	449	522	656	735
Holmes	410	449	508	630	684
Jackson	410	449	508	630	684
Lafayette	410	449	508	630	684
Liberty	410	449	508	630	684
Monroe	588	663	852	1174	1397
Putnam	410	449	508	630	684
Suwannee	410	449	508	630	684
Union	410	449	508	630	684
Walton	410	449	508	654	818

GEORGIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	326	382	466	636	689	Dougherty, Lee
Athens, GA MSA	401	432	560	764	921	Clarke, Madison, Oconee
*Atlanta, GA MSA	727	810	944	1259	1523	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, Walton
Augusta--Aiken, GA--SC MSA	411	493	580	788	931	Columbia, McDuffie, Richmond
Chattanooga, TN--GA MSA	393	460	552	713	814	Catoosa, Dade, Walker
Columbus, GA--AL MSA	377	419	503	656	712	Chattahoochee, Harris, Muscogee
Macon, GA MSA	421	469	546	752	775	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	392	489	568	765	796	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Appling	298	359	439	569	648
Bacon	298	359	439	569	648
Baldwin	298	382	465	597	652
Ben Hill	298	359	439	569	656
Bleckley	298	359	439	569	648
Brooks	298	359	439	569	648
Burke	298	359	439	569	648
Calhoun	298	359	439	569	648
Candler	298	359	439	569	648
Chattooga	298	359	439	569	648
Clinch	298	359	439	569	648
Colquitt	298	359	439	569	648
Crawford	298	359	439	569	648
Dawson	298	389	516	647	796
Dodge	298	359	439	569	648

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atkinson	298	359	439	569	648
Baker	298	359	439	569	648
Banks	298	359	439	569	648
Berrien	298	359	439	569	648
Brantley	298	359	439	569	648
Bulloch	359	365	468	604	767
Butts	298	395	523	702	735
Camden	418	472	528	735	869
Charlton	298	359	439	569	648
Clay	298	359	439	569	648
Coffee	298	359	439	569	656
Cook	298	359	439	569	648
Crisp	302	359	439	569	648
Decatur	298	359	439	569	648
Dooly	298	359	439	569	648

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

GEORGIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Early	298	359	439	569	648
Elbert	298	359	439	569	648
Evans	298	359	439	569	648
Floyd	298	359	440	580	648
Gilmer	298	359	439	569	648
Glynn	416	465	526	708	867
Grady	304	359	439	569	648
Habersham	320	359	439	569	653
Hancock	298	359	439	569	648
Hart	298	359	439	569	648
Irwin	298	359	439	569	648
Jasper	298	359	445	604	648
Jefferson	298	359	439	569	656
Johnson	298	359	439	569	648
Lanier	298	359	439	569	648
Liberty	371	414	471	655	660
Long	298	389	439	569	648
Lumpkin	298	402	452	605	742
Macon	298	359	439	569	648
Meriwether	298	359	439	569	648
Mitchell	298	359	439	569	648
Montgomery	298	359	439	569	648
Murray	298	359	439	569	648
Pierce	298	359	439	569	648
Polk	298	359	439	595	648
Putnam	298	359	439	569	656
Rabun	298	359	439	569	648
Schley	298	359	439	569	648
Seminole	298	359	439	569	648
Stewart	298	359	439	569	648
Talbot	298	359	439	569	648
Tattnall	298	359	439	569	648
Telfair	298	359	439	569	648
Thomas	298	370	439	569	648
Toombs	298	359	439	569	648
Treutlen	298	359	439	569	648
Turner	298	359	439	569	648
Upson	309	359	439	569	648
Warren	298	359	439	569	648
Wayne	309	359	439	569	648
Wheeler	298	359	439	569	648
Whitfield	298	392	471	602	710
Wilkes	298	359	439	569	648
Worth	298	359	439	569	648

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Echols	298	359	439	569	648
Emanuel	298	359	439	569	648
Fannin	298	359	439	569	648
Franklin	298	359	439	569	648
Glascock	298	359	439	569	648
Gordon	353	359	448	577	738
Greene	298	359	439	569	648
Hall	316	480	564	707	788
Haralson	298	359	439	569	648
Heard	298	359	439	569	648
Jackson	332	359	451	569	742
Jeff Davis	298	359	439	569	648
Jenkins	298	359	439	569	648
Lamar	298	369	439	569	696
Laurens	305	359	439	569	648
Lincoln	298	359	439	569	648
Lowndes	334	404	489	685	759
McIntosh	298	359	439	569	648
Marion	298	359	439	569	648
Miller	298	359	439	569	648
Monroe	298	359	439	578	648
Morgan	298	359	455	569	648
Oglethorpe	298	359	439	569	648
Pike	346	375	476	662	666
Pulaski	298	359	439	569	648
Quitman	298	359	439	569	648
Randolph	298	359	439	569	648
Screven	298	359	439	569	648
Stephens	298	359	439	569	648
Sumter	298	365	439	569	648
Taliaferro	298	359	439	569	648
Taylor	298	359	439	569	648
Terrell	298	359	439	569	648
Tift	298	359	439	569	648
Towns	298	359	439	569	648
Troup	298	406	457	571	648
Union	298	359	458	574	648
Ware	330	370	439	569	683
Washington	298	359	439	569	648
Webster	298	359	439	569	648
White	298	359	439	569	662
Wilcox	298	359	439	569	648
Wilkinson	298	359	439	569	648

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	609	729	858	1161	1256	Honolulu

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	474	618	711	944	1164
Maui	765	950	1159	1496	1695
Kauai	605	904	1102	1458	1577

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	428	487	593	822	973	Ada, Canyon
Pocatello, ID MSA	335	388	499	679	803	Bannock

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	302	351	452	600	710
Benewah	302	351	452	600	710
Blaine	467	515	686	957	1127
Bonner	348	431	535	739	850
Boundary	302	351	452	600	710
Camas	302	351	452	600	710
Cassia	302	351	452	600	710
Clearwater	302	351	452	600	710
Elmore	302	351	452	600	710
Fremont	302	351	452	600	710
Gooding	302	351	452	600	710
Jefferson	312	351	452	600	710
Kootenai	385	452	592	824	974
Lemhi	302	351	452	600	710
Lincoln	302	351	452	600	710
Minidoka	302	351	452	600	710
Oneida	303	351	452	600	710
Payette	302	351	452	600	710
Shoshone	302	351	452	600	710
Twin Falls	302	351	457	604	710
Washington	302	351	452	600	710
Bear Lake	302	351	452	600	710
Bingham	323	351	452	600	710
Boise	302	390	452	600	710
Bonneville	309	388	535	718	876
Butte	302	351	452	600	710
Caribou	302	351	452	600	710
Clark	302	351	452	600	710
Custer	302	351	452	600	710
Franklin	302	351	452	600	710
Gem	302	351	452	600	710
Idaho	302	351	452	600	710
Jerome	302	351	452	600	710
Latah	302	351	452	600	720
Lewis	302	351	452	600	710
Madison	302	351	452	600	710
Nez Perce	309	351	452	600	710
Owyhee	302	351	452	600	710
Power	302	351	452	600	710
Teton	330	351	452	612	725
Valley	315	351	452	600	710

ILLINOIS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington--Normal, IL MSA	366	446	598	830	877	McLean
Champaign--Urbana, IL MSA	403	495	640	878	1053	Champaign
*Chicago, IL PMSA	665	797	951	1189	1330	Cook, DuPage, Kane, Lake, McHenry, Will
Davenport--Moline--Rock Island, IA--IL MSA	302	417	515	666	723	Henry, Rock Island
Decatur, IL MSA	292	378	485	656	679	Macon
DeKalb County MSA*	508	591	748	1041	1207	DeKalb
Grundy County MSA*	440	509	676	894	950	Grundy

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 11

ILLINOIS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kankakee, IL PMSA	400	484	643	823	904	Kankakee
Kendall County MSA*	614	699	843	1173	1179	Kendall
Peoria--Pekin, IL MSA	406	447	600	799	981	Peoria, Tazewell, Woodford
Rockford, IL MSA	390	499	607	763	891	Boone, Ogle, Winnebago
*St. Louis, MO--IL MSA	439	536	695	905	999	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	336	417	555	738	840	Menard, Sangamon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	277	311	400	525	638	Alexander	277	311	400	525	589
Bond	277	311	400	525	589	Brown	277	311	400	525	589
Bureau	277	350	409	525	589	Calhoun	277	311	400	525	589
Carroll	277	311	400	525	589	Cass	278	311	400	525	589
Christian	298	311	402	528	589	Clark	277	311	400	525	589
Clay	277	311	400	525	589	Coles	292	349	463	616	727
Crawford	277	311	400	525	589	Cumberland	277	311	400	525	589
De Witt	281	311	400	530	589	Douglas	296	311	400	525	589
Edgar	277	311	400	525	589	Edwards	277	311	400	525	589
Effingham	277	320	400	525	589	Fayette	277	311	400	525	589
Ford	263	370	481	618	675	Franklin	277	311	400	525	589
Fulton	285	319	411	540	607	Gallatin	277	311	400	525	589
Greene	277	311	400	525	589	Hamilton	277	312	400	525	589
Hancock	277	311	400	525	589	Hardin	277	311	400	525	589
Henderson	277	311	400	525	589	Iroquois	277	311	400	525	589
Jackson	335	336	426	604	676	Jasper	277	313	400	525	589
Jefferson	278	326	407	555	589	Jo Daviess	306	331	400	525	589
Johnson	277	311	400	525	589	Knox	277	311	400	525	610
La Salle	335	394	525	710	796	Lawrence	277	311	400	525	589
Lee	308	317	425	531	595	Livingston	277	341	456	587	641
Logan	310	329	439	549	688	McDonough	277	316	400	525	631
Macoupin	277	311	400	525	589	Marion	282	311	400	525	589
Marshall	277	311	400	525	589	Mason	277	311	400	525	596
Massac	278	311	400	525	589	Mercer	277	311	400	525	589
Montgomery	277	311	400	525	589	Morgan	277	352	466	622	655
Moultrie	277	311	400	539	589	Perry	278	311	400	525	589
Piatt	277	336	438	596	614	Pike	277	311	400	525	589
Pope	277	311	400	525	589	Pulaski	277	311	400	525	589
Putnam	277	311	400	525	589	Randolph	277	311	400	525	589
Richland	277	311	400	525	589	Saline	277	311	400	525	589
Schuyler	277	311	400	525	589	Scott	277	311	400	525	589
Shelby	277	311	400	525	589	Stark	277	311	400	525	589
Stephenson	292	334	424	530	593	Union	277	311	400	525	589
Vermilion	277	354	441	551	618	Wabash	277	311	400	525	623
Warren	292	311	400	525	589	Washington	277	331	442	553	719
Wayne	277	311	400	525	589	White	277	311	400	525	589
Whiteside	292	332	443	554	625	Williamson	277	311	402	558	589

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 12

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	398	514	684	952	1125	Monroe
Cincinnati, OH--KY--IN PMSA	392	503	672	901	973	Dearborn
Elkhart--Goshen, IN MSA	402	459	579	741	852	Elkhart
Evansville--Henderson, IN--KY MSA	344	410	532	664	744	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	344	438	546	703	762	Adams, Allen, DeKalb, Huntington, Wells, Whitley
Gary, IN PMSA	447	588	732	921	1028	Lake, Porter
Indianapolis, IN MSA	393	492	592	741	830	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Morgan, Shelby
Kokomo, IN MSA	370	437	571	734	799	Howard, Tipton
Lafayette, IN MSA	375	476	634	882	1042	Clinton, Tippecanoe
Louisville, KY--IN MSA	369	475	583	804	848	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	386	480	570	772	911	Delaware
Ohio County MSA*	325	366	468	603	664	Ohio
South Bend, IN MSA	345	460	603	754	847	St. Joseph
Terre Haute, IN MSA	311	363	465	579	646	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	425	457	551	688	906	Benton	299	336	432	554	611
Blackford	299	336	444	555	623	Brown	299	397	523	726	752
Carroll	299	336	432	554	611	Cass	299	336	432	554	611
Crawford	299	336	432	554	611	Daviess	299	336	432	554	611
Decatur	299	365	466	604	657	Dubois	299	336	432	554	629
Fayette	316	357	456	586	689	Fountain	299	336	432	554	611
Franklin	299	336	432	554	682	Fulton	329	346	432	580	611
Gibson	299	336	432	554	611	Grant	315	336	432	556	611
Greene	299	336	432	554	611	Henry	328	369	472	610	668
Jackson	367	385	475	628	675	Jasper	299	363	432	554	611
Jay	299	336	432	554	611	Jefferson	299	336	432	554	611
Jennings	312	336	432	554	611	Knox	329	364	472	600	662
Kosciusko	299	396	478	620	669	LaGrange	304	352	447	582	677
LaPorte	304	368	493	631	689	Lawrence	299	336	432	558	611
Marshall	355	360	478	601	669	Martin	299	336	432	554	611
Miami	299	336	432	554	611	Montgomery	431	452	565	717	793
Newton	312	336	432	554	611	Noble	346	353	438	565	625
Orange	299	336	432	554	611	Owen	299	336	432	554	639
Parke	299	336	432	554	638	Perry	299	336	432	554	611
Pike	299	336	432	554	611	Pulaski	299	336	432	554	611
Putnam	325	378	465	625	630	Randolph	299	336	432	554	611
Ripley	299	336	432	564	639	Rush	307	336	432	554	639
Spencer	299	336	432	554	611	Starke	299	336	432	554	611
Steuben	366	412	494	618	689	Sullivan	299	336	432	554	611
Switzerland	299	336	432	554	611	Union	299	336	432	554	611
Wabash	299	336	432	554	611	Warren	299	336	432	554	611
Washington	299	336	432	554	611	Wayne	361	405	520	668	734
White	299	336	432	554	674						

IOWA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	296	417	536	744	800	Linn
Davenport--Moline--Rock Island, IA--IL MSA	302	417	515	666	723	Scott
Des Moines, IA MSA	420	530	655	848	892	Dallas, Polk, Warren
Dubuque, IA MSA	314	383	493	629	769	Dubuque
Iowa City, IA MSA	370	477	615	853	1009	Johnson
Omaha, NE--IA MSA	362	496	626	821	922	Pottawattamie
Sioux City, IA--NE MSA	368	443	552	688	786	Woodbury
Waterloo--Cedar Falls, IA MSA	345	442	552	734	863	Black Hawk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	282	349	437	556	612	Adams	282	349	437	556	612
Allamakee	282	349	437	562	643	Appanoose	282	349	437	556	616
Audubon	282	349	437	556	612	Benton	289	349	437	556	612
Boone	282	370	437	562	666	Bremer	282	349	437	556	651
Buchanan	296	349	437	556	612	Buena Vista	297	349	437	556	612
Butler	299	349	437	556	612	Calhoun	282	349	437	556	612
Carroll	282	349	437	556	612	Cass	282	349	437	556	612
Cedar	282	354	437	556	612	Cerro Gordo	282	369	457	609	640
Cherokee	282	349	437	556	612	Chickasaw	282	349	437	556	612
Clarke	289	349	437	556	612	Clay	282	349	437	556	612
Clayton	282	349	437	556	612	Clinton	282	349	444	556	621
Crawford	282	349	437	556	612	Davis	282	349	437	556	612
Decatur	282	349	437	556	612	Delaware	282	349	437	556	612
Des Moines	282	360	463	579	647	Dickinson	282	349	437	556	612
Emmet	282	349	437	556	647	Fayette	282	349	437	556	612
Floyd	307	349	437	556	612	Franklin	289	349	437	556	612
Fremont	310	349	437	556	645	Greene	282	349	437	556	612
Grundy	282	349	437	556	630	Guthrie	282	349	437	556	644
Hamilton	322	365	442	556	619	Hancock	282	349	437	556	612
Hardin	282	349	437	556	612	Harrison	282	349	437	556	612
Henry	282	358	454	568	643	Howard	282	349	437	556	640
Humboldt	282	349	437	556	612	Ida	289	349	437	556	612
Iowa	282	349	437	556	612	Jackson	282	349	440	556	616
Jasper	282	358	453	566	635	Jefferson	282	357	474	617	780
Jones	291	349	437	556	612	Keokuk	282	349	437	556	612
Kossuth	282	349	437	556	612	Lee	282	349	451	565	634
Louisa	282	349	437	556	612	Lucas	282	349	437	556	612
Lyon	282	349	437	556	612	Madison	282	349	455	582	639
Mahaska	282	349	437	556	612	Marion	282	388	474	594	666
Marshall	311	385	482	611	676	Mills	282	377	445	559	624
Mitchell	282	349	437	556	612	Monona	282	349	437	556	612
Monroe	282	367	437	556	645	Montgomery	310	351	437	556	612
Muscatine	322	399	529	705	739	O'Brien	282	349	437	556	612
Osceola	282	349	437	556	612	Page	282	349	437	556	612
Palo Alto	282	349	437	556	612	Plymouth	282	349	457	571	640

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 14

IOWA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pocahontas	282	349	437	556	612
Ringgold	282	349	437	556	612
Shelby	282	349	437	556	612
Story	367	446	527	728	835
Taylor	282	349	437	556	613
Van Buren	282	349	437	556	612
Washington	282	349	437	556	645
Webster	282	349	444	559	622
Winneshiek	282	349	437	556	612
Wright	282	349	437	556	612
Poweshiek	297	370	474	594	666
Sac	282	349	437	556	612
Sioux	282	349	437	556	612
Tama	282	349	437	556	612
Union	282	349	437	556	645
Wapello	282	349	441	556	617
Wayne	282	349	437	556	612
Winnebago	282	355	437	556	612
Worth	282	349	437	556	622

KANSAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Kansas City, MO--KS MSA	471	592	713	987	1094	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	381	457	585	815	938	Douglas
Topeka, KS MSA	357	412	536	724	816	Shawnee
*Wichita, KS MSA	373	448	599	811	876	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	287	326	418	539	600
Atchison	287	326	418	539	643
Barton	287	326	418	539	600
Brown	287	326	418	539	600
Chautauqua	287	326	418	539	600
Cheyenne	287	326	418	539	600
Clay	287	326	418	539	600
Coffey	296	326	418	539	627
Cowley	307	326	418	553	600
Decatur	287	326	418	539	600
Doniphan	287	326	418	539	600
Elk	287	326	418	539	600
Ellsworth	287	326	418	539	600
Ford	330	391	486	612	689
Geary	354	371	465	600	650
Graham	287	326	418	539	600
Gray	287	326	418	539	600
Greenwood	287	326	418	539	600
Harper	287	326	418	539	600
Hodgeman	287	326	418	539	600
Jefferson	287	326	426	565	600
Kearny	320	326	430	578	636
Kiowa	287	326	418	539	600
Lane	287	326	418	539	600
Linn	287	326	418	539	600
Lyon	287	326	418	539	640
Anderson	287	326	418	539	600
Barber	287	326	418	539	600
Bourbon	287	326	418	539	600
Chase	287	326	418	539	600
Cherokee	287	326	418	539	600
Clark	287	326	418	539	600
Cloud	287	326	418	539	600
Comanche	287	326	418	539	600
Crawford	287	326	426	539	600
Dickinson	287	326	418	539	600
Edwards	287	326	418	539	600
Ellis	287	326	418	539	600
Finney	377	402	516	672	849
Franklin	323	339	437	560	682
Gove	287	326	418	539	600
Grant	297	378	433	593	646
Greeley	287	326	418	539	600
Hamilton	287	326	418	539	600
Haskell	287	333	418	539	600
Jackson	287	326	418	539	600
Jewell	287	326	418	539	600
Kingman	287	326	418	539	600
Labette	287	326	418	539	600
Lincoln	287	326	418	539	600
Logan	287	326	418	539	600
McPherson	289	326	418	539	600

KANSAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Marion	287	326	418	539	600	Marshall	287	326	418	539	600
Meade	287	326	418	539	600	Mitchell	287	326	418	539	600
Montgomery	287	326	418	539	600	Morris	287	326	418	539	600
Morton	287	351	418	539	600	Nemaha	287	326	418	539	600
Neosho	287	326	418	539	600	Ness	287	326	418	539	600
Norton	287	326	418	539	600	Osage	287	326	418	539	600
Osborne	287	326	418	539	601	Ottawa	287	326	418	539	600
Pawnee	287	326	418	539	600	Phillips	287	326	418	539	600
Pottawatomie	287	326	418	539	613	Pratt	287	326	418	551	600
Rawlins	287	326	418	539	600	Reno	287	326	418	539	651
Republic	287	326	418	539	600	Rice	287	326	418	539	600
Riley	357	393	523	652	793	Rooks	287	326	418	539	600
Rush	287	326	418	539	600	Russell	287	326	418	539	600
Saline	376	389	512	708	716	Scott	287	326	418	551	633
Seward	347	378	502	630	702	Sheridan	287	326	418	539	600
Sherman	287	326	418	539	600	Smith	287	326	418	539	600
Stafford	287	326	418	539	600	Stanton	287	326	418	539	600
Stevens	287	327	418	539	616	Sumner	287	326	418	565	600
Thomas	287	326	418	539	600	Trego	287	326	418	539	600
Wabaunsee	287	326	418	539	600	Wallace	287	326	418	539	600
Washington	287	326	418	539	600	Wichita	287	326	430	539	670
Wilson	287	326	418	539	600	Woodson	287	326	418	539	600

KENTUCKY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH--KY--IN PMSA	392	503	672	901	973	Boone, Campbell, Kenton
Clarksville--Hopkinsville, TN--KY MSA	365	408	481	654	673	Christian
Evansville--Henderson, IN--KY MSA	344	410	532	664	744	Henderson
Gallatin County MSA*	292	397	487	611	797	Gallatin
Grant County MSA*	291	347	459	640	758	Grant
Huntington--Ashland, WV--KY--OH MSA	327	384	472	602	663	Boyd, Carter, Greenup
Lexington, KY MSA	370	461	565	769	869	Bourbon, Clark, Fayette, Jessamine, Madison, Scott, Woodford
Louisville, KY--IN MSA	369	475	583	804	848	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	323	334	439	589	617	Daviess
Pendleton County MSA*	294	341	452	569	636	Pendleton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	265	324	383	507	557	Allen	265	310	383	495	557
Anderson	292	310	401	501	562	Ballard	265	310	383	495	557
Barren	265	321	383	495	557	Bath	265	310	383	495	557
Bell	265	310	387	495	557	Boyle	316	320	427	535	599
Bracken	265	310	383	495	557	Breathitt	265	310	383	495	557
Breckinridge	265	310	383	495	557	Butler	265	310	383	495	557
Caldwell	265	310	383	495	557	Calloway	265	310	383	495	557

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 16

KENTUCKY continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Carlisle	265	310	383	495	557
Casey	265	310	383	495	557
Clinton	265	310	383	495	557
Cumberland	265	310	383	495	557
Elliott	265	310	383	495	557
Fleming	265	310	383	495	557
Franklin	265	391	479	618	780
Garrard	265	310	383	495	557
Grayson	265	310	383	495	557
Hancock	265	310	383	500	592
Harlan	265	403	459	600	708
Hart	265	310	383	495	557
Hickman	265	310	383	495	557
Jackson	265	310	383	495	557
Knott	265	310	383	495	557
Larue	265	310	383	495	557
Lawrence	265	310	383	495	557
Leslie	265	310	383	495	557
Lewis	265	310	383	495	557
Livingston	307	310	412	573	577
Lyon	265	310	383	495	557
McCreary	265	310	383	495	557
Magoffin	265	310	383	495	557
Marshall	265	316	383	495	596
Mason	265	310	383	495	557
Menifee	265	310	383	495	557
Metcalfe	265	310	383	495	557
Montgomery	265	310	383	495	557
Muhlenberg	265	310	383	495	557
Nicholas	265	310	383	495	557
Owen	265	310	383	495	570
Perry	297	310	399	499	559
Powell	265	310	383	495	557
Robertson	265	310	383	495	557
Rowan	265	310	383	495	577
Shelby	266	350	393	548	557
Spencer	265	316	383	495	557
Todd	265	310	383	495	557
Trimble	265	310	383	495	557
Warren	265	343	458	572	662
Wayne	265	310	383	495	557
Whitley	265	310	383	495	557

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Carroll	265	310	383	495	557
Clay	265	310	383	495	557
Crittenden	265	310	383	495	557
Edmonson	265	310	383	495	557
Estill	265	310	383	495	557
Floyd	280	340	383	532	610
Fulton	265	310	383	495	557
Graves	265	310	383	495	557
Green	265	310	383	495	557
Hardin	330	339	424	570	676
Harrison	265	311	393	495	606
Henry	265	310	383	495	557
Hopkins	265	310	383	495	562
Johnson	265	310	383	495	557
Knox	265	367	469	589	723
Laurel	346	392	464	626	650
Lee	265	310	383	495	557
Letcher	265	310	383	495	557
Lincoln	265	310	383	495	557
Logan	265	310	383	505	557
McCracken	301	323	404	517	664
McLean	265	310	383	495	557
Marion	265	310	383	495	557
Martin	265	310	383	495	557
Meade	275	341	393	518	647
Mercer	265	310	383	505	557
Monroe	265	310	383	495	557
Morgan	265	310	383	495	557
Nelson	291	310	395	495	557
Ohio	265	310	383	495	557
Owsley	265	310	383	495	557
Pike	285	325	395	495	585
Pulaski	291	310	393	496	557
Rockcastle	265	310	383	495	557
Russell	265	310	383	495	557
Simpson	265	332	389	496	557
Taylor	320	379	424	567	642
Trigg	265	310	383	495	557
Union	265	310	383	495	557
Washington	265	314	383	495	557
Webster	265	310	383	495	557
Wolfe	265	310	383	495	557

LOUISIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	302	377	473	655	666	Rapides
*Baton Rouge, LA MSA	347	430	535	741	876	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	298	348	446	619	733	Lafourche, Terrebonne
Lafayette, LA MSA	315	363	431	594	703	Acadia, Lafayette, St. Landry, St. Martin
Lake Charles, LA MSA	347	403	512	670	839	Calcasieu
Monroe, LA MSA	326	365	487	656	681	Ouachita
New Orleans, LA MSA	463	531	661	899	1089	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, St. Tammany
St. James Parish MSA*	297	336	447	557	624	St. James
Shreveport--Bossier City, LA MSA	367	418	524	701	861	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allen	287	312	385	504	562	Assumption	314	338	401	504	562
Avoyelles	287	312	385	504	565	Beauregard	350	382	452	590	651
Bienville	287	312	385	511	604	Caldwell	287	312	385	504	562
Cameron	287	312	385	504	562	Catahoula	287	312	385	504	562
Claiborne	287	312	385	504	562	Concordia	287	312	385	504	562
De Soto	287	312	385	504	567	East Carroll	287	312	385	504	562
East Feliciana	287	312	385	504	562	Evangeline	287	312	385	504	562
Franklin	287	312	385	504	567	Grant	287	312	385	504	562
Iberia	304	316	393	504	562	Iberville	287	312	385	504	579
Jackson	287	312	385	504	562	Jefferson Davis	287	312	385	504	571
La Salle	287	312	385	504	567	Lincoln	338	340	424	582	698
Madison	287	312	385	504	562	Morehouse	287	312	385	504	562
Natchitoches	307	314	407	563	567	Pointe Coupee	287	312	385	504	610
Red River	287	312	385	504	567	Richland	287	312	385	504	567
Sabine	287	320	385	504	593	St. Helena	287	312	385	504	562
St. Mary	314	337	423	577	602	Tangipahoa	308	320	412	540	575
Tensas	287	312	385	504	562	Union	287	312	385	504	567
Vermilion	287	312	385	504	562	Vernon	330	368	419	543	641
Washington	287	312	385	504	562	West Carroll	287	312	385	504	562
West Feliciana	287	375	501	626	703	Winn	287	312	385	504	562

MAINE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	382	467	598	782	839	Penobscot county towns of Bangor city, Brewer city, Eddington town, Glenburn town, Hampden town, Hermon town, Holden town, Kenduskeag town, Milford town, Old Town city, Orono town, Orrington town, Penobscot Indian Island Reservation, Veazie town Waldo county towns of Winterport town
Lewiston--Auburn, ME MSA	352	425	546	683	776	Androscoggin county towns of Auburn city,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 18

MAINE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Portland, ME MSA	507	653	859	1076	1204	Greene town, Lewiston city, Lisbon town, Mechanic Falls town, Poland town, Sabattus town, Turner town, Wales town Cumberland county towns of Cape Elizabeth town, Casco town, Cumberland town, Falmouth town, Freeport town, Frye Island town, Gorham town, Gray town, Long Island town, North Yarmouth town, Portland city, Raymond town, Scarborough town, South Portland city, Standish town, Westbrook city, Windham town, Yarmouth town
Portsmouth--Rochester, NH--ME PMSA	604	723	930	1193	1463	York county towns of Buxton town, Hollis town, Limington town, Old Orchard Beach town York county towns of Berwick town, Eliot town, Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Androscoggin	353	437	579	724	811	Durham town, Leeds town, Livermore Falls town, Livermore town, Minot town
Aroostook	353	415	531	675	778	Allagash town, Amity town, Ashland town, Bancroft town, Blaine town, Bridgewater town, Caribou city, Cary plantation, Castle Hill town, Caswell town, Central Aroostook UT, Chapman town, Connor UT, Crystal town, Cyr plantation, Dyer Brook town, Eagle Lake town, Easton town, Fort Fairfield town, Fort Kent town, Frenchville town, Garfield plantation, Glenwood plantation, Grand Isle town, Hamlin town, Hammond town, Haynesville town, Hersey town, Hodgdon town, Houlton town, Island Falls town, Limestone town, Linneus town, Littleton town, Ludlow town, Macwahoc plantation, Madawaska town, Mapleton town, Mars Hill town, Masardis town, Merrill town, Monticello town, Moro plantation, Nashville plantation, New Canada town, New Limerick town, New Sweden town, Northwest Aroostook UT, Oakfield town, Orient town, Oxbow plantation, Penobscot Indian Island Reservation, Perham town, Portage Lake town, Presque Isle city, Reed plantation, Sherman town, Smyrna town, South Aroostook UT, Square Lake UT, St. Agatha town, St. Francis town, St. John plantation, Stockholm town, Van Buren town, Wade town, Wallagrass town, Washburn town, Westfield town, Westmanland town, Weston town, Winterville plantation, Woodland town
Cumberland	517	527	702	953	1095	Baldwin town, Bridgton town, Brunswick town, Harpswell town, Harrison town, Naples town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 19

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Franklin	360	415	531	675	778	New Gloucester town, Pownal town, Sebago town Avon town, Carrabassett Valley town, Carthage town, Chesterville town, Coplin plantation, Dallas plantation, East Central Franklin UT, Eustis town, Farmington town, Industry town, Jay town, Kingfield town, Madrid town, New Sharon town, New Vineyard town, North Franklin UT, Phillips town, Rangeley plantation, Rangeley town, Sandy River plantation, South Franklin UT, Strong town, Temple town, Weld town, West Central Franklin UT, Wilton town, Wyman UT
Hancock	380	466	577	727	807	Amherst town, Aurora town, Bar Harbor town, Blue Hill town, Brooklin town, Brooksville town, Bucksport town, Castine town, Central Hancock UT, Cranberry Isles town, Dedham town, Deer Isle town, East Hancock UT, Eastbrook town, Ellsworth city, Franklin town, Frenchboro town, Gouldsboro town, Great Pond town, Hancock town, Lamoine town, Mariaville town, Mount Desert town, Northwest Hancock UT, Orland town, Osborn town, Otis town, Penobscot town, Sedgwick town, Sorrento town, Southwest Harbor town, Stonington town, Sullivan town, Surry town, Swans Island town, Tremont town, Trenton town, Verona town, Waltham town, Winter Harbor town
Kennebec	367	459	551	693	778	Albion town, Augusta city, Belgrade town, Benton town, Chelsea town, China town, Clinton town, Farmingdale town, Fayette town, Gardiner city, Hallowell city, Litchfield town, Manchester town, Monmouth town, Mount Vernon town, Oakland town, Pittston town, Randolph town, Readfield town, Rome town, Sidney town, Unity UT, Vassalboro town, Vienna town, Waterville city, Wayne town, West Gardiner town, Windsor town, Winslow town, Winthrop town
Knox	353	454	590	788	829	Appleton town, Camden town, Criehaven UT, Cushing town, Friendship town, Hope town, Isle au Haut town, Matinicus Isle plantation, North Haven town, Owls Head town, Rockland city, Rockport town, South Thomaston town, St. George town, Thomaston town, Union town, Vinalhaven town, Warren town, Washington town
Lincoln	460	511	581	808	953	Alna town, Boothbay Harbor town, Boothbay town, Bremen town, Bristol town, Damariscotta town, Dresden town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 20

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Edgecomb town, Hibberts gore, Jefferson town, Monhegan plantation, Newcastle town, Nobleboro town, Somerville town, South Bristol town, Southport town, Waldoboro town, Westport town, Whitefield town, Wiscasset town
Oxford	353	415	531	675	778	Andover town, Bethel town, Brownfield town, Buckfield town, Byron town, Canton town, Denmark town, Dixfield town, Fryeburg town, Gilead town, Greenwood town, Hanover town, Hartford town, Hebron town, Hiram town, Lincoln plantation, Lovell town, Magalloway plantation, Mexico town, Milton UT, Newry town, North Oxford UT, Norway town, Otisfield town, Oxford town, Paris town, Peru town, Porter town, Roxbury town, Rumford town, South Oxford UT, Stoneham town, Stow town, Sumner town, Sweden town, Upton town, Waterford town, West Paris town, Woodstock town
Penobscot	353	415	531	675	778	Alton town, Argyle UT, Bradford town, Bradley town, Burlington town, Carmel town, Carroll plantation, Charleston town, Chester town, Clifton town, Corinna town, Corinth town, Dexter town, Dixmont town, Drew plantation, East Central Penobscot UT, East Millinocket town, Edinburg town, Enfield town, Etna town, Exeter town, Garland town, Greenbush town, Howland town, Hudson town, Kingman UT, Lagrange town, Lakeville town, Lee town, Levant town, Lincoln town, Lowell town, Mattawamkeag town, Maxfield town, Medway town, Millinocket town, Mount Chase town, Newburgh town, Newport town, North Penobscot UT, Passadumkeag town, Patten town, Plymouth town, Prentiss UT, Seboeis plantation, Springfield town, Stacyville town, Stetson town, Twombly UT, Webster plantation, Whitney UT, Winn town, Woodville town
Piscataquis	353	415	531	675	778	Abbot town, Atkinson town, Beaver Cove town, Blanchard UT, Bowerbank town, Brownville town, Dover-Foxcroft town, Greenville town, Guilford town, Kingsbury plantation, Lake View plantation, Medford town, Milo town, Monson town, Northeast Piscataquis UT, Northwest Piscataquis UT, Parkman town, Sangerville town, Sebec town, Shirley town, Southeast Piscataquis UT, Wellington town, Willimantic town
Sagadahoc	497	568	702	934	1152	Arrowsic town, Bath city, Bowdoin town, Bowdoinham town, Georgetown town, Perkins UT, Phippsburg town, Richmond town, Topsham town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 21

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						West Bath town, Woolwich town
Somerset	370	422	531	675	798	Anson town, Athens town, Bingham town, Brighton plantation, Cambridge town, Canaan town, Caratunk town, Central Somerset UT, Cornville town, Dennistown plantation, Detroit town, Embden town, Fairfield town, Harmony town, Hartland town, Highland plantation, Jackman town, Madison town, Mercer town, Moose River town, Moscow town, New Portland town, Norridgewock town, Northeast Somerset UT, Northwest Somerset UT, Palmyra town, Pittsfield town, Pleasant Ridge plantation, Ripley town, Seboomook Lake UT, Skowhegan town, Smithfield town, Solon town, St. Albans town, Starks town, The Forks plantation, West Forks plantation
Waldo	353	415	531	675	778	Belfast city, Belmont town, Brooks town, Burnham town, Frankfort town, Freedom town, Islesboro town, Jackson town, Knox town, Liberty town, Lincolnville town, Monroe town, Montville town, Morrill town, Northport town, Palermo town, Prospect town, Searsmont town, Searsport town, Stockton Springs town, Swanville town, Thorndike town, Troy town, Unity town, Waldo town
Washington	353	415	531	675	778	Addison town, Alexander town, Baileyville town, Baring plantation, Beals town, Beddington town, Calais city, Centerville town, Charlotte town, Cherryfield town, Codyville plantation, Columbia Falls town, Columbia town, Cooper town, Crawford town, Cutler town, Danforth town, Deblois town, Dennysville town, East Central Washington UT, East Machias town, Eastport city, Grand Lake Stream plantation, Harrington town, Jonesboro town, Jonesport town, Lubec town, Machias town, Machiasport town, Marshfield town, Meddybemps town, Milbridge town, North Washington UT, Northfield town, Passamaquoddy Indian Township Reservation, Passamaquoddy Pleasant Point Reservation, Pembroke town, Perry town, Princeton town, Robbinston town, Roque Bluffs town, Steuben town, Talmadge town, Topsfield town, Vanceboro town, Waite town, Wesley town, Whiting town, Whitneyville town
York	437	499	668	836	936	Acton town, Alfred town, Arundel town, Biddeford city, Cornish town, Dayton town, Kennebunk town, Kennebunkport town, Lebanon town, Limerick town, Lyman town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 22

MAINE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Newfield town, North Berwick town, Ogunquit town, Parsonsfield town, Saco city, Sanford town, Shapleigh town, Waterboro town, Wells town

MARYLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD PMSA	596	727	888	1176	1345	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city
Columbia, MD MSA*	612	822	958	1267	1583	Columbia
Cumberland, MD--WV MSA	361	435	539	712	812	Allegany
Hagerstown, MD PMSA	401	482	602	787	899	Washington
*Washington, DC--MD--VA--WV PMSA	913	1039	1218	1660	2002	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington--Newark, DE--MD PMSA	502	661	771	1048	1266	Cecil

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	396	427	534	700	795	Dorchester	354	457	534	696	795
Garrett	354	474	534	696	877	Kent	358	441	589	735	886
St. Mary's	577	685	790	1102	1259	Somerset	422	473	534	740	876
Talbot	468	496	660	827	1084	Wicomico	398	460	594	755	832
Worcester	354	427	535	742	795						

MASSACHUSETTS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable--Yarmouth, MA MSA	541	724	967	1212	1357	Barnstable county towns of Barnstable Town city Brewster town, Chatham town, Dennis town, Eastham town, Harwich town, Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA--NH PMSA	1007	1135	1419	1775	2084	Bristol county towns of Berkley town, Dighton town, Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city, Danvers town, Essex town, Gloucester city, Hamilton town, Ipswich town, Lynn city, Lynnfield town, Manchester-by-the-Sea town, Marblehead town, Middleton town, Nahant town, Newbury town, Newburyport city, Peabody city, Rockport town, Rowley town, Salem city, Salisbury town, Saugus town, Swampscott town, Topsfield town, Wenham town Middlesex county towns of Acton town, Arlington town, Ashland town, Ayer town, Bedford town, Belmont town, Boxborough town, Burlington town, Cambridge city, Carlisle town, Concord town, Everett city,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 23

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Framingham town, Holliston town, Hopkinton town, Hudson town, Lexington town, Lincoln town, Littleton town, Malden city, Marlborough city, Maynard town, Medford city, Melrose city, Natick town, Newton city, North Reading town, Reading town, Sherborn town, Shirley town, Somerville city, Stoneham town, Stow town, Sudbury town, Townsend town, Wakefield town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city
						Norfolk county towns of Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town
						Plymouth county towns of Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town
						Suffolk county towns of Boston city, Chelsea city, Revere city, Winthrop town
						Worcester county towns of Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town
Brockton, MA PMSA	647	853	1046	1300	1483	Bristol county towns of Easton town, Raynham town
						Norfolk county towns of Avon town
						Plymouth county towns of Abington town, Bridgewater town, Brockton city, East Bridgewater town, Halifax town, Hanson town, Lakeville town, Middleborough town, Plympton town, West Bridgewater town, Whitman town
Fitchburg--Leominster, MA PMSA	441	620	805	1035	1125	Middlesex county towns of Ashby town
						Worcester county towns of Ashburnham town, Fitchburg city, Gardner city, Leominster city, Lunenburg town, Templeton town, Westminster town, Winchendon town
Lawrence, MA--NH PMSA	639	771	971	1214	1492	Essex county towns of Andover town, Boxford town, Georgetown town, Groveland town, Haverhill city, Lawrence city, Merrimac town, Methuen city, North Andover town, West Newbury town
Lowell, MA--NH PMSA	682	881	1065	1334	1491	Middlesex county towns of Billerica town, Chelmsford town, Dracut town, Dunstable town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 24

MASSACHUSETTS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Groton town, Lowell city, Pepperell town, Tewksbury town, Tyngsborough town, Westford town
New Bedford, MA PMSA	592	723	823	1029	1155	Bristol county towns of Acushnet town, Dartmouth town, Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town, Rochester town
Pittsfield, MA MSA	353	501	617	775	959	Berkshire county towns of Adams town, Cheshire town, Dalton town, Hinsdale town, Lanesborough town, Lee town, Lenox town, Pittsfield city, Richmond town, Stockbridge town
Providence--Fall River--Warwick, RI--MA MSA	414	564	678	851	1050	Bristol county towns of Attleboro city, Fall River city, North Attleborough town, Rehoboth town, Seekonk town, Somerset town, Swansea town, Westport town
Springfield, MA MSA	439	544	686	857	1055	Franklin county towns of Sunderland town Hampden county towns of Agawam city, Chicopee city, East Longmeadow town, Hampden town, Holyoke city, Longmeadow town, Ludlow town, Monson town, Montgomery town, Palmer town, Russell town, Southwick town, Springfield city, West Springfield town, Westfield city, Wilbraham town Hampshire county towns of Amherst town, Belchertown town, Easthampton city, Granby town, Hadley town, Hatfield town, Huntington town, Northampton city, South Hadley town, Southampton town, Ware town, Williamsburg town
Worcester, MA--CT PMSA	549	663	827	1033	1158	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town, Boylston town, Brookfield town, Charlton town, Clinton town, Douglas town, Dudley town, East Brookfield town, Grafton town, Holden town, Leicester town, Millbury town, North Brookfield town, Northborough town, Northbridge town, Oakham town, Oxford town, Paxton town, Princeton town, Rutland town, Shrewsbury town, Southbridge town, Spencer town, Sterling town, Sturbridge town, Sutton town, Uxbridge town, Webster town, West Boylston town, West Brookfield town, Westborough town, Worcester city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Barnstable	526	722	960	1202	1347	Bourne town, Falmouth town, Provincetown town, Truro town, Wellfleet town
Berkshire	419	509	600	823	987	Alford town, Becket town, Clarksburg town, Egremont town, Florida town,

MASSACHUSETTS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Great Barrington town, Hancock town, Monterey town, Mount Washington town, New Ashford town, New Marlborough town, North Adams city, Otis town, Peru town, Sandisfield town, Savoy town, Sheffield town, Tyringham town, Washington town, West Stockbridge town, Williamstown town, Windsor town
Dukes	710	723	961	1203	1350	Aquinnah town, Chilmark town, Edgartown town, Gosnold town, Oak Bluffs town, Tisbury town, West Tisbury town
Franklin	451	560	716	896	1083	Ashfield town, Bernardston town, Buckland town, Charlemont town, Colrain town, Conway town, Deerfield town, Erving town, Gill town, Greenfield town, Hawley town, Heath town, Leverett town, Leyden town, Monroe town, Montague town, New Salem town, Northfield town, Orange town, Rowe town, Shelburne town, Shutesbury town, Warwick town, Wendell town, Whately town
Hampden	455	622	829	1102	1360	Blandford town, Brimfield town, Chester town, Granville town, Tolland town, Wales town
Hampshire	639	646	862	1082	1210	Chesterfield town, Cummington town, Goshen town, Middlefield town, Pelham town, Plainfield town, Westhampton town, Worthington town
Nantucket	807	1082	1443	1803	2019	Nantucket town
Worcester	508	530	706	884	989	Athol town, Hardwick town, Hubbardston town, New Braintree town, Petersham town, Phillipston town, Royalston town, Warren town

MICHIGAN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	546	659	815	1069	1199	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	407	413	542	675	758	Berrien
*Detroit, MI PMSA	488	663	801	1002	1122	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	426	483	607	774	849	Genesee
*Grand Rapids--Muskegon--Holland, MI MSA	445	520	636	796	892	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	320	431	547	681	764	Jackson
Kalamazoo--Battle Creek, MI MSA	379	458	576	722	806	Calhoun, Kalamazoo, Van Buren
Lansing--East Lansing, MI MSA	427	502	649	849	979	Clinton, Eaton, Ingham
Saginaw--Bay City--Midland, MI MSA	373	411	547	681	764	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	308	353	446	580	661	Alger	308	353	446	580	661
Alpena	308	353	446	580	665	Antrim	308	370	446	580	661
Arenac	308	353	446	580	661	Baraga	308	353	446	580	661
Barry	308	380	506	636	712	Benzie	322	353	446	599	661

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 26

MICHIGAN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Branch	358	366	449	615	661
Charlevoix	375	379	481	654	677
Chippewa	308	353	446	580	661
Crawford	337	353	456	623	661
Dickinson	308	379	468	585	661
Gladwin	308	353	446	580	661
Grand Traverse	408	438	584	730	820
Hillsdale	308	353	446	580	661
Huron	308	353	446	580	661
Iosco	308	353	446	580	700
Isabella	346	368	493	665	808
Keweenaw	308	353	446	580	661
Leelanau	419	452	530	691	868
Mackinac	308	353	446	580	661
Marquette	308	353	446	580	661
Mecosta	308	353	446	604	717
Missaukee	325	353	446	580	661
Montmorency	308	353	446	580	661
Oceana	329	353	446	580	661
Ontonagon	308	353	446	580	661
Oscoda	308	353	446	580	661
Presque Isle	308	353	446	580	661
St. Joseph	308	360	446	582	661
Schoolcraft	308	353	446	580	661
Tuscola	335	366	488	611	682

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cass	308	353	448	613	661
Cheboygan	325	353	446	580	678
Clare	320	353	446	580	661
Delta	308	353	446	580	661
Emmet	346	412	488	641	682
Gogebic	308	353	446	580	661
Gratiot	322	353	446	580	661
Houghton	308	353	446	580	661
Ionia	378	384	480	597	673
Iron	308	353	446	580	661
Kalkaska	308	353	447	582	735
Lake	312	353	446	580	661
Luce	308	353	446	580	661
Manistee	308	353	446	580	661
Mason	308	353	446	580	661
Menominee	308	353	446	580	661
Montcalm	369	416	528	685	781
Newaygo	356	380	447	580	661
Ogemaw	321	354	446	580	661
Osceola	308	353	446	580	661
Otsego	316	384	483	672	777
Roscommon	341	353	446	580	661
Sanilac	308	363	446	582	661
Shiawassee	308	388	466	649	695
Wexford	308	357	462	606	717

MINNESOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth--Superior, MN--WI MSA	302	389	499	666	776	St. Louis
Fargo--Moorhead, ND--MN MSA	372	512	619	859	919	Clay
Grand Forks, ND--MN MSA	385	458	603	832	929	Polk
La Crosse, WI--MN MSA	306	394	501	670	812	Houston
*Minneapolis--St. Paul, MN--WI MSA	578	743	951	1286	1457	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright
Rochester, MN MSA	389	546	714	986	1108	Olmsted
St. Cloud, MN MSA	349	453	535	674	861	Benton, Stearns

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aitkin	287	372	496	622	693
Beltrami	283	363	485	636	679
Blue Earth	387	466	581	745	944
Carlton	283	346	438	548	627
Chippewa	283	346	438	548	627

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Becker	283	406	457	572	641
Big Stone	283	346	438	548	627
Brown	283	366	438	548	627
Cass	283	346	438	548	627
Clearwater	283	346	438	548	627

MINNESOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cook	335	346	450	616	641
Crow Wing	283	346	460	576	723
Douglas	283	346	438	548	627
Fillmore	283	346	438	548	627
Goodhue	327	421	560	716	785
Hubbard	289	346	438	548	627
Jackson	283	346	438	548	627
Kandiyohi	350	441	537	673	810
Koochiching	343	350	464	580	760
Lake	283	346	438	548	627
Le Sueur	283	346	438	548	676
Lyon	283	346	438	548	649
Mahnomen	283	346	438	548	627
Martin	283	346	438	548	627
Mille Lacs	370	425	541	753	887
Mower	283	346	438	548	627
Nicollet	356	379	505	670	710
Norman	283	346	438	548	627
Pennington	283	346	438	585	627
Pipestone	283	346	438	548	627
Red Lake	283	358	438	548	627
Renville	283	346	438	548	627
Rock	283	346	438	548	627
Sibley	283	346	438	548	627
Stevens	322	407	460	576	645
Todd	283	346	438	548	627
Wabasha	306	373	472	592	677
Waseca	369	405	514	645	737
Wilkin	283	346	438	548	627
Yellow Medicine	283	346	438	548	627

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cottonwood	283	346	438	548	627
Dodge	283	346	438	548	627
Faribault	283	346	438	548	627
Freeborn	283	346	446	587	629
Grant	283	346	438	548	627
Itasca	363	367	479	597	670
Kanabec	350	442	572	714	801
Kittson	283	346	438	548	627
Lac qui Parle	283	346	438	548	627
Lake of the Woods	283	346	438	548	627
Lincoln	283	346	438	548	627
McLeod	336	434	578	718	806
Marshall	283	346	438	548	627
Meeker	337	397	503	632	722
Morrison	314	346	438	548	627
Murray	283	346	438	548	627
Nobles	283	346	438	548	627
Otter Tail	283	346	438	548	627
Pine	359	396	503	633	720
Pope	283	346	438	548	627
Redwood	283	346	438	548	627
Rice	335	459	613	763	855
Roseau	343	350	458	590	643
Steele	335	390	519	648	726
Swift	283	346	438	548	627
Traverse	283	346	438	548	627
Wadena	283	346	438	548	627
Watonwan	283	346	438	548	627
Winona	330	431	545	681	763

MISSISSIPPI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi--Gulfport--Pascagoula, MS MSA	424	498	573	798	941	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	320	391	480	644	768	Forrest, Lamar
Jackson, MS MSA	422	482	589	784	827	Hinds, Madison, Rankin
Memphis, TN--AR--MS MSA	458	534	626	870	913	DeSoto

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	264	314	391	500	636
Amite	264	314	389	500	562
Benton	264	314	389	500	562
Calhoun	264	314	389	500	562
Chickasaw	264	314	389	500	562
Claiborne	264	314	389	500	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcorn	264	314	389	500	562
Attala	264	314	389	500	562
Bolivar	301	314	404	505	576
Carroll	264	314	389	500	562
Choctaw	264	314	389	500	562
Clarke	264	314	389	500	562

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 28

MISSISSIPPI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Clay	264	314	389	500	567	Coahoma	308	314	414	519	580
Copiah	264	314	389	500	562	Covington	264	314	389	500	562
Franklin	267	314	389	500	562	George	264	314	389	500	562
Greene	264	314	389	500	562	Grenada	264	315	389	531	562
Holmes	264	314	389	500	562	Humphreys	264	314	389	500	562
Issaquena	278	382	507	634	711	Itawamba	264	314	389	500	562
Jasper	264	314	389	500	562	Jefferson	264	314	389	500	562
Jefferson Davis	264	314	389	500	562	Jones	264	314	389	500	562
Kemper	266	314	389	500	562	Lafayette	267	367	489	613	684
Lauderdale	264	341	429	557	602	Lawrence	264	314	389	500	562
Leake	264	314	389	500	562	Lee	331	355	429	537	602
Leflore	264	314	389	501	601	Lincoln	264	314	389	500	562
Lowndes	326	351	418	522	590	Marion	264	314	389	500	562
Marshall	264	314	389	500	570	Monroe	264	314	389	500	562
Montgomery	264	314	389	500	562	Neshoba	264	314	389	500	562
Newton	264	314	389	500	562	Noxubee	268	314	389	500	562
Oktibbeha	324	338	412	573	677	Panola	274	314	389	500	562
Pearl River	278	314	389	502	562	Perry	264	314	389	500	562
Pike	268	314	389	500	562	Pontotoc	264	314	389	500	562
Prentiss	267	314	389	500	562	Quitman	264	314	389	500	562
Scott	264	314	389	500	562	Sharkey	268	314	389	500	562
Simpson	267	314	389	500	562	Smith	264	314	389	500	562
Stone	264	314	389	500	562	Sunflower	292	318	389	500	597
Tallahatchie	264	314	389	500	562	Tate	264	357	412	517	679
Tippah	264	314	389	500	562	Tishomingo	264	314	389	500	562
Tunica	264	314	389	500	562	Union	264	314	389	500	562
Walthall	264	314	389	500	562	Warren	264	345	431	596	714
Washington	286	340	454	587	647	Wayne	264	314	389	500	562
Webster	266	314	389	500	562	Wilkinson	264	314	389	500	562
Winston	264	314	389	500	562	Yalobusha	266	314	389	500	562
Yazoo	268	314	389	500	562						

MISSOURI

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	280	395	514	715	843	Boone
Joplin, MO MSA	273	317	421	554	595	Jasper, Newton
*Kansas City, MO--KS MSA	471	592	713	987	1094	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	263	319	426	538	597	Andrew, Buchanan
*St. Louis, MO--IL MSA	439	536	695	905	999	Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	287	364	471	652	677	Christian, Greene, Webster

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	254	318	421	531	637
Audrain	272	292	377	509	589
Barton	254	292	377	489	562
Benton	286	292	390	489	562
Butler	254	292	377	489	562
Callaway	299	305	405	515	667
Cape Girardeau	262	322	428	570	699
Carter	254	292	377	489	562
Chariton	254	292	377	489	562
Cole	254	335	447	597	626
Crawford	279	335	378	498	562
Dallas	254	292	377	489	562
DeKalb	263	292	377	495	562
Douglas	254	292	377	489	562
Gasconade	254	292	377	489	562
Grundy	254	292	377	489	562
Henry	289	294	394	493	647
Holt	254	292	377	489	562
Howell	254	292	377	489	562
Johnson	306	341	445	590	697
Laclede	254	292	377	493	562
Lewis	254	292	377	489	562
Livingston	254	292	378	489	562
Macon	274	315	404	526	603
Maries	254	292	377	489	562
Mercer	254	292	377	489	562
Mississippi	254	292	377	489	562
Monroe	254	292	377	489	562
Morgan	254	292	377	489	562
Nodaway	269	325	400	508	612
Osage	254	292	377	489	562
Pemiscot	254	292	377	489	562
Pettis	273	320	428	538	644
Pike	254	292	377	489	591
Pulaski	254	357	400	530	591
Ralls	254	292	377	489	562
Reynolds	254	292	377	489	562
St. Clair	254	292	377	489	562
St. Francois	279	351	444	557	730
Schuyler	254	292	377	489	562
Scott	306	308	412	556	640
Shelby	254	292	377	489	562
Stone	294	314	391	498	562
Taney	287	318	416	562	660
Vernon	254	292	377	501	562

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Atchison	254	292	377	489	562
Barry	254	303	377	489	562
Bates	254	292	377	489	572
Bollinger	254	292	377	489	562
Caldwell	254	294	397	496	562
Camden	334	338	451	627	737
Carroll	254	292	377	489	562
Cedar	254	292	377	489	562
Clark	254	292	377	489	562
Cooper	254	292	377	489	562
Dade	254	292	377	489	562
Daviess	254	292	377	489	562
Dent	254	292	377	489	562
Dunklin	254	292	377	489	562
Gentry	254	292	377	489	562
Harrison	254	292	377	489	562
Hickory	254	292	377	489	562
Howard	254	292	377	489	564
Iron	254	292	377	489	562
Knox	254	292	377	489	562
Lawrence	270	299	377	489	562
Linn	254	292	377	489	562
McDonald	254	292	377	489	562
Madison	254	292	377	489	562
Marion	254	292	377	489	562
Miller	279	335	377	493	582
Moniteau	254	292	377	489	562
Montgomery	270	310	398	518	594
New Madrid	254	292	377	489	562
Oregon	254	292	377	489	562
Ozark	254	292	377	489	562
Perry	308	313	418	557	586
Phelps	263	316	404	549	596
Polk	254	293	377	489	589
Putnam	254	292	377	489	562
Randolph	254	292	377	489	562
Ripley	254	292	377	489	562
Ste. Genevieve	254	303	390	498	632
Saline	254	292	388	489	562
Scotland	254	292	377	489	562
Shannon	254	292	377	489	562
Stoddard	254	292	377	489	562
Sullivan	254	292	377	489	562
Texas	254	292	377	489	562
Washington	296	360	403	504	565

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 30

MISSOURI continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wayne	254	292	377	489	562
Wright	254	292	377	489	562
Worth	254	292	377	489	562

MONTANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	363	422	563	757	918	Yellowstone
Great Falls, MT MSA	363	420	553	719	856	Cascade
Missoula, MT MSA	363	426	566	730	929	Missoula

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	325	374	495	641	749
Blaine	325	374	495	641	749
Carbon	369	432	561	731	853
Chouteau	325	374	495	641	749
Daniels	325	396	495	641	749
Deer Lodge	325	374	495	641	749
Fergus	325	374	495	641	749
Gallatin	398	466	625	802	1025
Glacier	325	374	495	641	749
Granite	325	374	495	641	749
Jefferson	342	374	495	641	749
Lake	352	374	495	641	749
Liberty	325	374	495	641	749
McCone	325	394	495	641	749
Meagher	325	396	495	641	749
Musselshell	330	374	495	641	749
Petroleum	325	374	495	641	749
Pondera	325	395	495	641	749
Powell	330	374	495	641	749
Ravalli	325	374	495	641	749
Roosevelt	339	374	495	641	749
Sanders	325	374	495	641	749
Silver Bow	325	374	495	641	749
Sweet Grass	349	374	495	641	749
Toole	332	374	495	641	749
Valley	325	374	495	641	749
Wibaux	325	396	495	641	749

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	325	374	495	641	749
Broadwater	325	374	495	641	799
Carter	325	396	495	641	749
Custer	325	374	495	641	749
Dawson	325	374	495	641	749
Fallon	325	374	495	641	749
Flathead	325	375	502	701	823
Garfield	325	374	495	641	749
Golden Valley	325	395	495	641	749
Hill	335	374	495	641	749
Judith Basin	325	396	495	641	749
Lewis and Clark	361	422	560	779	923
Lincoln	352	374	495	641	749
Madison	332	374	495	641	749
Mineral	325	374	495	641	766
Park	325	374	495	641	758
Phillips	325	374	495	641	749
Powder River	325	379	495	641	749
Prairie	325	374	495	641	749
Richland	325	405	495	641	749
Rosebud	325	374	495	641	749
Sheridan	334	374	495	641	749
Stillwater	332	374	495	641	749
Teton	325	374	495	641	749
Treasure	325	374	495	641	749
Wheatland	325	374	495	641	749

NEBRASKA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	337	431	569	755	882	Lancaster
Omaha, NE--IA MSA	362	496	626	821	922	Cass, Douglas, Sarpy, Washington
Sioux City, IA--NE MSA	368	443	552	688	786	Dakota

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	264	354	467	586	701
Arthur	253	326	416	532	605
Blaine	253	326	416	532	605
Box Butte	275	326	416	533	629
Brown	253	326	416	532	617
Burt	253	326	416	532	605
Cedar	253	326	416	532	605
Cherry	253	343	416	535	630
Clay	253	326	416	532	605
Cuming	253	344	416	532	605
Dawes	271	326	416	536	633
Deuel	253	326	416	532	605
Dodge	253	326	429	565	605
Fillmore	253	326	416	532	605
Frontier	284	326	416	532	605
Gage	253	327	424	539	605
Garfield	253	326	416	532	605
Grant	253	326	416	532	605
Hall	304	400	533	701	786
Harlan	253	326	416	533	605
Hitchcock	253	326	416	532	605
Hooker	253	341	416	533	605
Jefferson	253	326	416	532	605
Kearney	253	326	416	532	633
Keya Paha	253	326	416	532	605
Knox	253	338	416	532	605
Logan	253	326	416	532	634
McPherson	253	326	416	533	605
Merrick	253	326	416	532	605
Nance	253	326	416	532	605
Nuckolls	253	326	416	532	605
Pawnee	253	326	416	536	605
Phelps	283	326	416	533	633
Platte	253	326	416	580	605
Red Willow	253	326	416	532	615
Rock	253	333	416	532	605
Saunders	253	326	416	532	605
Seward	314	326	425	532	605
Sherman	253	328	416	532	634
Stanton	253	326	416	532	605
Thomas	253	326	416	532	605
Valley	253	326	416	532	605
Webster	253	326	416	532	605
York	253	326	421	532	605

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Antelope	253	343	416	535	605
Banner	253	326	416	533	605
Boone	253	326	416	532	630
Boyd	253	340	416	532	605
Buffalo	273	395	495	617	747
Butler	253	326	416	532	605
Chase	253	344	416	532	635
Cheyenne	283	326	416	532	605
Colfax	276	339	416	532	605
Custer	283	328	416	532	629
Dawson	278	339	416	536	605
Dixon	282	326	416	532	605
Dundy	253	326	416	532	605
Franklin	253	326	416	537	605
Furnas	253	326	416	532	630
Garden	253	339	416	535	633
Gosper	253	326	416	532	612
Greeley	253	326	416	532	615
Hamilton	253	326	416	536	605
Hayes	253	341	416	532	630
Holt	253	326	416	532	605
Howard	253	326	416	532	605
Johnson	253	330	416	532	605
Keith	253	326	416	532	605
Kimball	253	326	416	533	633
Lincoln	259	339	416	532	605
Loup	253	326	416	532	632
Madison	259	341	451	584	712
Morrill	253	328	416	532	630
Nemaha	253	326	416	532	605
Otoe	253	326	416	532	634
Perkins	253	326	416	532	605
Pierce	253	326	416	532	605
Polk	253	326	416	532	605
Richardson	253	326	416	532	605
Saline	253	340	416	532	605
Scotts Bluff	257	338	429	532	630
Sheridan	253	326	416	532	606
Sioux	253	326	416	532	633
Thayer	253	343	416	532	605
Thurston	253	326	416	532	605
Wayne	289	326	416	532	630
Wheeler	253	326	416	533	605

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Las Vegas, NV--AZ MSA	606	719	856	1191	1407	Clark, Nye
Reno, NV MSA	556	644	828	1153	1364	Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	489	498	664	915	1086	Douglas	439	640	804	1116	1241
Elko	444	509	677	894	1113	Esmeralda	472	589	663	826	926
Eureka	361	589	663	825	923	Humboldt	530	557	671	881	941
Lander	365	564	663	828	1085	Lincoln	362	544	663	830	928
Lyon	431	516	663	922	1086	Mineral	367	501	666	874	1093
Pershing	502	509	677	847	969	Storey	509	515	677	943	1113
White Pine	362	499	663	894	940	Carson	380	520	696	967	1141

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA--NH PMSA	1007	1135	1419	1775	2084	Rockingham county towns of Seabrook town, South Hampton town
Lawrence, MA--NH PMSA	639	771	971	1214	1492	Rockingham county towns of Atkinson town, Chester town, Danville town, Derry town, Fremont town, Hampstead town, Kingston town, Newton town, Plaistow town, Raymond town, Salem town, Sandown town, Windham town
Lowell, MA--NH PMSA	682	881	1065	1334	1491	Hillsborough county towns of Pelham town
Manchester, NH PMSA	499	712	888	1110	1244	Hillsborough county towns of Bedford town, Goffstown town, Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town, Londonderry town
Nashua, NH PMSA	588	820	1016	1382	1643	Hillsborough county towns of Amherst town, Brookline town, Greenville town, Hollis town, Hudson town, Litchfield town, Mason town, Merrimack town, Milford town, Mont Vernon town, Nashua city, New Ipswich town, Wilton town
Portsmouth--Rochester, NH--ME PMSA	604	723	930	1193	1463	Rockingham county towns of Brentwood town, East Kingston town, Epping town, Exeter town, Greenland town, Hampton Falls town, Hampton town, Kensington town, New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city, Rollinsford town, Somersworth city

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 33

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Belknap	474	548	720	974	1182	Alton town, Barnstead town, Belmont town, Center Harbor town, Gilford town, Gilmanton town, Laconia city, Meredith town, New Hampton town, Sanbornton town, Tilton town
Carroll	395	543	724	908	1131	Albany town, Bartlett town, Brookfield town, Chatham town, Conway town, Eaton town, Effingham town, Freedom town, Hale's location, Hart's Location town, Jackson town, Madison town, Moultonborough town, Ossipee town, Sandwich town, Tamworth town, Tuftonboro town, Wakefield town, Wolfeboro town
Cheshire	492	583	746	973	1152	Alstead town, Chesterfield town, Dublin town, Fitzwilliam town, Gilsum town, Harrisville town, Hinsdale town, Jaffrey town, Keene city, Marlborough town, Marlow town, Nelson town, Richmond town, Rindge town, Roxbury town, Stoddard town, Sullivan town, Surry town, Swanzey town, Troy town, Walpole town, Westmoreland town, Winchester town
Coos	340	415	531	694	820	Atkinson and Gilmanton Academy grant, Beans grant, Beans purchase, Berlin city, Cambridge township, Carroll town, Chandlers purchase, Clarksville town, Colebrook town, Columbia town, Crawfords purchase, Cutts grant, Dalton town, Dixs grant, Dixville township, Dummer town, Errol town, Ervings location, Gorham town, Greens grant, Hadleys purchase, Jefferson town, Kilkenny township, Lancaster town, Low and Burbanks grant, Martins location, Milan town, Millsfield township, Northumberland town, Odell township, Pinkhams grant, Pittsburg town, Randolph town, Sargents purchase, Second College grant, Shelburne town, Stark town, Stewartstown town, Stratford town, Success township, Thompson and Meserves purchase, Wentworth location, Whitefield town
Grafton	437	527	702	908	1146	Alexandria town, Ashland town, Bath town, Benton town, Bethlehem town, Bridgewater town, Bristol town, Campton town, Canaan town, Dorchester town, Easton town, Ellsworth town, Enfield town, Franconia town, Grafton town, Groton town, Hanover town, Haverhill town, Hebron town, Holderness town, Landaff town, Lebanon city, Lincoln town, Lisbon town, Littleton town, Livermore town, Lyman town, Lyme town, Monroe town, Orange town, Orford town, Piermont town, Plymouth town, Rumney town, Sugar Hill town, Thornton town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 34

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Warren town, Waterville Valley town, Wentworth town, Woodstock town
Hillsborough	465	581	775	1024	1233	Antrim town, Bennington town, Deering town, Francestown town, Greenfield town, Hancock town, Hillsborough town, Lyndeborough town, New Boston town, Peterborough town, Sharon town, Temple town, Windsor town
Merrimack	489	585	729	935	1042	Andover town, Boscawen town, Bow town, Bradford town, Canterbury town, Chichester town, Concord city, Danbury town, Dunbarton town, Epsom town, Franklin city, Henniker town, Hill town, Hopkinton town, Loudon town, New London town, Newbury town, Northfield town, Pembroke town, Pittsfield town, Salisbury town, Sutton town, Warner town, Webster town, Wilmot town
Rockingham	508	594	796	1104	1274	Deerfield town, Northwood town, Nottingham town
Strafford	449	610	814	1020	1143	Middleton town, New Durham town, Strafford town
Sullivan	473	480	624	819	874	Acworth town, Charlestown town, Claremont city, Cornish town, Croydon town, Goshen town, Grantham town, Langdon town, Lempster town, Newport town, Plainfield town, Springfield town, Sunapee town, Unity town, Washington town

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic--Cape May, NJ PMSA	561	639	850	1064	1217	Atlantic, Cape May
*Bergen--Passaic, NJ PMSA	793	967	1133	1510	1862	Bergen, Passaic
Jersey City, NJ PMSA	772	911	1061	1349	1484	Hudson
Middlesex--Somerset--Hunterdon, NJ PMSA	851	932	1164	1581	1825	Hunterdon, Middlesex, Somerset
Monmouth--Ocean, NJ PMSA	666	798	1013	1346	1578	Monmouth, Ocean
*Newark, NJ PMSA	640	819	987	1242	1569	Essex, Morris, Sussex, Union, Warren
*Philadelphia, PA--NJ PMSA	587	721	892	1115	1399	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	573	798	973	1318	1591	Mercer
Vineland--Millville--Bridgeton, NJ PMSA	541	658	793	990	1113	Cumberland

NEW MEXICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
*Albuquerque, NM MSA	451	539	673	928	1096	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	315	396	471	645	761	Dona Ana
Santa Fe, NM MSA	457	646	798	1072	1214	Los Alamos, Santa Fe

NEW MEXICO continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Catron	292	340	422	568	641
Cibola	303	331	422	568	641
Curry	292	338	442	568	641
Eddy	299	330	422	568	660
Guadalupe	292	330	422	568	645
Hidalgo	292	330	422	568	641
Lincoln	330	338	446	587	735
McKinley	292	365	465	579	650
Otero	292	330	422	588	641
Rio Arriba	340	348	428	568	641
San Juan	329	352	439	610	723
Sierra	292	330	422	568	641
Taos	500	506	675	844	1111
Union	292	355	422	568	641
Chaves	292	331	436	601	641
Colfax	292	338	422	568	641
De Baca	292	331	422	568	641
Grant	345	393	503	675	762
Harding	292	330	422	568	641
Lea	292	330	422	568	641
Luna	320	352	451	605	683
Mora	292	330	422	568	641
Quay	292	421	474	594	664
Roosevelt	292	330	422	568	641
San Miguel	322	330	435	568	641
Socorro	292	330	422	568	658
Torrance	319	345	422	568	641

NEW YORK

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany--Schenectady--Troy, NY MSA	419	516	634	795	888	Albany, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie
Binghamton, NY MSA	376	422	527	668	752	Broome, Tioga
*Buffalo--Niagara Falls, NY MSA	437	517	624	778	873	Erie, Niagara
Dutchess County, NY PMSA	671	851	1054	1369	1599	Dutchess
Elmira, NY MSA	376	422	518	657	781	Chemung
Glens Falls, NY MSA	376	489	596	746	834	Warren, Washington
Jamestown, NY MSA	376	422	509	657	752	Chautauqua
Nassau--Suffolk, NY PMSA	901	1085	1324	1843	1974	Nassau, Suffolk
New York, NY PMSA	848	944	1073	1342	1504	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Westchester County MSA*	814	1062	1294	1680	2006	Westchester
Newburgh, NY--PA PMSA	538	697	855	1084	1237	Orange
Rochester, NY MSA	405	527	639	820	895	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	403	485	600	766	849	Cayuga, Madison, Onondaga, Oswego
Utica--Rome, NY MSA	376	422	509	657	752	Herkimer, Oneida

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allegany	376	422	509	657	752
Chenango	401	422	509	657	752
Columbia	471	495	635	831	889
Delaware	376	422	509	657	808
Franklin	376	422	509	657	752
Greene	376	489	586	756	922
Jefferson	405	478	562	703	789
Otsego	376	446	513	661	841
Schuyler	407	435	516	718	846
Steuben	390	444	509	664	752
Tompkins	492	529	679	949	1118
Cattaraugus	376	422	509	657	752
Clinton	376	422	548	684	767
Cortland	376	450	563	703	833
Essex	376	428	538	673	752
Fulton	376	422	509	657	752
Hamilton	376	453	521	657	752
Lewis	376	422	509	657	752
St. Lawrence	376	422	509	657	752
Seneca	402	433	522	674	752
Sullivan	489	548	667	922	935
Ulster	462	643	773	1007	1266

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NEW YORK continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Wyoming	376	422	509	657	752
Yates	376	422	509	657	752

NORTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	369	446	582	758	819	Buncombe, Madison
Charlotte--Gastonia--Rock Hill, NC--SC MSA	549	619	697	920	1101	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	404	460	515	713	848	Cumberland
Goldsboro, NC MSA	367	423	513	661	774	Wayne
Greensboro--Winston Salem--High Point, NC MSA	438	500	595	821	834	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph, Stokes, Yadkin
Greenville, NC MSA	454	461	597	805	984	Pitt
Hickory--Morganton--Lenoir, NC MSA	418	455	529	667	790	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	378	440	499	691	818	Onslow
*Norfolk--Virginia Beach--Newport News, VA--NC MSA	562	632	748	1044	1226	Currituck
Raleigh--Durham--Chapel Hill, NC MSA	561	680	799	1073	1264	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	353	382	464	615	678	Edgecombe, Nash
Wilmington, NC MSA	486	532	651	891	1063	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	312	365	436	562	665	Anson	312	359	436	562	637
Ashe	312	359	436	562	637	Avery	347	392	477	598	667
Beaufort	312	359	436	562	637	Bertie	312	359	436	562	637
Bladen	312	359	436	562	637	Camden	312	398	531	663	744
Carteret	352	387	471	655	729	Caswell	312	359	436	562	637
Cherokee	312	359	436	562	637	Chowan	312	359	436	562	637
Clay	312	359	436	562	637	Cleveland	397	465	556	736	813
Columbus	312	359	436	562	637	Craven	312	390	468	614	657
Dare	323	512	590	809	827	Duplin	312	359	436	562	637
Gates	312	359	436	562	637	Graham	312	359	436	562	637
Granville	329	359	436	577	654	Greene	312	359	436	562	637
Halifax	312	359	436	562	637	Harnett	351	406	493	637	720
Haywood	324	369	449	603	656	Henderson	403	415	513	682	786
Hertford	312	359	436	562	637	Hoke	312	359	436	562	637
Hyde	312	359	436	562	637	Iredell	421	431	568	711	794
Jackson	383	442	537	751	981	Jones	312	359	436	562	637
Lee	312	398	471	610	661	Lenoir	312	359	436	562	637
McDowell	312	380	455	622	737	Macon	312	372	436	562	637
Martin	312	359	436	562	637	Mitchell	312	407	467	638	667
Montgomery	312	359	436	562	637	Moore	358	432	516	706	846
Northampton	312	359	436	562	637	Pamlico	312	359	436	562	637
Pasquotank	359	385	479	665	672	Pender	376	455	525	678	828
Perquimans	312	359	436	562	637	Person	312	359	467	610	715
Polk	404	513	574	729	828	Richmond	312	359	436	562	637
Robeson	312	367	436	562	637	Rockingham	312	359	436	562	637

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rutherford	386	440	535	689	782
Scotland	312	359	436	562	637
Surry	312	359	436	562	637
Transylvania	360	386	488	647	690
Vance	330	373	436	562	637
Washington	312	359	436	562	637
Wilkes	353	399	449	621	697
Yancey	312	366	436	562	658
Sampson	312	359	436	562	637
Stanly	312	359	443	598	637
Swain	312	359	436	562	637
Tyrrell	312	359	436	562	637
Warren	312	359	436	562	637
Watauga	406	488	617	839	1012
Wilson	325	359	442	562	637

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	380	425	565	787	933	Burleigh, Morton
Fargo--Moorhead, ND--MN MSA	372	512	619	859	919	Cass
Grand Forks, ND--MN MSA	385	458	603	832	929	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	249	312	404	524	612
Benson	283	312	404	524	612
Bottineau	249	312	404	524	612
Burke	270	312	404	524	612
Dickey	270	312	404	524	612
Dunn	249	312	404	524	612
Emmons	249	312	404	524	612
Golden Valley	249	322	426	533	612
Griggs	249	312	404	524	612
Kidder	249	312	404	524	612
Logan	249	312	404	524	612
McIntosh	249	312	404	524	612
McLean	264	312	404	524	612
Mountrail	275	312	404	524	612
Oliver	249	312	404	524	612
Pierce	249	312	404	540	612
Ransom	255	312	404	524	612
Richland	262	312	412	524	612
Sargent	249	312	404	524	612
Sioux	249	312	404	524	612
Stark	249	312	404	524	612
Stutsman	297	312	408	567	669
Traill	262	334	404	524	612
Ward	249	343	457	618	736
Williams	249	312	404	524	612
Barnes	249	315	417	545	612
Billings	270	312	404	524	612
Bowman	249	312	404	524	612
Cavalier	249	323	428	534	659
Divide	249	312	404	524	612
Eddy	249	312	404	524	612
Foster	249	312	406	524	612
Grant	249	312	404	524	612
Hettinger	249	312	404	524	612
LaMoure	270	312	404	524	612
McHenry	249	312	404	524	612
McKenzie	249	312	404	524	612
Mercer	249	312	404	524	612
Nelson	249	312	404	524	612
Pembina	249	312	404	532	632
Ramsey	257	343	457	573	747
Renville	288	312	404	527	624
Rolette	269	344	415	524	612
Sheridan	249	312	404	524	612
Slope	249	312	404	524	612
Steele	249	312	404	524	612
Towner	285	322	426	533	703
Walsh	333	354	440	551	617
Wells	265	312	404	524	612

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	423	513	658	824	923	Portage, Summit

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OHIO continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Brown County MSA*	325	382	476	617	681	Brown
Canton--Massillon, OH MSA	309	402	512	641	721	Carroll, Stark
Cincinnati, OH--KY--IN PMSA	392	503	672	901	973	Clermont, Hamilton, Warren
*Cleveland--Lorain--Elyria, OH PMSA	483	606	752	956	1075	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	422	499	640	813	935	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton--Springfield, OH MSA	413	462	589	760	854	Clark, Greene, Miami, Montgomery
Hamilton--Middletown, OH PMSA	355	504	647	809	905	Butler
Huntington--Ashland, WV--KY--OH MSA	327	384	472	602	663	Lawrence
Lima, OH MSA	309	370	486	621	680	Allen, Auglaize
Mansfield, OH MSA	309	370	471	588	658	Crawford, Richland
Parkersburg--Marietta, WV--OH MSA	329	395	452	586	635	Washington
Steubenville--Weirton, OH--WV MSA	309	363	457	582	649	Jefferson
Toledo, OH MSA	387	470	574	739	802	Fulton, Lucas, Wood
Wheeling, WV--OH MSA	337	369	457	582	649	Belmont
Youngstown--Warren, OH MSA	361	427	535	671	764	Columbiana, Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	297	353	439	559	627	Ashland	297	353	463	579	648
Athens	410	463	544	714	875	Champaign	297	362	470	587	658
Clinton	339	435	522	727	733	Coshocton	297	353	439	559	627
Darke	326	353	442	559	627	Defiance	353	401	529	666	739
Erie	297	396	494	666	808	Fayette	322	353	439	559	627
Gallia	297	353	439	559	627	Guernsey	297	353	439	559	627
Hancock	376	380	482	616	674	Hardin	297	353	439	559	627
Harrison	297	353	439	559	627	Henry	342	378	472	611	693
Highland	297	353	439	559	627	Hocking	297	353	439	559	627
Holmes	297	353	439	559	627	Huron	344	374	466	616	655
Jackson	297	353	439	559	627	Knox	350	385	493	637	704
Logan	349	354	456	614	639	Marion	297	353	439	559	627
Meigs	297	353	439	559	627	Mercer	297	353	439	559	645
Monroe	297	353	439	559	627	Morgan	297	358	439	559	627
Morrow	297	353	439	559	627	Muskingum	297	353	439	559	627
Noble	297	353	439	559	636	Ottawa	297	439	504	686	733
Paulding	297	353	439	559	627	Perry	297	353	439	559	627
Pike	312	371	461	590	659	Preble	304	361	449	576	643
Putnam	307	353	439	559	627	Ross	344	359	439	559	627
Sandusky	297	386	494	623	688	Scioto	297	353	439	559	627
Seneca	298	353	439	565	627	Shelby	297	362	483	603	676
Tuscarawas	297	353	460	576	645	Union	297	410	542	678	784
Van Wert	297	357	439	559	627	Vinton	297	353	439	559	627
Wayne	297	393	483	614	676	Williams	329	368	459	586	656
Wyandot	297	353	439	559	627						

OKLAHOMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	319	324	429	597	683	Garfield

OKLAHOMA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fort Smith, AR--OK MSA	359	363	479	639	671	Sequoyah
Lawton, OK MSA	395	397	506	702	770	Comanche
*Oklahoma City, OK MSA	398	432	561	779	872	Canadian, Cleveland, Logan, McClain, Oklahoma, Pottawatomie
*Tulsa, OK MSA	381	455	595	829	978	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	266	305	381	506	580	Alfalfa	266	305	381	506	580
Atoka	266	305	381	506	580	Beaver	266	309	381	506	580
Beckham	270	305	381	506	580	Blaine	266	305	381	506	580
Bryan	266	305	381	506	580	Caddo	266	305	381	506	580
Carter	266	307	384	534	580	Cherokee	278	314	381	506	588
Choctaw	266	305	381	506	580	Cimarron	266	305	381	506	580
Coal	266	305	381	506	580	Cotton	266	305	381	506	580
Craig	266	305	381	519	614	Custer	266	305	390	543	626
Delaware	266	305	381	506	590	Dewey	266	305	381	506	580
Ellis	266	305	381	506	580	Garvin	266	305	381	506	584
Grady	292	305	394	536	648	Grant	266	305	381	506	580
Greer	266	305	381	506	580	Harmon	266	305	381	506	580
Harper	266	305	381	506	580	Haskell	266	305	381	506	580
Hughes	266	305	381	506	580	Jackson	266	345	420	552	623
Jefferson	266	305	381	506	580	Johnston	266	305	381	506	580
Kay	295	311	410	571	668	Kingfisher	266	313	389	510	580
Kiowa	266	305	381	506	580	Latimer	266	305	381	506	580
Le Flore	266	305	381	506	580	Lincoln	284	305	381	506	580
Love	266	305	385	506	580	McCurtain	266	305	381	506	580
McIntosh	266	305	381	506	580	Major	266	319	381	528	580
Marshall	266	305	381	506	580	Mayes	266	309	412	519	580
Murray	266	305	381	506	580	Muskogee	287	323	381	526	580
Noble	266	305	381	506	580	Nowata	266	305	381	506	580
Okfuskee	266	305	381	506	580	Okmulgee	270	305	381	506	580
Ottawa	285	305	381	506	580	Pawnee	300	305	394	507	580
Payne	359	424	543	750	841	Pittsburg	266	305	381	506	580
Pontotoc	266	305	381	506	580	Pushmataha	266	305	381	506	580
Roger Mills	266	305	381	506	580	Seminole	266	305	381	506	580
Stephens	270	305	381	506	604	Texas	266	315	381	507	580
Tillman	266	305	381	506	580	Washington	266	364	443	588	688
Washita	266	305	381	506	580	Woods	266	305	381	506	580
Woodward	266	305	381	506	580						

OREGON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Corvallis, OR MSA	431	560	710	1068	1133	Benton
Eugene--Springfield, OR MSA	378	518	675	943	1089	Lane
Medford--Ashland, OR MSA	376	492	659	916	1021	Jackson

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OREGON continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Portland--Vancouver, OR--WA PMSA	524	644	795	1106	1200	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR PMSA	445	525	671	925	969	Marion, Polk

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	338	400	520	716	797	Clatsop	390	461	605	826	928
Coos	338	412	548	763	797	Crook	338	400	520	716	797
Curry	338	459	610	782	961	Deschutes	417	481	642	895	1036
Douglas	338	400	520	716	851	Gilliam	338	427	520	716	797
Grant	338	400	520	716	797	Harney	338	400	520	716	797
Hood River	397	447	607	790	935	Jefferson	338	400	520	716	797
Josephine	338	410	528	716	834	Klamath	338	400	520	716	846
Lake	338	400	520	716	797	Lincoln	410	416	555	773	840
Linn	406	483	625	860	959	Malheur	338	400	520	716	797
Morrow	338	400	520	716	797	Sherman	338	400	520	716	797
Tillamook	338	400	520	716	797	Umatilla	338	400	520	716	797
Union	338	400	520	716	797	Wallowa	338	400	520	716	797
Wasco	411	510	571	777	874	Wheeler	338	400	520	716	797

PENNSYLVANIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown--Bethlehem--Easton, PA MSA	401	545	647	844	946	Carbon, Lehigh, Northampton
Altoona, PA MSA	306	390	466	608	681	Blair
Erie, PA MSA	310	405	477	616	689	Erie
Harrisburg--Lebanon--Carlisle, PA MSA	368	471	604	762	850	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	310	395	474	616	689	Cambria, Somerset
Lancaster, PA MSA	409	500	624	814	876	Lancaster
Newburgh, NY--PA PMSA	538	697	855	1084	1237	Pike
*Philadelphia, PA--NJ PMSA	587	721	892	1115	1399	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA MSA	418	511	615	770	860	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland
Reading, PA MSA	323	477	589	735	829	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	328	459	550	686	829	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	340	395	474	616	689	Mercer
State College, PA MSA	446	547	677	886	947	Centre
Williamsport, PA MSA	310	397	477	616	689	Lycoming
York, PA MSA	346	474	589	734	821	York

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	304	409	542	703	889	Armstrong	308	408	462	604	759
Bedford	304	387	462	604	674	Bradford	308	391	476	623	683
Cameron	304	387	462	604	674	Clarion	304	387	462	604	674
Clearfield	304	387	462	604	674	Clinton	304	387	462	604	674
Crawford	304	387	462	604	674	Elk	304	387	462	604	674
Forest	304	387	462	604	674	Franklin	304	387	469	646	674

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Fulton	304	387	462	604	674	Greene	304	387	462	604	674
Huntingdon	304	387	462	604	674	Indiana	348	389	462	604	674
Jefferson	304	387	462	604	674	Juniata	304	387	462	604	674
Lawrence	304	387	462	604	674	McKean	304	389	462	604	674
Mifflin	338	387	462	604	674	Monroe	486	580	716	977	1092
Montour	359	387	486	674	797	Northumberland	320	406	496	658	733
Potter	304	387	462	604	674	Schuylkill	304	387	481	604	674
Snyder	365	387	463	604	674	Sullivan	304	387	462	604	674
Susquehanna	363	387	462	604	717	Tioga	304	387	462	604	674
Union	366	487	609	761	850	Venango	304	387	462	604	674
Warren	304	387	462	604	674	Wayne	305	471	555	707	909

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London--Norwich, CT--RI MSA	541	654	797	997	1140	Washington county towns of Hopkinton town, Westerly town
Providence--Fall River--Warwick, RI--MA MSA	414	564	678	851	1050	Bristol county towns of Barrington town, Bristol town, Warren town Kent county towns of Coventry town, East Greenwich town, Warwick city, West Greenwich town, West Warwick town Newport county towns of Jamestown town, Little Compton town, Tiverton town Providence county towns of Burrillville town, Central Falls city, Cranston city, Cumberland town, East Providence city, Foster town, Glocester town, Johnston town, Lincoln town, North Providence town, North Smithfield town, Pawtucket city, Providence city, Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town, Narragansett town, North Kingstown town, Richmond town, South Kingstown town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Newport	614	715	918	1149	1286	Middletown town, Newport city, Portsmouth town
Washington	725	816	917	1182	1302	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta--Aiken, GA--SC MSA	411	493	580	788	931	Aiken, Edgefield
Charleston--North Charleston, SC MSA	433	504	578	768	895	Berkeley, Charleston, Dorchester

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SOUTH CAROLINA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlotte--Gastonia--Rock Hill, NC--SC MSA	549	619	697	920	1101	York
Columbia, SC MSA	465	512	588	779	895	Lexington, Richland
Florence, SC MSA	352	391	509	635	712	Florence
Greenville--Spartanburg--Anderson, SC MSA	418	506	571	718	846	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	457	464	594	743	832	Horry
Sumter, SC MSA	372	413	468	640	761	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	307	357	434	558	637	Allendale	307	357	434	558	637
Bamberg	307	357	434	558	637	Barnwell	322	357	436	558	637
Beaufort	437	537	618	771	864	Calhoun	307	357	434	558	637
Chester	307	357	434	558	637	Chesterfield	307	357	434	558	637
Clarendon	307	357	434	558	637	Colleton	307	357	434	558	637
Darlington	307	357	434	558	637	Dillon	307	357	434	558	637
Fairfield	307	410	467	582	654	Georgetown	307	390	437	558	664
Greenwood	308	357	434	558	637	Hampton	307	357	434	558	637
Jasper	307	357	434	558	637	Kershaw	307	357	434	558	637
Lancaster	321	358	434	558	637	Laurens	307	357	434	558	637
Lee	307	357	434	558	637	McCormick	307	357	434	558	679
Marion	307	357	434	558	637	Marlboro	307	357	434	558	637
Newberry	307	357	434	558	637	Oconee	307	357	434	558	637
Orangeburg	307	357	434	558	637	Saluda	307	357	434	558	637
Union	307	357	434	558	637	Williamsburg	307	357	434	558	637

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	392	467	622	845	1024	Pennington
Sioux Falls, SD MSA	380	524	665	841	967	Lincoln, Minnehaha

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	276	370	460	609	706	Beadle	276	367	460	609	706
Bennett	276	367	460	609	706	Bon Homme	306	367	460	609	706
Brookings	295	469	520	704	829	Brown	304	404	507	670	776
Brule	276	367	460	609	706	Buffalo	276	367	460	609	712
Butte	320	434	578	755	890	Campbell	276	367	460	609	706
Charles Mix	276	367	460	609	706	Clark	276	367	460	609	706
Clay	307	408	512	679	841	Codington	319	422	531	703	812
Corson	276	367	460	609	706	Custer	276	367	460	609	706
Davison	308	390	491	657	751	Day	308	367	460	609	706
Deuel	276	367	460	609	706	Dewey	276	367	460	609	706
Douglas	306	367	460	609	706	Edmunds	276	367	460	609	706
Fall River	315	367	460	609	706	Faulk	276	367	484	609	706
Grant	276	367	460	609	706	Gregory	278	367	460	609	706

SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Haakon	276	375	460	609	706	Hamlin	276	367	460	609	706
Hand	276	367	460	609	706	Hanson	281	384	511	642	719
Harding	276	375	460	609	706	Hughes	314	379	503	661	784
Hutchinson	276	367	460	609	706	Hyde	276	373	460	609	706
Jackson	276	372	460	609	706	Jerauld	276	370	460	609	706
Jones	276	367	460	609	706	Kingsbury	300	367	460	609	706
Lake	276	372	460	609	706	Lawrence	317	456	574	786	889
Lyman	276	367	460	609	706	McCook	276	367	460	609	706
McPherson	276	367	460	609	706	Marshall	327	367	460	609	706
Meade	388	438	585	765	902	Mellette	330	372	460	609	706
Miner	276	372	460	609	706	Moody	276	367	460	609	706
Perkins	276	367	460	609	706	Potter	276	367	460	609	706
Roberts	276	367	460	609	706	Sanborn	276	367	460	609	706
Shannon	276	372	460	609	706	Spink	299	367	468	609	706
Stanley	276	375	460	609	706	Sully	276	367	460	609	706
Todd	304	367	460	609	706	Tripp	276	367	460	609	706
Turner	276	367	460	609	706	Union	290	367	460	609	706
Walworth	276	375	460	609	706	Yankton	276	367	460	609	706
Ziebach	276	367	460	609	706						

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN--GA MSA	393	460	552	713	814	Hamilton, Marion
Clarksville--Hopkinsville, TN--KY MSA	365	408	481	654	673	Montgomery
Jackson, TN MSA	283	373	501	692	696	Chester, Madison
Johnson City--Kingsport--Bristol, TN--VA MSA	328	391	486	629	745	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	328	403	507	676	812	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN--AR--MS MSA	458	534	626	870	913	Fayette, Shelby, Tipton
Nashville, TN MSA	460	550	678	924	1036	Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bedford	254	326	399	503	559	Benton	274	312	375	494	553
Bledsoe	254	297	375	494	553	Bradley	254	320	427	577	703
Campbell	256	297	375	494	553	Cannon	254	297	375	494	553
Carroll	254	309	375	494	553	Claiborne	254	297	375	494	553
Clay	258	297	375	494	553	Cocke	254	297	375	494	553
Coffee	254	353	398	553	630	Crockett	254	297	375	494	553
Cumberland	267	297	390	543	553	Decatur	254	297	375	494	553
DeKalb	254	297	375	494	553	Dyer	317	321	428	536	667
Fentress	254	297	375	494	553	Franklin	265	297	375	516	607
Gibson	254	297	375	494	553	Giles	254	323	400	501	560
Grainger	258	297	375	494	553	Greene	254	297	375	494	553
Grundy	254	297	375	494	553	Hamblen	254	298	392	520	553
Hancock	254	297	375	494	553	Hardeman	254	297	375	494	553
Hardin	254	297	375	494	553	Haywood	266	310	412	516	577

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TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Henderson	254	297	375	494	553	Henry	254	297	375	494	553
Hickman	300	304	403	532	564	Houston	254	297	375	494	553
Humphreys	254	310	375	494	553	Jackson	254	297	375	494	553
Jefferson	277	297	386	494	613	Johnson	254	297	375	494	553
Lake	254	297	375	494	553	Lauderdale	254	297	379	494	553
Lawrence	254	297	375	494	553	Lewis	254	297	375	494	553
Lincoln	254	297	380	494	553	McMinn	254	297	375	496	553
McNairy	254	297	375	494	553	Macon	254	297	375	494	553
Marshall	298	325	424	536	596	Maury	364	371	494	619	689
Meigs	254	297	375	494	553	Monroe	254	297	375	494	553
Moore	254	297	375	494	553	Morgan	254	297	375	494	553
Obion	294	298	382	506	553	Overton	254	297	375	494	553
Perry	254	300	375	494	553	Pickett	254	297	375	494	553
Polk	254	297	375	494	553	Putnam	309	312	400	550	592
Rhea	254	317	375	500	553	Roane	274	297	375	505	607
Scott	254	297	375	494	553	Sequatchie	254	297	375	494	553
Smith	254	297	375	494	553	Stewart	254	297	375	494	553
Trousdale	254	312	414	519	680	Van Buren	254	297	375	494	553
Warren	282	297	385	494	553	Wayne	254	297	375	494	553
Weakley	275	297	375	494	553	White	258	297	375	494	553

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	360	400	517	697	848	Taylor
Amarillo, TX MSA	305	385	479	667	787	Potter, Randall
*Austin--San Marcos, TX MSA	567	686	914	1269	1501	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont--Port Arthur, TX MSA	347	420	512	677	716	Hardin, Jefferson, Orange
Brazoria, TX PMSA	525	584	730	1017	1196	Brazoria
Brownsville--Harlingen--San Benito, TX MSA	319	402	503	630	787	Cameron
Bryan--College Station, TX MSA	405	472	596	832	981	Brazos
Corpus Christi, TX MSA	380	467	595	811	958	Nueces, San Patricio
*Dallas, TX PMSA	589	678	871	1205	1425	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	428	481	569	788	934	El Paso
*Fort Worth--Arlington, TX PMSA	536	585	757	1058	1246	Hood, Johnson, Parker, Tarrant
Galveston--Texas City, TX PMSA	514	528	662	920	1086	Galveston
Henderson County MSA*	346	412	502	685	822	Henderson
*Houston, TX PMSA	523	588	760	1060	1248	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen--Temple, TX MSA	427	445	563	784	861	Bell, Coryell
Laredo, TX MSA	346	398	523	654	736	Webb
Longview--Marshall, TX MSA	343	387	474	646	705	Gregg, Harrison, Upshur
Lubbock, TX MSA	328	416	540	749	831	Lubbock
McAllen--Edinburg--Mission, TX MSA	297	394	451	563	633	Hidalgo
Odessa--Midland, TX MSA	328	379	506	703	816	Ector, Midland
San Angelo, TX MSA	305	389	472	647	764	Tom Green
*San Antonio, TX MSA	425	491	635	883	1044	Bexar, Comal, Guadalupe, Wilson

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TEXAS continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Sherman--Denison, TX MSA	305	417	503	642	769	Grayson
Texarkana, TX--Texarkana, AR MSA	331	404	495	652	692	Bowie
Tyler, TX MSA	381	421	514	711	753	Smith
Victoria, TX MSA	377	381	482	668	753	Victoria
Waco, TX MSA	331	405	535	710	748	McLennan
Wichita Falls, TX MSA	365	407	493	655	773	Archer, Wichita

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Anderson	355	400	448	624	630	Andrews	296	341	412	552	630
Angelina	322	375	421	584	689	Aransas	296	363	485	673	679
Armstrong	296	341	446	559	630	Atascosa	296	341	412	552	630
Austin	296	341	412	565	630	Bailey	296	341	412	552	630
Bandera	316	341	412	559	630	Baylor	296	341	412	552	630
Bee	296	341	412	552	630	Blanco	296	341	435	607	640
Borden	296	341	412	552	630	Bosque	296	341	412	552	630
Brewster	296	341	412	556	666	Briscoe	296	341	412	552	630
Brooks	296	341	412	552	630	Brown	296	341	413	554	678
Burleson	296	341	432	584	712	Burnet	376	434	534	742	868
Calhoun	315	341	412	570	673	Callahan	296	341	412	552	630
Camp	400	405	506	633	708	Carson	296	341	412	552	630
Cass	296	341	412	552	630	Castro	298	341	412	552	630
Cherokee	330	342	419	552	630	Childress	296	341	412	552	630
Clay	296	348	412	552	643	Cochran	296	341	412	552	630
Coke	296	341	412	552	630	Coleman	296	341	412	552	630
Collingsworth	296	341	412	552	630	Colorado	296	341	412	552	630
Comanche	296	341	412	552	630	Concho	296	341	412	552	630
Cooke	320	341	433	588	654	Cottle	296	341	412	552	630
Crane	296	341	412	552	630	Crockett	296	341	412	552	630
Crosby	296	341	412	552	630	Culberson	296	341	412	552	630
Dallam	296	341	412	552	630	Dawson	296	341	412	552	630
Deaf Smith	296	341	412	552	641	Delta	296	354	412	552	630
DeWitt	296	341	412	552	630	Dickens	296	341	412	552	630
Dimmit	296	341	412	552	630	Donley	296	341	412	552	630
Duval	296	341	412	552	630	Eastland	296	341	412	552	630
Edwards	296	341	412	552	630	Erath	306	347	448	580	630
Falls	296	341	412	552	630	Fannin	300	341	412	554	630
Fayette	296	341	412	552	630	Fisher	296	341	412	552	630
Floyd	296	341	412	552	630	Foard	296	341	412	552	630
Franklin	296	341	412	570	630	Freestone	296	341	412	552	630
Frio	296	341	412	552	630	Gaines	302	341	412	552	630
Garza	296	341	412	552	630	Gillespie	296	373	481	663	676
Glasscock	296	341	412	552	630	Goliad	296	341	412	552	630
Gonzales	296	341	412	552	630	Gray	323	341	438	552	652
Grimes	296	341	412	556	657	Hale	296	341	412	552	630
Hall	296	341	412	552	630	Hamilton	296	341	412	552	630
Hansford	296	341	412	552	648	Hardeman	296	341	412	552	630

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 46

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hartley	296	341	412	552	630
Hemphill	296	381	425	594	630
Hockley	302	352	412	557	630
Houston	296	341	412	552	630
Hudspeth	356	402	448	563	739
Irion	296	341	412	552	630
Jackson	296	342	412	552	630
Jeff Davis	296	341	412	552	630
Jim Wells	296	341	412	552	639
Karnes	296	341	412	552	630
Kenedy	296	341	412	552	630
Kerr	296	383	477	665	785
King	296	341	412	552	630
Kleberg	359	373	453	633	745
Lamar	296	366	431	603	712
Lampasas	296	341	412	559	661
Lavaca	296	341	412	552	630
Leon	296	380	424	552	699
Lipscomb	296	341	412	552	630
Llano	296	381	506	634	832
Lynn	296	341	412	552	630
McMullen	296	341	412	552	630
Marion	296	341	412	552	654
Mason	296	341	412	552	630
Maverick	296	341	412	552	630
Menard	296	341	412	552	630
Mills	296	341	412	552	630
Montague	296	341	412	552	630
Morris	296	341	412	552	630
Nacogdoches	311	377	488	609	720
Newton	296	341	412	552	630
Ochiltree	296	341	412	552	630
Palo Pinto	296	341	412	552	656
Parmer	296	341	412	552	630
Polk	330	360	419	565	685
Rains	296	383	463	642	648
Real	296	341	412	552	630
Reeves	296	341	412	552	630
Roberts	296	345	412	552	630
Runnels	296	341	412	552	630
Sabine	296	341	412	552	630
San Jacinto	309	349	412	552	645
Schleicher	296	341	412	552	630
Shackelford	296	341	412	552	630
Sherman	296	341	412	552	630

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Haskell	296	341	412	552	630
Hill	296	341	412	552	630
Hopkins	345	371	435	607	654
Howard	314	341	412	556	630
Hutchinson	296	341	425	594	701
Jack	296	341	412	552	630
Jasper	296	341	420	559	687
Jim Hogg	296	341	412	552	630
Jones	296	341	412	552	630
Kendall	296	431	485	673	797
Kent	296	341	412	552	630
Kimble	296	341	448	562	630
Kinney	296	341	412	552	630
Knox	296	341	412	552	630
Lamb	296	341	412	552	630
La Salle	296	341	412	552	630
Lee	335	377	422	589	662
Limestone	296	341	412	552	630
Live Oak	296	341	412	552	630
Loving	296	341	412	552	630
McCulloch	304	341	412	552	630
Madison	296	351	412	552	650
Martin	296	341	412	552	630
Matagorda	341	374	463	642	648
Medina	296	341	412	552	630
Milam	296	341	412	552	630
Mitchell	296	341	412	552	630
Moore	296	347	412	552	641
Motley	296	341	412	552	630
Navarro	354	373	447	568	630
Nolan	304	341	412	552	630
Oldham	296	341	446	559	655
Panola	296	348	412	552	630
Pecos	296	341	412	556	657
Presidio	296	341	412	552	630
Reagan	377	383	508	639	835
Red River	296	381	425	552	630
Refugio	296	341	412	552	630
Robertson	296	391	436	552	630
Rusk	308	341	412	552	630
San Augustine	296	341	412	552	630
San Saba	296	341	412	552	630
Scurry	296	341	426	596	704
Shelby	296	341	412	552	630
Somervell	338	381	425	584	630

TEXAS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Starr	296	341	412	552	630	Stephens	296	341	412	552	630
Sterling	296	341	412	552	630	Stonewall	296	341	412	552	630
Sutton	296	341	412	552	630	Swisher	296	341	412	552	630
Terrell	296	341	412	552	630	Terry	296	341	412	552	630
Throckmorton	296	341	412	552	630	Titus	313	390	441	610	630
Trinity	307	347	412	552	630	Tyler	296	341	439	552	724
Upton	296	341	412	552	630	Uvalde	296	341	412	552	630
Val Verde	296	392	462	576	680	Van Zandt	315	341	426	582	704
Walker	398	423	518	688	726	Ward	296	341	412	552	630
Washington	366	375	500	624	820	Wharton	296	341	412	552	630
Wheeler	296	341	412	552	630	Wilbarger	296	341	412	552	651
Willacy	296	341	412	552	630	Winkler	296	341	412	552	630
Wise	296	345	414	577	630	Wood	296	341	425	594	701
Yoakum	296	389	477	597	785	Young	296	341	412	552	639
Zapata	296	341	412	552	630	Zavala	296	341	412	552	630

UTAH

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County MSA*	344	424	529	710	854	Kane
Provo--Orem, UT MSA	476	503	622	862	1020	Utah
*Salt Lake City--Ogden, UT MSA	514	595	756	1052	1232	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beaver	325	396	498	665	800	Box Elder	362	399	502	670	809
Cache	362	445	556	744	895	Carbon	348	396	498	665	800
Daggett	352	481	639	802	898	Duchesne	325	396	498	665	800
Emery	325	396	498	665	800	Garfield	325	396	498	665	800
Grand	325	396	498	665	800	Iron	332	451	560	703	825
Juab	325	396	498	665	800	Millard	325	396	498	665	800
Morgan	325	396	498	665	800	Piute	325	396	498	665	800
Rich	325	396	498	665	800	San Juan	325	396	498	665	800
Sanpete	325	396	498	665	800	Sevier	329	396	498	665	800
Summit	479	592	738	997	1213	Tooele	401	510	616	824	990
Uintah	325	396	498	665	800	Wasatch	325	413	498	665	800
Washington	398	493	652	873	1067	Wayne	325	396	498	665	800

VERMONT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	521	638	850	1159	1400	Chittenden county towns of Burlington city, Charlotte town, Colchester town, Essex town, Hinesburg town, Jericho town, Milton town, Richmond town, Shelburne town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 48

VERMONT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						South Burlington city, St. George town, Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town, St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town, South Hero town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
Addison	463	559	650	907	1016	Addison town, Bridport town, Bristol town, Cornwall town, Ferrisburg town, Goshen town, Granville town, Hancock town, Leicester town, Lincoln town, Middlebury town, Monkton town, New Haven town, Orwell town, Panton town, Ripton town, Salisbury town, Shoreham town, Starksboro town, Vergennes city, Waltham town, Weybridge town, Whiting town
Bennington	418	528	678	862	1006	Arlington town, Bennington town, Dorset town, Glastenbury town, Landgrove town, Manchester town, Peru town, Pownal town, Readsboro town, Rupert town, Sandgate town, Searsburg town, Shaftsbury town, Stamford town, Sunderland town, Winhall town, Woodford town
Caledonia	404	482	588	740	850	Barnet town, Burke town, Danville town, Groton town, Hardwick town, Kirby town, Lyndon town, Newark town, Peacham town, Ryegate town, Sheffield town, St. Johnsbury town, Stannard town, Sutton town, Walden town, Waterford town, Wheelock town
Chittenden	425	687	775	1077	1269	Bolton town, Buels gore, Huntington town, Underhill town, Westford town
Essex	384	464	573	723	829	Averill town, Avery's gore, Bloomfield town, Brighton town, Brunswick town, Canaan town, Concord town, East Haven town, Ferdinand town, Granby town, Guildhall town, Lemington town, Lewis town, Lunenburg town, Maidstone town, Norton town, Victory town, Warner's grant, Warren's gore
Franklin	463	525	643	816	938	Bakersfield town, Berkshire town, Enosburg town, Fairfield town, Fletcher town, Franklin town, Highgate town, Montgomery town, Richford town, Sheldon town
Grand Isle	400	480	594	748	859	Alburg town, Isle La Motte town, North Hero town
Lamoille	370	513	613	840	961	Belvidere town, Cambridge town, Eden town, Elmore town, Hyde Park town, Johnson town, Morristown town, Stowe town, Waterville town, Wolcott town
Orange	383	503	621	819	918	Bradford town, Braintree town, Brookfield town, Chelsea town, Corinth town,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 49

VERMONT continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within nonmetropolitan counties
						Fairlee town, Newbury town, Orange town, Randolph town, Strafford town, Thetford town, Topsham town, Tunbridge town, Vershire town, Washington town, West Fairlee town, Williamstown town
Orleans	356	430	531	669	768	Albany town, Barton town, Brownington town, Charleston town, Coventry town, Craftsbury town, Derby town, Glover town, Greensboro town, Holland town, Irasburg town, Jay town, Lowell town, Morgan town, Newport city, Newport town, Troy town, Westfield town, Westmore town
Rutland	423	549	670	842	941	Benson town, Brandon town, Castleton town, Chittenden town, Clarendon town, Danby town, Fair Haven town, Hubbardton town, Ira town, Killington town, Mendon town, Middletown Springs town, Mount Holly town, Mount Tabor town, Pawlet town, Pittsfield town, Pittsford town, Poultney town, Proctor town, Rutland city, Rutland town, Shrewsbury town, Sudbury town, Tinmouth town, Wallingford town, Wells town, West Haven town, West Rutland town
Washington	399	494	666	833	935	Barre city, Barre town, Berlin town, Cabot town, Calais town, Duxbury town, East Montpelier town, Fayston town, Marshfield town, Middlesex town, Montpelier city, Moretown town, Northfield town, Plainfield town, Roxbury town, Waitsfield town, Warren town, Waterbury town, Woodbury town, Worcester town
Windham	459	530	704	892	983	Athens town, Brattleboro town, Brookline town, Dover town, Dummerston town, Grafton town, Guilford town, Halifax town, Jamaica town, Londonderry town, Marlboro town, Newfane town, Putney town, Rockingham town, Somerset town, Stratton town, Townshend town, Vernon town, Wardsboro town, Westminster town, Whitingham town, Wilmington town, Windham town
Windsor	494	559	698	895	1062	Andover town, Baltimore town, Barnard town, Bethel town, Bridgewater town, Cavendish town, Chester town, Hartford town, Hartland town, Ludlow town, Norwich town, Plymouth town, Pomfret town, Reading town, Rochester town, Royalton town, Sharon town, Springfield town, Stockbridge town, Weathersfield town, West Windsor town, Weston town, Windsor town, Woodstock town

VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	462	547	698	928	1040	Albemarle, Fluvanna, Greene,

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 50

VIRGINIA continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Charlottesville city
Clarke County MSA*	369	521	674	926	945	Clarke
Culpeper County MSA*	457	666	775	1024	1227	Culpeper
Danville, VA MSA	315	397	466	626	755	Pittsylvania, Danville city
Johnson City--Kingsport--Bristol, TN--VA MSA	328	391	486	629	745	Scott, Washington, Bristol city
King George County MSA*	447	595	667	927	934	King George
Lynchburg, VA MSA	374	414	476	626	755	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
*Norfolk--Virginia Beach--Newport News, VA NC MSA	562	632	748	1044	1226	Gloucester, Isle of Wight, James, Mathews, York, Chesapeake city, Hampton city, Newport News city, Norfolk city, Poquoson city, Portsmouth city, Suffolk city, Virginia Beach city, Williamsburg city
*Richmond--Petersburg, VA MSA	596	673	785	1091	1288	Charles, Chesterfield, Dinwiddie, Goochland, Hanover, Henrico, New Kent, Powhatan, Prince George, Colonial Heights city, Hopewell city, Petersburg city, Richmond city
Roanoke, VA MSA	317	397	515	660	822	Botetourt, Roanoke, Roanoke city, Salem city
Warren County MSA*	361	495	661	865	1080	Warren
*Washington, DC--MD--VA--WV PMSA	913	1039	1218	1660	2002	Arlington, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	365	395	461	613	738	Alleghany	320	389	456	613	738
Amelia	308	389	456	613	738	Appomattox	308	389	456	613	738
Augusta	308	399	485	639	776	Bath	308	389	456	613	738
Bland	308	389	456	613	738	Brunswick	308	389	456	613	738
Buchanan	308	389	456	613	738	Buckingham	308	389	456	613	738
Caroline	436	442	591	784	826	Carroll	308	389	456	613	738
Charlotte	308	389	456	613	738	Craig	308	389	456	613	738
Cumberland	308	423	490	613	738	Dickenson	308	389	456	613	738
Essex	308	433	511	712	841	Floyd	308	389	456	613	738
Franklin	308	389	456	613	738	Frederick	419	483	581	795	952
Giles	308	389	456	613	738	Grayson	308	389	456	613	738
Greensville	308	399	456	613	738	Halifax	308	389	456	613	738
Henry	308	389	456	613	738	Highland	308	389	456	613	738
King and Queen	308	442	498	622	738	King William	308	423	473	613	738
Lancaster	386	432	488	650	792	Lee	308	389	456	613	738
Louisa	308	401	495	687	738	Lunenburg	308	389	456	613	738
Madison	309	459	516	648	848	Mecklenburg	308	389	456	613	738
Middlesex	308	391	456	613	738	Montgomery	316	417	489	679	803
Nelson	308	389	456	613	738	Northampton	308	389	456	613	738
Northumberland	308	389	456	613	738	Nottoway	308	389	456	613	738
Orange	342	464	622	866	1016	Page	358	403	456	613	738
Patrick	308	389	456	613	738	Prince Edward	345	391	456	613	738
Pulaski	308	389	456	613	738	Rappahannock	312	506	570	790	932

VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Richmond	308	412	460	613	757
Rockingham	308	427	540	740	868
Shenandoah	406	417	512	710	807
Southampton	308	389	456	613	738
Sussex	308	389	456	613	738
Westmoreland	308	417	553	696	900
Wythe	321	389	456	613	738

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Rockbridge	308	389	456	613	738
Russell	308	389	456	613	738
Smyth	308	389	456	613	738
Surry	319	389	456	613	738
Tazewell	308	389	456	613	738
Wise	308	389	456	613	738

WASHINGTON

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	433	562	747	1033	1224	Whatcom
Bremerton, WA PMSA	522	602	781	1053	1281	Kitsap
Olympia, WA PMSA	536	660	823	1132	1335	Thurston
Portland--Vancouver, OR--WA PMSA	524	644	795	1106	1200	Clark
Richland--Kennewick--Pasco, WA MSA	540	618	740	1031	1209	Benton, Franklin
Seattle--Bellevue--Everett, WA PMSA	599	729	923	1282	1515	Island, King, Snohomish
Spokane, WA MSA	346	471	569	773	865	Spokane
Tacoma, WA PMSA	463	553	736	1023	1156	Pierce
Yakima, WA MSA	390	480	596	798	833	Yakima

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	343	410	535	705	782
Chelan	343	410	535	705	782
Columbia	343	410	535	705	782
Douglas	400	424	535	705	782
Garfield	343	410	535	705	782
Grays Harbor	350	410	540	727	839
Kittitas	343	410	535	705	782
Lewis	343	410	535	705	782
Mason	389	483	593	780	839
Pacific	343	410	535	705	782
San Juan	424	578	771	1015	1209
Skamania	343	410	535	705	782
Wahkiakum	343	410	535	705	782
Whitman	369	421	559	777	920

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Asotin	343	410	535	705	782
Clallam	399	494	628	808	884
Cowlitz	385	430	554	770	782
Ferry	343	410	535	705	782
Grant	368	410	535	705	782
Jefferson	343	443	545	738	782
Klickitat	343	410	535	705	782
Lincoln	343	410	535	705	782
Okanogan	343	410	535	705	782
Pend Oreille	343	410	535	705	938
Skagit	466	571	674	841	940
Stevens	343	410	535	705	782
Walla Walla	343	410	535	714	844

WEST VIRGINIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County MSA*	485	518	609	762	856	Berkeley
Charleston, WV MSA	308	419	531	729	797	Kanawha, Putnam
Cumberland, MD--WV MSA	361	435	539	712	812	Mineral
Huntington--Ashland, WV--KY--OH MSA	327	384	472	602	663	Cabell, Wayne
Jefferson County MSA*	489	543	672	874	990	Jefferson
Parkersburg--Marietta, WV--OH MSA	329	395	452	586	635	Wood
Steubenville--Weirton, OH--WV MSA	309	363	457	582	649	Brooke, Hancock
Wheeling, WV--OH MSA	337	369	457	582	649	Marshall, Ohio

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WEST VIRGINIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	274	347	389	500	582
Braxton	274	334	389	500	582
Clay	274	334	389	500	582
Fayette	274	334	389	500	582
Grant	274	334	389	500	582
Hampshire	274	334	391	513	582
Harrison	301	370	427	533	640
Lewis	274	365	389	500	582
Logan	280	334	389	503	595
Marion	274	345	426	545	629
Mercer	274	334	389	500	582
Monongalia	344	382	463	640	756
Morgan	372	420	470	590	657
Pendleton	274	334	389	500	582
Pocahontas	274	334	389	500	582
Raleigh	315	372	433	558	653
Ritchie	274	334	389	500	582
Summers	274	334	389	500	582
Tucker	274	334	389	500	582
Upshur	274	334	391	500	582
Wetzel	309	334	420	524	660
Wyoming	274	334	389	500	582

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Boone	274	334	389	500	582
Calhoun	274	334	389	500	582
Doddridge	283	334	389	500	582
Gilmer	301	334	389	500	582
Greenbrier	274	377	402	502	582
Hardy	274	334	389	500	582
Jackson	274	342	389	532	582
Lincoln	274	334	389	500	582
McDowell	274	334	389	500	582
Mason	274	334	389	500	597
Mingo	274	334	389	500	589
Monroe	274	334	389	500	582
Nicholas	274	334	389	500	582
Pleasants	282	334	389	500	596
Preston	274	350	389	500	582
Randolph	274	334	389	500	582
Roane	274	334	389	500	582
Taylor	335	361	395	500	582
Tyler	274	334	409	511	582
Webster	274	334	389	500	582
Wirt	274	334	389	500	582

WISCONSIN

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton--Oshkosh--Neenah, WI MSA	344	424	540	678	783	Calumet, Outagamie, Winnebago
Duluth--Superior, MN--WI MSA	302	389	499	666	776	Douglas
Eau Claire, WI MSA	371	404	530	679	766	Chippewa, Eau Claire
Green Bay, WI MSA	407	448	576	800	805	Brown
Janesville--Beloit, WI MSA	379	478	592	741	830	Rock
Kenosha, WI PMSA	452	560	688	945	1064	Kenosha
La Crosse, WI--MN MSA	306	394	501	670	812	La Crosse
Madison, WI MSA	471	592	716	993	1172	Dane
Milwaukee--Waukesha, WI PMSA	419	547	688	861	962	Milwaukee, Ozaukee, Washington, Waukesha
*Minneapolis--St. Paul, MN--WI MSA	578	743	951	1286	1457	Pierce, St. Croix
Racine, WI PMSA	372	462	609	786	859	Racine
Sheboygan, WI MSA	328	423	515	644	800	Sheboygan
Wausau, WI MSA	403	418	520	712	788	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	294	343	437	556	628
Barron	294	343	437	556	628
Buffalo	294	343	437	556	628
Clark	294	343	437	556	628
Crawford	294	343	437	556	628
Door	294	364	451	581	705

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	320	356	437	556	628
Bayfield	294	343	437	556	628
Burnett	294	343	437	556	628
Columbia	294	350	459	601	675
Dodge	372	377	496	622	693
Dunn	294	343	448	599	739

WISCONSIN continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Florence	294	343	437	556	628
Forest	294	343	437	556	628
Green	299	343	437	587	628
Iowa	304	343	437	574	628
Jackson	294	343	437	556	628
Juneau	300	343	437	556	628
Lafayette	299	343	437	556	628
Lincoln	294	343	437	556	628
Marinette	294	343	437	556	628
Menominee	294	343	437	556	628
Oconto	294	343	437	556	628
Pepin	294	343	437	556	628
Portage	358	377	489	612	756
Richland	294	343	437	556	628
Sauk	344	356	474	590	662
Shawano	299	343	437	556	628
Trempealeau	294	343	437	556	628
Vilas	294	343	437	556	628
Washburn	294	343	437	556	628
Waushara	294	343	437	556	628

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Fond du Lac	341	462	547	745	767
Grant	298	343	437	556	628
Green Lake	294	343	437	556	628
Iron	294	343	437	556	628
Jefferson	294	390	505	654	715
Kewaunee	294	343	437	556	628
Langlade	294	343	437	556	628
Manitowoc	297	343	437	556	628
Marquette	294	343	437	556	628
Monroe	294	343	437	582	628
Oneida	294	344	437	560	673
Polk	294	343	444	556	628
Price	294	343	437	556	628
Rusk	294	343	437	556	628
Sawyer	294	343	437	556	628
Taylor	294	343	437	556	628
Vernon	294	343	437	556	628
Walworth	306	432	559	729	820
Waupaca	294	343	437	556	660
Wood	318	365	452	568	638

WYOMING

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	356	412	527	722	854	Natrona
Cheyenne, WY MSA	401	504	673	860	1045	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	336	420	559	777	919
Campbell	345	367	470	626	738
Converse	320	367	470	624	717
Fremont	320	367	470	624	717
Hot Springs	320	367	470	624	717
Lincoln	320	367	470	624	717
Park	320	367	470	624	724
Sheridan	320	367	470	624	724
Sweetwater	333	367	470	626	738
Uinta	335	367	470	625	755
Weston	320	367	470	624	717

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	320	367	470	624	717
Carbon	320	367	470	624	717
Crook	320	367	470	624	717
Goshen	320	367	470	624	717
Johnson	320	367	470	624	717
Niobrara	320	367	470	624	717
Platte	320	367	470	624	717
Sublette	354	398	470	624	717
Teton	425	541	719	968	1055
Washakie	320	367	470	624	717

GUAM

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	760	913	1081	1356	1524

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

SCHEDULE B - PROPOSED FAIR MARKET RENTS 2004 FOR EXISTING HOUSING PAGE 54

PUERTO RICO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	227	277	329	408	461	Aguada, Aguadilla, Moca
Arecibo, PR PMSA	246	298	350	439	495	Arecibo, Camuy, Hatillo
Caguas, PR PMSA	288	345	407	513	571	Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayagüez, PR MSA	270	329	390	487	547	Añasco, Cabo Rojo, Hormigueros, Mayagüez, Sabana Grande, San Germán
Ponce, PR MSA	267	328	386	485	543	Guayanilla, Juana Díaz, Peñuelas, Ponce, Villalba, Yauco
San Juan--Bayamón, PR PMSA	361	440	519	650	730	Aguas Buenas, Barceloneta, Bayamón, Canóvanas, Carolina, Cataño, Ceiba, Comerío, Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao, Juncos, Las Piedras, Loíza, Luquillo, Manatí, Morovis, Naguabo, Naranjito, Río Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto, Vega Alta, Vega Baja, Yabucoa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adjuntas	213	263	309	390	431	Aibonito	213	263	309	390	431
Arroyo	213	263	309	390	431	Barranquitas	213	263	309	390	431
Ciales	213	263	309	390	431	Coamo	213	263	309	390	431
Culebra	213	263	309	390	431	Guánica	213	263	309	390	431
Guayama	213	263	309	390	431	Isabela	213	263	309	390	431
Jayuya	213	263	309	390	431	Lajas	213	263	309	390	431
Lares	213	263	309	390	431	Las Marías	213	263	309	390	431
Maricao	213	263	309	390	431	Maunabo	213	263	309	390	431
Orocovis	213	263	309	390	431	Patillas	213	263	309	390	431
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Salinas	213	263	309	390	431	San Sebastián	213	263	309	390	431
Santa Isabel	213	263	309	390	431	Utuado	213	263	309	390	431
Vieques	213	263	309	390	431						

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
St. Croix Island	509	618	729	909	1019	St. John/St. Thomas	654	792	934	1167	1307

Note1: The FMRs for unit sizes larger then 4 BRs are calculated by adding 15 the 4 BR FMR for each extra bedroom.
Note2: 50th percentile FMRs are indicated by an * before the MSA name. 04/11/2003

SCHEDULE D - FY 2004 FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES IN THE SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

State	Area Name	Space Rent
California	Los Angeles--Long Beach, CA PMSA	$463
	Orange County, CA PMSA	$562
	Riverside--San Bernardino, CA PMSA	$369
	San Diego, CA MSA	$579
	Vallejo--Fairfield--Napa, CA PMSA	$483
Colorado	Boulder--Longmont, CO PMSA	$423
	Denver, CO PMSA	$402
Maryland	Hagerstown, MD PMSA	$257
	St. Mary's County	$376
Nevada	Reno, NV MSA	$445
New York	Newburgh, NY--PA PMSA	$396
	Rochester, NY MSA	$258
	Utica--Rome, NY MSA	$232
Oregon	Deschutes County	$282
	Portland--Vancouver, OR--WA PMSA	$324
	Salem, OR PMSA	$401
Washington	Olympia, WA PMSA	$474

[FR Doc. 03–13269 Filed 5–27–03; 8:45 am]
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Federal Register

Wednesday,
May 28, 2003

Part VIII

The President

Executive Order 13303—Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest

Federal Register
Vol. 68, No. 102
Wednesday, May 28, 2003

Presidential Documents

Title 3—

The President

Executive Order 13303 of May 22, 2003

Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, obstructs the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq. This situation constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. Unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the following:

(a) the Development Fund for Iraq, and

(b) all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

Sec. 2. (a) As of the effective date of this order, Executive Order 12722 of August 2, 1990, Executive Order 12724 of August 9, 1990, and Executive Order 13290 of March 20, 2003, shall not apply to the property and interests in property described in section 1 of this order.

(b) Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under Executive Orders 12722, 12724, or 13290, or under the authority of IEEPA or the UNPA, except as hereafter terminated, modified, or suspended by the issuing Federal agency and except as provided in section 2(a) of this order.

Sec. 3. For the purposes of this order:

(a) The term ''person'' means an individual or entity;

(b) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United

States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term ''Iraqi petroleum and petroleum products'' means any petroleum, petroleum products, or natural gas originating in Iraq, including any Iraqi-origin oil inventories, wherever located; and

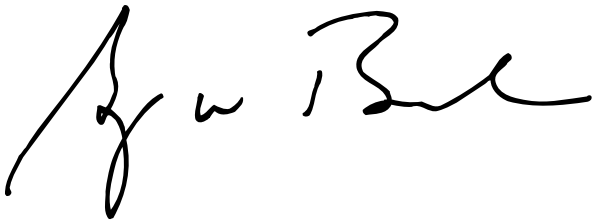
(e) The term ''Development Fund for Iraq'' means the fund established on or about May 22, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.

Sec. 4. (a) The Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their statutory authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

Sec. 5. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 6. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
May 22, 2003.

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Federal Register

Wednesday,
May 28, 2003

Part IX

The President

Proclamation 7681—Prayer for Peace, Memorial Day, 2003

Federal Register
Vol. 68, No. 102
Wednesday, May 28, 2003

Presidential Documents

Title 3—

The President

Proclamation 7681 of May 22, 2003

Prayer for Peace, Memorial Day, 2003

By the President of the United States of America

A Proclamation

On Memorial Day, America undertakes its solemn duty to remember the sacred list of brave Americans who have sacrificed their lives for the cause of freedom and the security of our Nation. By honoring these proud Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen lost throughout our country's history, we renew our commitment to upholding the democratic ideals they fought and died to preserve.

Each Memorial Day, we pray for peace throughout the world, remembering what was gained and what was lost during times of war. From the bravery of the men at Valley Forge, to the daring of Normandy, the courage of Iwo Jima, and the steady resolve in Afghanistan and Iraq, our men and women in uniform have won for us every hour that we live in freedom. During this year's observance, we particularly recognize the courageous spirit of the men and women in our Nation's Armed Forces who are working with our coalition partners to restore civil order, provide critical humanitarian aid, and renew Afghanistan and Iraq. As we honor those who have served and have been lost, we better understand the meaning of patriotism and citizenship, and we pledge that their sacrifices will not be in vain.

Throughout our history, the decency, character, and idealism of our military troops have turned enemies into allies and oppression into hope. In all our victories, American soldiers have fought to liberate, not to conquer; and today, the United States joins with a strong coalition in the noble cause of liberty and peace for the world. On this day, America honors her own, but we also recognize the shared victories and hardships of our allied forces who have served and fallen alongside our troops.

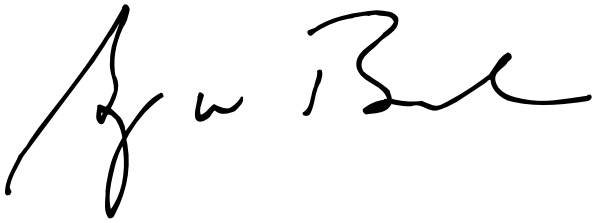
The noble sacrifices of our service men and women will not be forgotten. Every name, every life is a loss to our military, to our Nation, and to their loved ones. Americans stand with the families who grieve, and we share in their great sorrow and great pride. There will be no homecoming on this Earth for those lost in battle, but we know that this reunion will one day come.

In respect for their devotion to America, the Congress, by a joint resolution approved on May 11, 1950, as amended (64 Stat. 158), has requested the President to issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated the minute beginning at 3:00 p.m. local time on that day as a time for all Americans to observe the National Moment of Remembrance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Memorial Day, May 26, 2003, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day. I urge the press, radio, television, and all other media to participate in these observances.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States, and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

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



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

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Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 289/P.L. 108–23

Ottawa National Wildlife Refuge Complex Expansion and Detroit River International Wildlife Refuge Expansion Act (May 19, 2003; 117 Stat. 704)

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